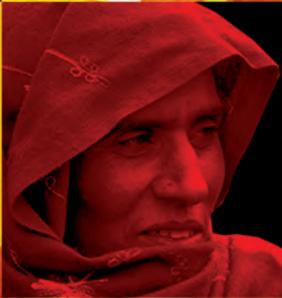


# THE INDIGENOUS WORLD 2016



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Copenhagen 2016

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The articles in *The Indigenous World* are produced on a voluntary basis. It is IWGIA's intention that *The Indigenous World* should provide a comprehensive update on the situation of indigenous peoples worldwide but, unfortunately, it is not always possible to find authors to cover all relevant countries. The articles reflect the authors' own views and opinions and not necessarily those of IWGIA itself. IWGIA can furthermore not be held responsible for the accuracy of their content. *The Indigenous World* is published annually in English and Spanish.

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EDITORIAL

## EDITORIAL

Speaking on a panel organized during the 2015 UN Forum on Business and Human Rights and entitled “Utilizing the Guiding Principles in the context of extractive industries – benefits and challenges” the UN Special Rapporteur on the rights of indigenous peoples, Ms. Victoria Tauli-Corpuz noted that despite developments in human rights law in relation to indigenous peoples’ rights, the reality around the world was that serious violations of these rights continue unabated.

The different reports in this 2016 edition of *The Indigenous World* underscore this discrepancy between what is said and decided at the international level and the daily life of indigenous peoples. What used to be called the “implementation gap” has become an “implementation abyss”!

### **Achievements at the international level**

Throughout 2015, indigenous peoples’ representatives have been extremely active at the international level and, due to their consistent efforts, there have been some notable achievements. For months, indigenous representatives have been engaged in preparing for the two important UN events of the year: the United Nations Sustainable Development Summit in September and the 21th Conference of Parties (COP21) of the UN Framework Convention on Climate Change (UNFCCC) held in Paris in December. In each case, indigenous expert groups—the Indigenous Peoples’ Major Group on Sustainable Development Goals (SDGs) and the International Indigenous peoples Forum on Climate Change and its Global Steering Committee—have organized preparatory regional seminars, formulated proposals, engaged with stakeholders and State Parties, lobbied and elaborated statements, position papers, and key demands. Although the final documents—the United Nations’ new framework, “Transforming Our World: the 2030 Agenda for Sustainable Development”, the UNFCCC States Parties’ Intended Nationally Determined Contributions (INDGs) to the reduction of emissions and the Paris Climate Change Agreement—did not fulfil indigenous peoples’ expectations, some of their concerns were met: the 2030 Agenda includes references to indig-

enous peoples in several paragraphs and mentions them in Goals 2 and 4. There is also a general view that the SDGs are a major improvement to the Millennium Development Goals (MDGs) and that the Agenda's references to, *inter alia*, human rights, human dignity, the rule of law, justice, equality and non-discrimination, the respect for ethnicity and cultural diversity are positive elements. Few of the Internationally Determined Contributions (INDCs), however, include any reference to indigenous peoples, their rights and potential contributions; but indigenous peoples will have an opportunity to contribute to the Nationally Determined Contributions (NDC) that will be elaborated to replace the INDCs when a country ratifies the Paris Agreement. As for the four key demands to COP21 which had been consensually adopted by 200 indigenous representatives during the Indigenous Peoples' Caucus, they were not taken into consideration. In the Paris Agreement, the language on human rights and indigenous peoples' rights was only included in its Preamble, but its section on adaptation does recognize the importance of indigenous peoples' knowledge and local knowledge systems for adaptation actions.

Other positive developments at the international level reported for 2015 include: the decisions taken by the UN Secretary General and the President of the UN General Assembly with regard to the follow up on the implementation of the Outcome Document of the World Conference on Indigenous Peoples and the drafting of a system-wide action plan with inputs from indigenous peoples, the UN Permanent Forum on Indigenous Issues (UNPFII), and the UN Expert Mechanism on Indigenous Peoples (EMRIP). The increased attention given by some of the Treaty Bodies—in particular the Committee on the Elimination of Racial Discrimination (CERD), the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Rights of the Child (CRC)—to indigenous issues, is another positive development. The decision by the 39<sup>th</sup> session of the World Heritage Committee (WHC) to introduce references to indigenous peoples in its operational guidelines must also be seen as the result of several years lobbying efforts by indigenous organizations; the committee also encouraged States to obtain the free, prior and informed consent of indigenous peoples when nominating sites for World Heritage listing and took several notable decisions on specific sites where indigenous peoples have expressed concerns. The UN Working Group on Business and Human Rights visited Brazil and signaled a series of critical issues in relation to, *inter alia*, the displacement and violation of indige-

nous peoples' rights caused by large-scale development projects on their territories.

Also to be noted is the active role played at the regional level by the Inter-American Court (IACHR) regarding the protection of indigenous peoples' rights in providing precautionary measures (Nicaragua, Argentina), declaring complaints admissible (Nicaragua) and passing judgments ordering states (Suriname, Panama) to implement actions to respect indigenous rights. In the case of Paraguay, that has failed to comply with three judgments in indigenous cases, the Court has passed a resolution that opens up the procedure for actions that could lead to the appointment of judges in the country to whom the court will delegate oversight of the rulings. In another case, the court has established that the Paraguayan state has been in arrears since 2014 and will need to make a back payment of US\$10,000 to the Xákmok Kásek community for failure to return their lands. In Guatemala, the economic and social reparations ordered by means of an IACHR ruling for those communities that suffered massacres during the internal armed conflict began finally to take shape in 2015 with the implementation of a payment plan. In Panama, compensation for the Guna de Madungandi people (US\$2 million) and the Emberá communities of Ipetí and Piriati (US\$560,000) was paid by the State in fulfilment of the sentence imposed by the IACHR as a consequence of its violation of their territorial rights caused by the Alto Bayano hydroelectric dam, built in 1972.

In Africa, the Working Group on Indigenous Populations of the African Commission on Human and Peoples' Rights continued to work actively on indigenous rights issues in Africa, among others producing a study on the impact of extractive industries on the rights of indigenous peoples in Africa.

## **Positive developments at the national level**

In Canada, the newly elected Prime Minister Justin Trudeau expressed his strong commitment to improve the relationship to indigenous peoples. Trudeau furthermore has prioritized the implementation of the Truth and Reconciliation Commission's Calls to Action, including the implementation of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

A number of countries have also passed laws that—if implemented in the right spirit—may have a positive impact on indigenous peoples' situation. In Taiwan,

e.g., an amendment to the Indigenous Peoples' Basic Law strengthens the legal status of indigenous communities; the Central African Republic's new Constitution adopted in December 2015 recognizes ILO Convention No. 169 and includes in its Articles 6 and 148 the protection of indigenous peoples' rights; in India the passing of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill will provide stringent action against those involved in crimes against indigenous peoples.

In Aotearoa, progress has been made in the settlement of Maori claims regarding historical Treaty breaches. In South Africa, the government endorsed the conclusions of a study on the traditional knowledge associated with the rooibos plant stating that "...the traditional knowledge rests with the Khoi and San people of South Africa....Any individual or organization planning a bioprospecting project involving rooibos must engage with the Khoi and San people".

## **The situation at community level**

However, most of the country specific reports in this yearbook give a rather bleak picture of the situation of indigenous communities at the local level. When looking at socio-economic parameters, there are few signs of progress—in some cases it is even reported that the situation has deteriorated, as for instance in Mexico where extreme poverty among indigenous peoples has increased since 2012.

National policies are also often in dire contrast to the international agreements, the various states have committed themselves to—notably international conventions, UNDRIP, and ILO Convention No. 169—but also to the intentions behind the newly adopted Agenda for Sustainable Development and Paris Agreement.

## **Land and resource rights**

The root cause of many indigenous peoples' socio-economic poverty is their precarious situation when it comes to land and resource rights. In some countries, there may be delays in land regulation (Brazil), in titling collective properties (Venezuela); in others, indigenous land rights are not respected and land expropriation, land grabbing and encroachments occur regularly—legally or illegally—but often in relation to large agribusiness development plans, extractive industries

and infrastructural developments, and accompanied by the forced displacement of indigenous peoples.

An example of agri-business related land alienation is from Ethiopia, where the government allows foreign companies to lease large land tracts in return for foreign investments, while pursuing at the same time a villagization policy which aims at resettling those who live in rural areas to villages with improved access to amenities... which often are not being provided. In Bolivia, new laws will enable the agribusiness sector to expand the agricultural frontier, from its current 3.7 million ha to 20 million ha.

Extractive industries—legal or illegal—affect indigenous peoples from Norway to Botswana and from Latin America to Asia and pose increasing problems to indigenous communities, their social fabric, their health and their environment. In Norway, for instance, the Ministry of Environment has given its permission to start underground copper mining in the Finmark and establish a submarine tailing deposit in the Repparfjord. This project is highly controversial for its impact not only on traditional Sámi reindeer herding but also on the fragile environment of the Repparfjord and the local Sámi fisheries. In Botswana, indigenous peoples are concerned about the expansion of mineral prospecting and hydraulic fracking activities in the Okavango World Heritage Site, the Kgalagadi Transfrontier Park, and the Central Kalahari Game Reserve. In Ecuador, the State attempts to expand the oil frontier towards the centre and south of the Amazon region where there are important protected areas and ancestral territories. In Turkana, in north western Kenya, indigenous peoples are questioning the process by which 40,000 acres of community land were privatized and transferred to private developers for a large wind mill project without any consultation.

At the same time, it seems that some governments are not only eager to develop these industries but even to make it easier and more attractive to new mining and logging companies by amending national legislation in a more corporate friendly way which threatens to undermine indigenous peoples' rights. In the Russian Federation, the prospect of indigenous peoples to have their lands protected as "Territories of Traditional Nature Use" (TTNU) has decreased due to changes in the legislation as well as to actions by regional authorities and the judiciary in favour of extractive companies. In Mexico, a new Guide to Land Occupations" published by the Ministry of Finance has been dubbed "the Guide to Land Grabbing" since it justifies land grabbing on the basis that it is promoting the development of the mining sector. In Peru, the government follows a logic of

“administrative simplification” in favour of investment, ignoring rights such as prior consultation and even violating rights to property, possession and community autonomy over the use of land; recent legislation has furthermore simplified the procedural steps required for obtaining a mining concession, for requesting a Global Environmental Certificate for an environmental impact assessment and for authorizing licences over water and forest resources. In Bolivia, three new supreme decrees will negatively affect indigenous peoples’ rights when it comes to receive compensation for the impact of hydrocarbon extractive activities on their territories; get accurate, prompt and appropriate information from the State with regard to projects; and be provided with specialist advice when taking part in a consultation. Finally, it establishes that operators have the authority to implement their projects without any interruption and that this can be guaranteed, if necessary, by the use of the Security Forces.

In order to protect their land rights, indigenous peoples use different strategies. Many are trying to map their territories. In Indonesia, more than 600 indigenous territory maps covering a total of 6.8 million ha have been submitted to the Ministry of Environment and Forestry. The question that remains to be solved is the legal validity of these maps. In Malaysia, indigenous peoples challenge development aggression through press statements, police reports, complaints and ultimately filing cases in court. In Laos, Tarieng people in Xekong province have even used social media to report their concerns at the environmental impact on health being caused by extractive industries.

## **Human rights violations and conflicts in indigenous areas**

As in previous years, several indigenous leaders involved in the defense of territorial rights have been arrested (Russian Federation), harassed (Burma), threatened (the Philippines) or murdered (Nicaragua, Brazil, the Philippines). Repression by military and paramilitary forces in conjunction with the eviction of people from their lands has also taken its deadly toll (Burma, the Philippines).

Scarcity of resources continued to fuel conflicts between farmers and pastoralists in Burkina Faso and Tanzania. In Kenya, more than 100 lives were lost in a territorial boundary conflict between the Turkana and the Pokot (both pastoralist groups). The conflict was sparked off by the discovery of oil deposits in an area which both peoples claim to be part of their territory.

Anti-terror law is used as a tool of repression and a threat to indigenous peoples' rights in countries like Ethiopia where indigenous activists have been arrested and face extended prison sentences. Muslim indigenous peoples are being targeted in several countries. In the Xinjiang-Uyghur Autonomous Region, China, two bloody events—a bomb blast and an attack on a coal mining facility—have resulted in the imposition by the Chinese government of severe rules and controls on the Muslim Uyghur and their religious practices. In Burma, the persecution of the Rohingya by security forces continues and tens of thousands Muslim Rohingya have had to flee from Burma. In Mali, on-going fighting, suicide bombings and criminal attacks as well as inter-ethnic clashes between Tuareg and Fulani communities have left the population in northern and central Mali in a situation of lawlessness and insecurity.

### **The situation of indigenous women and youth**

The situation of indigenous women continues to be alarming and in the words of the UN Special Rapporteur on the rights of indigenous peoples “indigenous women experience a broad, multifaceted and complex spectrum of mutually reinforcing human rights abuses” stemming from different sources of discrimination and marginalization. In its Concluding Observations on Russia, CEDAW expresses its concerns about indigenous women's access to land and livelihood, their limited representation in local decision-making bodies and the lack of disaggregated data on their situation. These concerns are validated by several country reports in this book.

While indigenous women experience a series of human rights abuses, incidents of rape, gang rape and attempted rape are often mentioned as exceeding all other forms of violence (Uganda, Bangladesh). The majority of the perpetrators are from a non-indigenous background, and the authorities (police, army) are often involved. The victims' access to justice is frequently curtailed by a strong culture of impunity. An example of this is from Guatemala where the case against former members of the military accused of raping and enslaving indigenous Q'eqchi' women from Alta Verapaz department during the armed conflict has made significant progress with a conviction forthcoming at the start of 2016. This case has been emblematic in that it is the first time that former soldiers have been

brought to justice for such crimes, thus opening up the possibility of thousands of women victims of the internal armed conflict obtaining justice and redress.

MDGs have often been criticized for not being culturally adapted to indigenous peoples. A blatant example of this is the new “No Home-Birthing Policy” of the Philippines’ Department of Health that prohibits and penalizes home births assisted by traditional birth attendants. Instead, it requires pregnant women to give birth in hospitals and lying-in centers. This policy is clearly intended to fulfil Goal no. 5 “Improve maternal health” and reduce maternal mortality ratio by increasing the “Proportion of births attended by skilled health personnel”. But in the case of indigenous women, this policy may well have the opposite effect and increase their maternal and neonatal mortality. Indeed, public birthing facilities are few and far between in rural areas and pregnant indigenous women will therefore be forced to travel long distances just to give birth in the nearest health facility, where they furthermore will have to deal with discriminatory attitudes and the insensitivity of health care providers towards indigenous peoples.

Some country reports do, however, note a few positive developments: in Tanzania, an emerging change in attitude towards female genital mutilation (FGM) is the result of an ongoing national and community awareness raising conducted by indigenous peoples’ organizations to highlight the health and social risks linked with FGM. Secondary education scholarships for girls have provided a safe haven for likely victims. In India, the already mentioned Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill makes it an offence to assault or sexually exploit an indigenous woman. Intentionally touching an indigenous woman in a sexual manner without her consent, or using words, acts or gestures of a sexual nature, will also be considered an offence.

In Canada, the Truth and Reconciliation Commission’s Calls to Action include supporting the call for a national inquiry into the crisis of missing and murdered indigenous women and girls (see *The Indigenous World* 2015, p. 51). The new federal government has announced that an inquiry will be held as soon as possible and the new Minister of Indigenous Affairs has already consulted indigenous peoples on how such an inquiry should be developed. The formal inquiry is to commence in 2016.

Only two country reports (Kenya and Burkina Faso) deal with the important—and probably quite common—issue of the marginalization and lack of opportunities for indigenous youth and its consequences. In Kenya, 80% of the 2.5 million youth are unemployed and indigenous youth form a large proportion of this sector

of Kenyan society. Given the deplorable situation in Kenya's north-eastern regions and minimal economic opportunities for Kenyan youth in general, they have become easy targets for extreme radicalization and home-grown agents of terror and violent conflicts. Similar conditions in Burkina Faso are characterized as ever more favorable to extremism of all kinds. Much has yet to be done to address this urgent difficulty. Another critical issue related to youth and children was taken up by the last UNPFII session in a thematic discussion on self-harm and suicide among children and young people. It was, *inter alia*, noted that indigenous communities frequently see significantly higher youth suicide rates than among the general population

### **Forging new alliances**

An interesting and promising development at the level of indigenous communities is the strengthening of alliances at the national level between different indigenous groups with the purpose of gaining more political leverage. In Namibia, efforts have been made during 2015 to establish a Namibian Indigenous Peoples Advocacy Platform comprising Himba, Nama and San representatives. In Thailand, the first assembly of the national Council of Indigenous Peoples was convened at the end of 2014. In Panama an alliance (the Unity Forum) has been formed between all the 12 traditional congresses and councils of the seven indigenous peoples of the country with the aim of working for the titling, defense and regularization of their territories. In Venezuela, the indigenous movement is organizing and mobilizing right across the country in demand of indigenous peoples' human rights. In the Philippines some 600 indigenous peoples and peasants from northern Luzon travelled to Manila to meet with more than 1,300 indigenous peoples and advocates from other regions for a national convergence for the assertion of the right to self-determination.

In Bolivia and Peru, indigenous communities have taken a further step by declaring themselves autonomous. In Bolivia, the Guarani municipality of Charagua approved by referendum its status as a native Peasant Indigenous Autonomy, overcoming the social diversity and political tensions that exist within the municipality, which is the country's largest (71,745 km<sup>2</sup>) and inhabited by 70 Guarani communities. In Peru, the Government of the Wampis nation was formed in November 2015 and is the first autonomous indigenous government in the

country. This “historic decision” has been taken “in part as a strategy for territorial defense and as a response to the efforts to divide us into communities”

If such alliances do lead to increased political leverage, it might be an important step towards gaining the strength to demand accountability from States and governments. As reported from Indonesia, governments tend to remember and use the term “indigenous peoples” only when it is beneficial. However, when it comes to fulfil and implement the commitments they have made internationally and nationally, they tend to forget or totally disregard indigenous peoples’ rights.

This why it is important that indigenous peoples at the international level keep advocating for indigenous rights and monitor their respective governments’ declarations and actions, and at the national level form strong alliances that are able to hold their governments accountable and make them fulfill their duty towards indigenous peoples. Only then will it be possible to start bridging the implementation abyss.

## **About this book**

IWGIA would like to thank all those who have contributed to this 2016 edition of *The Indigenous World* and shared their valuable information and insights on the situation of indigenous peoples in their respective countries and in relation to processes at the international and regional levels.

The purpose of *The Indigenous World 2016* is to give an overview as comprehensive as possible of the developments indigenous peoples have experienced during 2015. It is our hope that indigenous peoples themselves and their organizations will find it useful in their advocacy work to improve indigenous peoples’ human rights situation. In this relation, they may also find it inspiring for their work to read about the experiences of indigenous peoples in other countries and parts of the world. It is also IWGIA’s wish and hope that the yearbook will be useful for a wider audience interested in indigenous issues and that it can be used as a reference book and a basis for obtaining further information on the situation of indigenous peoples worldwide.

This year, the volume includes 53 country reports and 11 reports on international processes. As usual, the authors of this volume are indigenous and non-indigenous activists and scholars who have worked with the indigenous movement for many years and are part of IWGIA’s network. They are identified by IW-

GIA's regional coordinators on the basis of their knowledge and network in the regions. All the contributions to this volume are offered on a voluntary basis—this we consider a strength, but it also means that we cannot guarantee to include all countries or all aspects of importance to indigenous peoples every year. We would like to stress that omissions of specific country reports should not be interpreted as “no news is good news”. In fact, sometimes, it is the precarious human rights situation that makes it difficult to obtain articles from specific countries. In other cases, we have simply not been able to get an author to cover a specific country. In case you would like to contribute to this book, please contact the IW-GIA team.

The articles in this book express the views and visions of the authors, and IWGIA cannot be held responsible for the opinions stated herein. We therefore encourage those who are interested in obtaining more information about a specific country to contact the authors directly. It is, nonetheless, our policy to allow those authors who wish to remain anonymous to do so, due to the political sensitivity of some of the issues raised in their articles.

***Diana Vinding***, editor and ***Marianne Wiben Jensen***, Interim Director  
Copenhagen, April 2016



PART I

REGION AND  
COUNTRY REPORTS  
THE ARCTIC

# GREENLAND

Kalaallit Nunaat (Greenland) has, since 1979, been a self-governing country within the Danish Realm. In 2009, Greenland entered a new era with the inauguration of the new Act on Self-Government, which gave the country further self-determination within the State of Denmark. Greenland has a public government, and aims to establish a sustainable economy in order to achieve greater independence. The population numbers 56,000, of whom 50,000 are Inuit. Greenland's diverse culture includes subsistence hunting, commercial fisheries, tourism and emerging efforts to develop the oil and mining industries. Approximately 50 per cent of the national budget is financed by Denmark through a block grant. The Inuit Circumpolar Council (ICC), an indigenous peoples' organisation and an ECOSOC-accredited NGO, represents Inuit from Greenland, Canada, Alaska and Chukotka (Russia) and is also a permanent participant in the Arctic Council. The majority of the people of Greenland speak the Inuit language, Kalaallisut, which is the official language, while the second language of the country is Danish. In 1996, at the request of Greenland, Denmark ratified ILO Convention No. 169.

## The coalition government perseveres

**T**he Government of Greenland, under the leadership of Premier Kim Kielsen (Siumut), was elected into office in a Parliamentary election on 28 November 2014. The social democratic party Siumut opted to form a narrow coalition with the small liberal party, the Democrats, and the even smaller conservative party, Atassut. The votes cast by the electorate had suggested a strong inclination for a broad coalition between the two largest parties in Greenland politics—Siumut and the socialist party, Inuit Ataqatigiit (IA).

The coalition has managed to hold on to power ever since, despite some criticism for lack of performance and execution in terms of implementing the so-



cio-economic reforms needed to address the growing deficit in public finance. Greenland is facing some fundamental structural problems due to an aging population and a decline in GNP in recent years and the government has been encour-

aged to boost business and industrial development and to increase the quality and level of education in order to combat unemployment and migration.

Experts have called for the establishment of the framework and conditions for new economic growth. The government has taken a number of initiatives to generate revenues from increased taxation of resources, primarily fisheries. Revenues from fisheries are the backbone of the Greenland economy along with the core funding provided by Denmark. However, critics have pointed out that the fisheries may suffer from random taxation created to make ends meet in the fiscal budget.

### **Lack of transparency**

Transparency International Greenland (TIG) was established in 2011 and was accepted as a full member of Transparency International in 2015. The organisation is a member of the Greenland NGO Coalition formed in 2013 to ensure consultation with civil society on major development projects. TIG is closely monitoring the conduct of the government, democratic institutions and public and private enterprise in Greenland.

A whistle blower arrangement was introduced by the Government of Greenland to help prevent nepotism and ensure transparency in the central administration. The arrangement allows staff to anonymously report on presumed irregularities and possible breaches in legislation. Upon its introduction, both TIG and the large opposition party, IA, called for amendments to the legislation to allow for public and private companies to be covered as well.

In order to better equip public servants with knowledge of their freedom of expression, Transparency International Greenland has published a handbook on transparency in public administration.

A major predicament emerged when the economically and politically significant contract for the upkeep and operation of the US Thule Air Base was lost in the tendering process to a company with little connection to Greenland. The maintenance of Thule Air Base had been under Greenlandic and Danish control since the 1950s, providing jobs and valuable work training to residents from all over Greenland. Greenlandic society had thus been benefitting to a large extent from the contracts with the US. The new tender has opened up opportunities for other companies, however, that are not bound by the same obligations as the

previous one. For Greenland, this may result in severely reduced future income and the loss of many jobs. Greenland Contractors (partly owned by the Greenlandic authorities) brought the formulation of the tender to the US Court of Federal Claims, which ruled that the American subsidiary that was controversially awarded the lucrative maintenance contract for the US Air Force's base did not meet the necessary requirements. The case is still pending.

## **Fisheries Agreement with EU renewed**

In November, Greenland reached a new agreement with the EU on European Fishery in Greenland waters for 2016-2020. The agreement is the first under a new protocol and states that the EU quotas for shrimp and redfish are lower than in the previous agreement, while the quota for cod has been increased. Capelin had by far the largest quota in the old agreement; however, new quotas will only be negotiated when scientific advice is ready in the spring.

A few years back, the fisheries agreement was supplemented by a broader so-called fisheries partnership agreement, which provides funding for further development of Greenland's fishing industry, and includes significant funding for education in Greenland.

Through a joint effort by various stakeholders, the Greenland fishing industry has succeeded in achieving the important Marine Stewards Council certification (MSC) on shrimp and lumpfish. The MSC certification program serves to ensure sustainable fishing and is becoming a very important worldwide marketing label and tool.

## **Infrastructure development to be realised through external investments**

The Parliament of Greenland recently made a decision in principle to enlarge the airports in the capital, Nuuk, and in the major tourist destination, Ilulissat, to enable them to handle transatlantic flights. Extensions of the runways will—in turn—decrease the role of the current main airport in Kangerlussuaq, which has been criticised by some. It is a milestone decision in the area of infrastructure development, which has been discussed continuously by political parties and municipali-

ties for more than 25 years, effectively delaying any long-term solutions, particularly in the area of air traffic.

The Chairman of Greenland's Economic Council has pointed out that private investments will likely be needed for such major infrastructure projects and suggests that it could be in the form of a public-private partnership or a consortium of private investors and contributors of know-how and expertise.

## **COP21 - Climate agreement**

The Greenland Minister for Foreign Affairs, Vittus Qujaukitsoq, recently participated in COP21 in Paris as part of the Danish delegation. His comments were, among others, that he was disappointed that indigenous peoples' rights are not included in the legally binding paragraphs of the agreement to enter into force in 2020.

Indigenous peoples and their territories, including in the Arctic, are often used to demonstrate the consequences of climate change; however, their knowledge, their unique adaptation to climate change and their aspirations to determine their own future development were not properly recognised.

According to Qujaukitsoq, international society ought to have acknowledged in the agreement that the United Nations Declaration on Indigenous Peoples' Rights recognizes that indigenous peoples have special rights, including the right to development.

Denmark voted yes to the Paris Agreement along with the remaining 196 states present. However, Greenland maintains the option to reserve its position, in accordance with a territorial reservation between Denmark and the European Union, when the agreement, which was negotiated by the EU on behalf of its member states, is ratified in 2016. Greenland opted to leave the EU in 1985, maintaining, however, the above fisheries and partnership agreements with the EU.

In relation to climate targets, Greenland has clearly stated the need to protect its rights to development, including the right to develop extractive industries, which may involve emissions beyond the agreed targets. However, since little has actually happened in the field of extractive industries as yet, this demand for a right to development has not really been tested in the context of climate change agreements.

## **Extractive industries**

Hopes of attracting extractive industries to Greenland are still high, despite the general downturn caused by the global market prices for minerals and oil. Civil society's pressure to engage the public more effectively in decision-making concerning the extraction of oil and minerals is also increasing. Currently, most concerns are related to a lack of transparency, and primarily call for improved procedures with regard to public consultation—including free, prior and informed consent—with regard to uranium mining, in particular.

Despite political ambitions, Greenland has few mining activities. Currently, one mine is preparing for operation, namely the ruby mine True North Gem, 160 km south of Nuuk, the capital. In December 2015, the mining company embarked on the final construction phase and is hoping to be exporting rubies and sapphires from Greenland via the Bangkok-based company China Stone within the coming year. True North Gem has committed itself to ensuring that local Greenlandic employment will make up 70-80 per cent of the workforce in the mine. Another mine under construction is the anorthosite mine of Hudson Resources North, which is situated north of Kangerlussuaq and is expected to open in late 2016.

## **CSR Greenland**

In 2010, CSR Greenland was established by a number of Greenlandic companies in order to focus on potential activities linked to Corporate Social Responsibility. Its vision is to promote sustainable social, economic and environmental development in Greenland by focussing on the social responsibility of companies and to stimulate social development through innovative partnerships between government, the private sector and civil society.

CSR Greenland has been very successful in bringing together the private and public sectors with civil society in joint projects on sustainability. In Greenland, the organisation has emerged as a platform for cooperation, which includes a number of partnerships and working groups across different sectors. It also coordinates projects such as the "Saligaatsoq – Avatangiiserik" project, which has captured Greenlanders' aspirations for a cleaner environment. One of its activities is a clean-up day project. It takes place every year with a growing number of partici-

pants and was, in 2014, nominated for the Nordic Council Nature and Environment Prize. Other projects include “Clean Greenland – Green Companies” taking place in cooperation with WWF and seven companies. A final example is the “quit smoking counsellors’ training” conducted in cooperation with the Department of Health.<sup>1</sup>

The strategic focus for 2015-2017 is to put education, capacity building and an inclusive labour market on the agenda and to promote potential synergies. One ambitious project is to foster dialogue between the vocational schools and companies in order to improve vocational guidance for the benefit of both students and companies. ○

## Note

- 1 See Communication on engagement CSR Greenland June 2013 – June 2015  
[https://www.unglobalcompact.org/system/attachments/cop\\_2015/204131/original/Communication\\_on\\_engagement\\_Final.pdf?1446206315](https://www.unglobalcompact.org/system/attachments/cop_2015/204131/original/Communication_on_engagement_Final.pdf?1446206315)

***Marianne Lykke Thomsen*** has a background in Inuit studies and anthropology and has been living and working in Greenland in various capacities for 30 years. In her earlier capacity as senior policy advisor to the Government of Greenland, she played an active part in the UN’s work concerning human and indigenous peoples’ rights, and in the Arctic Council process. Prior to this, she worked with the Inuit Circumpolar Council on environmental issues and traditional knowledge. She is currently doing consultancy work in relation to indigenous peoples’ rights, while studying a Master’s in Professional Communication. Marianne Lykke Thomsen was elected a member of IWGIA’s Board in January 2015.

## SÁPMI

Sápmi is the Sámi people's own name for their traditional territory. The Sámi people are the indigenous people of the northern part of the Scandinavian Peninsula and large parts of the Kola Peninsula and live in Sweden, Norway, Finland and Russia. There is no reliable information as to how many Sámi people there are; it is, however estimated that they number between 50,000 – 100,000. Around 20,000 live in Sweden, which is approximately 0.22% of Sweden's total population of around 9 million. The north-western part of the Swedish territory is the Sámi people's traditional territory. The Sámi reindeer herders, small farmers, hunters, fishers and gatherers traditionally use these lands. Around 50-65,000 live in Norway, i.e., between 1.06 and 1.38% of the Norwegian total population of approx. 4.7 million. Around 8,000 live in Finland, which is approx. 0.16% of the total Finnish population of around 5 million. Around 2,000 live in Russia, and this is a very small proportion of the total population of Russia. Politically, the Sámi people are represented by three Sámi parliaments, one in Sweden, one in Norway and one in Finland, whereas on the Russian side they are organized into NGOs. In 2000, the three Sámi parliaments established a joint council of representatives called the Sámi Parliamentary Council. The Sámi Parliamentary Council is not to be confused with the Sámi Council, which is a central Sámi NGO representing large national Sámi associations (NGOs) in all four countries. There are also other important Sámi institutions, both regional and local, *inter alia*, the Sámi University College, which is a research and higher education institution for the Sámi society's needs, and where the language of work and tuition is mainly the Sámi language. Sweden, Norway and Finland voted in favour of the UN Declaration on the Rights of Indigenous Peoples in September 2007, while Russia abstained.

**T**his article offers a short overview of some cases that describe the growing pressure from industry on the Sámi people's lands and territories, particularly

during the last two years. The examples from the Nordic countries of Norway, Finland and Sweden, and the political struggles of the Sámi in Russia, indicate that there is still a long way to go for governments and industry when it comes to respecting indigenous peoples' rights to existence and self-determination. Further, several international bodies have expressed their concern at the lack of implementation of the fundamental rights and freedoms of the indigenous Sámi people in the last years. The Sámi people's lack of influence in decision-making processes concerning exploitation of natural resources and the lack of Sámi language education are examples of issues about which these international reviews have expressed their concern. The lack of available data on how many Sámi persons there are in these countries is another major challenge.

## Norway

### Revision of the Norwegian Constitution

On 6 May 2014, a full language revision of the 1814 Norwegian Constitution was adopted. The result is that there are now two equal Norwegian language versions of the Constitution – one in *bokmål* and one in *nynorsk*.<sup>1</sup> There are more than ten Sámi languages and dialects in Norway and even though Sámi languages are official languages in Norway, there is no Sámi version of the Constitution.

A series of articles on human rights was enshrined in the Constitution. The provision concerning the Sámi people's constitutional protection was moved from §110a to §108 but the parties in the Norwegian Parliament did not reach any agreement on what the new wording of §108 should be. Parliament's Human Rights Committee (*Lønningutvalget*) had proposed in 2012<sup>3</sup> that §108 should include a reference to the Sámi people's status as the Indigenous People of Norway, a proposal that was supported by several political parties in Parliament in October 2014.<sup>4</sup> In 2015, in a study commissioned by the *Sámediggi*—the Sámi Parliament in Norway—Professor Carsten Smith proposed that an amended §108 should be adopted with the following wording (new wording underlined):

*It is the responsibility of the authorities of the State to create conditions enabling the Sami people, as the country's indigenous people, to preserve and develop its language, culture and way of life.*<sup>5</sup>

In September 2015, the plenary of the *Sámediggi* decided, with the support of a large majority, to support the Smith proposal.<sup>6</sup> Both the Smith proposal and the



proposal tabled by some of the political parties in Parliament are now pending reconsideration of this issue.<sup>7</sup>

### Other legal developments

In 2015, the Norwegian government proposed a new National Population Register Act.<sup>8</sup> The Sámediggi stated that the population register must include a potential way of registering Sámi linguistic background, as well as a self-assessment of the extent of language mastery.

This type of registration would enable a statistical recording of Sámi speakers, which in turn would make it easier for the public authorities to offer suitable Sámi linguistic services. During the review of Norway's periodic report to the UN Committee on the Elimination of Racial Discrimination (CERD) in 2014, the committee called for these kinds of statistics.

The Ministry of Local Government and Regional Development (KMD) has, after consulting the Sámediggi, appointed a Sámi Language Committee.<sup>9</sup> The task of the committee is to assess the current arrangements, measures and legislation related to the Sámi languages and consider how to adapt these to the present organization of the public sector and ensure functional and equal public services in Sámi. The final report will be completed in August 2016.

### **Land and resources**

Reindeer herding is one of the main traditional Sámi livelihoods in Norway. The 2007 Reindeer Husbandry Act<sup>10</sup> imposed on reindeer herding districts a requirement to adapt to so-called ecologically sustainable resource management by developing usage rules, including determination of a maximum number of reindeer for each district. The work on the usage rules started in 2008 and, by the end of 2011, the National Board for Reindeer Herding (*Reindrifststyret*) had come up with its decision. Some Sámi reindeer owners are now going through a difficult process of reducing the number of reindeer in line with this decision. In their opinion, their own perception of the sustainable management of reindeer herds based on Sámi traditional knowledge has not been taken into account. Herders experience the process as a violation of their human rights, including the violation of their property rights in accordance with the European Convention on Human Rights, Additional Protocol 1 Article 1, as well as a violation of their right to internal self-governance, which the 2007 Reindeer Herding Act was intended to safeguard.

In 2011, the national mining company NUSSIR applied for permission to deposit the tailings from a planned copper mining site in Kvalsund municipality (Finnmark) in the Repparfjord. In December 2015, the Ministry of Environment gave its permission to start underground copper mining in the area of Nussir and Ulveryggen and to deposit the tailings in the Repparfjord. This case is controversial because of the impacts that this mining project will have on traditional Sámi reindeer herding in several reindeer herding districts. Secondly, the case is also highly controversial seen from a Sea-Sámi<sup>11</sup> and an environmental perspective,

as submarine tailing deposits are considered an environmental hazard. Repparfjord is vital for the local Sámi fisheries, and is also a “National Salmon Fjord” leading to the Repparfjord River, which is one of the few remaining rivers where wild salmon are still found. During the UPR examination of Norway in 2014, Norway was questioned on intensified mining activities in the north and their impact on indigenous peoples. The Ministry stated that mining permissions were issued with strict conditions that made the operations environmentally acceptable. Reindeer herders in the area claim the permission is violating their human rights,<sup>12</sup> and are preparing legal steps to stop the NUSSIR mining operations. Among those who have responded negatively to the permission are the national environmental organizations,<sup>13</sup> the Sámediggi and the Norwegian Fishermen’s Association.<sup>14</sup>

Reindeer herding in Norway has also faced challenges in relation to the establishment of wind farms. In 2014, the Norwegian Water Resources and Energy Directorate (NVE) allocated a concession to a wind farm<sup>15</sup> in the middle of summer pastures belonging to Voengelh-Njaarke (Vestre Namdal) and Åarjel-Njaarke (Cape Mountain / Bindal) reindeer herding districts. Environmental organizations, together with the affected reindeer herding districts, submitted a joint complaint claiming that this was in violation of the national Nature Diversity Act, ILO Convention No. 169 and several UN Human Rights Conventions. The case is now under consideration by the Ministry of Oil and Energy. The same Ministry rejected the expansion of a wind farm on Fálesrášša, in Kvalsund municipality in Finnmark in 2015. This was the result of strong protests from *inter alia* the local Sámi reindeer herders of district 21 Gearretnjárga and the Sámediggi.<sup>16</sup>

### **National Human Rights Institution (NHRI)**

Based on an evaluation in 2011 conducted by the International Coordinating Committee of National Institutions (ICC), declassification of the Norwegian NHRI from A-status to B-status was recommended. In June 2014, the Norwegian Parliament adopted the establishment<sup>17</sup> of a new NHRI. The institution is subordinate to Parliament but otherwise independent. Law<sup>18</sup> and instructions<sup>19</sup> for the institution were adopted by Parliament in April 2015. The Board of Gáldu Resource Centre for the Rights of Indigenous Peoples has adopted a resolution establishing an organizational link with the new NHRI but the organizational form has not yet been decided.

### **Universal Periodic Review**

In April 2014, Norway submitted to its second Universal Periodic Review.<sup>20</sup> The majority of the questions and recommendations from other states dealt with matters involving minority rights, women's and children's rights, prisoners and immigrants. A number of states raised the re-establishment of an NHRI in compliance with the Paris Principles. Some raised specific concerns about indigenous people's participation in decision-making processes, and control over land and resources, and welcomed the work on a Nordic Sámi Convention. Responding to questions and recommendations relating to indigenous people's rights, Norway referred to existing measures, the legal framework and ongoing processes with regard to securing human rights.

### **CERD**

CERD considered Norway's report in August 2015.<sup>21</sup> The Committee focused particularly on hate crimes and integration issues, rights of national minorities, such as Sámi and Roma, as well as issues of language training, interpretation and equality. The shadow reports of the Sámi Parliament and civil society organizations helped form the basis for the hearing. Regarding Sámi rights, the Committee focused on mother-tongue teaching, the lack of comprehensive language policy, oversight and quality of Sámi training programs. Other issues of concern were reindeer husbandry and mining activities, fisheries legislation, and a ban on traditional duck hunting during the spring season. The committee also noted that the Mineral Act 2009 had failed to provide an adequate level of consultation with the Sámi Parliament and has resulted in unpredictability in safeguarding Sámi rights.<sup>22</sup> The committee welcomed the independent National Human Rights Institution, which would hopefully achieve A-status accreditation and be provided with adequate funding.

### **Sweden**

#### **Sámi hunting and fishing rights**

Sámi hunting and fishing rights have long been a problematic issue in the relationship between the Sámi and the Swedish state, but also an internal challenge for the Sámi people in Sweden.<sup>23</sup> Swedish legislation has failed to protect the

hunting and fishing rights of the indigenous Sámi, and has on the contrary provided extended access to hunting and fishing for the majority population of the country. In 1993, the state opened up extensive access to hunting and fishing in the Swedish mountains, which meant that anyone who bought a hunting license had the right to hunt small game there. In 2009, the Sámi village (*sameby*) of Girjas, together with the Association of Swedish Reindeer Herders, presented a lawsuit against the Swedish state in Gällivare District Court. Girjas claims exclusive hunting and fishing rights to its traditional areas, and points out that the current legislation and regulation of the hunting and fishing in these traditional areas is not compatible with property rights under national and international law. According to the current legislation, the Reindeer Herding Act of 1971, Sámi who are members of a *sameby* should have exclusive rights to hunting and fishing.

From a principle point of view, the Girjas case is important to highlight how the state has, over the years and without legal support, limited the rights of the Sámi to hunt and fish. The Girjas case will be important as it will show whether the Sámi can gain back the exclusive rights they previously had over hunting and fishing.<sup>24</sup> As of today, of the approximately 20,000 Sámi living in Sweden, only about 2,000 are members of one of the 51 *samebyer*.<sup>25</sup> Many Sámi village members have left reindeer herding, and those who are not members of a Sámi village have even more limited rights to hunting and fishing than those who are members of such villages. The Court will announce its decision on this case in February 2016.

### **The Rönnbäcken and Kallak cases**

In 2010, the Swedish Mining Inspectorate (*Bergstaten*) granted a permit to a British mining company to establish an open-pit nickel mining site in the county of Västerbotten, in the traditional reindeer herding areas of Vapsten Sameby (Sámi village). The mining plans will deprive the Sámi reindeer herders of important grazing and calving lands.<sup>26</sup> Vapsten Sámi village appealed this decision but, on 22 August 2013, the Swedish government upheld the permit and allowed the mining company to proceed with its mining plans.

In Sweden, mining on Sámi territories is a highly disputed topic. The issue gained huge international attention in 2013, due to the Kallak case. The test mining of iron ore in the Swedish Sámi village of Gállok (in Swedish Kallak) provides an example of the interface between mining and Sámi rights. The Sámi have used these lands since time immemorial and the lands play a key role in Sámi

reindeer herding. The Swedish government has not only given test mining permission to a British-owned company—Beowulf—but also sent police to protect mining equipment from the local Sámi and environmental groups who oppose the plans. Granting mining permission on these lands has had various adverse consequences for the local Sámi, in terms of both their livelihood practices and other land-use and resource practices.<sup>27</sup>

### **Universal Periodic Review**

Sweden submitted its second report to the Universal Periodic Review in 2015.<sup>28</sup> In the past few years, the Government of Sweden has taken a series of measures to strengthen the Sámi's status as an indigenous people. During the last UPR, Sweden had to elaborate on the state of affairs concerning the government's initiatives to safeguard the human rights of the Sámi in Sweden. Further, the government was asked to elaborate on measures to enhance safeguards against discrimination of persons belonging to vulnerable groups such as the Sámi.

In 1977, the Sámi were recognized by the Parliament as Sweden's only indigenous people. The Sámi Parliament was established in 1993. The government has been considering ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries since the early 1990s but has still not done so. During the 2015 UPR hearing, Sweden was criticized for not doing enough to secure and promote the rights of the Sámi people. Several countries recommended that Sweden should complete the work on clarifying the legal consequences of the ratification of ILO Convention No. 169 as a matter of priority. Further, Sweden was recommended to undertake a deeper dialogue with representatives of the Sámi Parliament and increase efforts to give additional responsibilities to the Sámi Parliament to strengthen the self-determination of the Sámi people. Another issue that was highlighted by states was the lack of active consultation on issues related to land rights, water and resources. Sweden was also recommended to ensure that Sámi people can make use of legal resources that enable them to defend their rights, and develop and institute effective mechanisms for improved dialogue and consultation with the Sámi people in all areas of government policy that affect them, as well as in the development of legislation.

## Finland

Since ILO Convention No.169 entered into force in 1991, Finland has had the intention of ratifying it but has so far failed to do so. In its governmental policy program from 2011,<sup>29</sup> the Finnish government announced once again that its priority on Sámi issues was the ratification of ILO Convention No.169, and the state cabinet, under the leadership of the Minister of Justice, Ms Anna-Maja Henriks-son, developed a process to prepare a proposal for the Finnish Parliament on this process. The preparatory process mainly included two different elements—a negotiation process with the Sámi Parliament and a wider hearing process with different interest groups.

The compromise process agreed between the government and the Sámi Parliament included changes to the Sámi Parliament Act, which directs the work and mandate of the Sámi parliament of Finland. In particular, the definition of who can register as a Sámi and can vote for the Sámi Parliament was, for the first time in history, agreed in a manner that had the backing of the Sámi Parliament of Finland. Furthermore, the new Act should reinforce the negotiation obligations between the Sámi Parliament and the Finnish public authorities. The negotiation result was approved<sup>30</sup> at the Sámi Parliament's meeting on 30 October 2014. After this, the state cabinet of Finland decided to bring a ratification proposal for ILO 169 to the Parliament of Finland. Attached to this proposal was the new Sámi Parliament Act proposal.

In 2015, the Parliament of Finland voted on the Sámi Parliament Act as a basis for ratification of ILO 169. In its first reading, it was voted down by 162 votes against and 28 votes for (9 votes not present in the Parliament). This led to the withdrawal of the Sámi Parliament Act proposal by Minister of Justice Henriks-son<sup>31</sup> from the agenda of the Finnish Parliament. The ratification process of ILO 169 was thus put on hold<sup>32</sup> and handed over to the new government after the parliamentary elections in spring 2015. This ratification process has not, however, yet been resumed.

During the Sámi Parliament elections in the fall 2015, the issue of the Sámi definition was highly visible in the Finnish national political debate. The Sámi Parliament electoral voting register was criticized by some individuals who had applied to the register but had not been approved by the Sámi Parliament. This escalated into 184 complaints to the Finnish Supreme Administrative Court,

which has a mandate to overrule the Sámi Parliament on issues concerning the electoral voting registration. The Court thus decided to approve 93 individuals for the Sámi Parliament's electoral register against the will of the Sámi Parliament. In response, the Sámi Parliament declared this overruling to be a forced assimilation<sup>33</sup> of the Sámi living in Finland and a violation of the rights of the Sámi peoples as Indigenous Peoples. The Sámi Parliament therefore decided to act upon the case at the international level, where the case has already received some attention. The decision of the Court has thus been widely criticized, for example, by one of the vice-chairs<sup>34</sup> of the United Nations Permanent Forum on Indigenous Issues and by a Finnish professor in international law, Mr. Martin Scheinin.<sup>35</sup>

### **The UN Special Rapporteur**

The UN Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, participated in a conference in Hemavan, Sweden, hosted by the Sámi Parliamentarian Council in August 2015. Representatives from the three Sámi parliaments, as well as from the governments of Sweden, Norway and Finland, attended. Ms. Tauli-Corpuz' visit was a follow-up of the former Rapporteur, James Anaya's, visit report from 2011.<sup>36</sup> The Sámi parliaments focused on issues such as indigenous self-determination and the need for an agreement on a Nordic Sámi Convention. The Sámi parliaments discussed the exploitation of natural resources, mining, wind farms, oil extraction, forestry, etc., with the Special Rapporteur. According to present legislation, the Sámi have very little influence in exploitation cases.

## **Russia**

### **Sámi political organization in Russia**

The Sámi on the Kola Peninsula in the Russian Federation (the Kola Sámi) do not have a Sámi parliament representing them. Instead, they are organized in a number of civil society organizations, non-governmental organizations and *obshchiny* (sing. *obshchina*).<sup>37</sup> The two largest organizations are the Association of Kola Sámi (AKS) and the Public Organization of the Sámi of Murmansk Province (OOSMO). In 2010, these two organizations arranged a Sámi Conference at which the Kola Sámi Assembly was established. Its members refer to the assem-

bly as the Russian Sámi Parliament (*Samskiy parlament*) but the authorities in Russia have not recognized it as a formal representative body. Instead, the provincial government of Murmansk established a Council of Representatives with members chosen by the government based on suggestions from the *obshchiny*. However, due to the lack of representativeness of their elected members, many Russian Sámi do not recognize this Council as their representative organ.<sup>38</sup>

### Archive of the Skolt Sámi village of Suonjel/Suenjel

In 2015, the archive of the Skolt Sámi village of Suonjel/Suenjel was included in the UNESCO Memory of the World Register. The archive, covering the period 1601-1775, includes documents officially issued by the Russian Emperor and the Imperial Government confirming the rights of the Skolt Sámi community to their fishing and reindeer herding territories. These documents are a unique expression of how indigenous people already, centuries ago, understood documented decisions as a safeguard of their fundamental rights to their territories.<sup>39</sup> ○

## Notes and references

- 1 Norway has two official variants of the Norwegian language. Bokmål, (Book Language or Standard) and Nynorsk, (New Norwegian). Bokmål is developed from Danish and Danish-Norwegian and influenced by Norwegian speech. Nynorsk was founded by Ivar Aasen and is based on a comparison of the Norwegian dialects. Bokmål and Nynorsk are formally equal (Act on Language Use in Public Services, 1980).
- 2 [https://lovdata.no/dokument/NL/lov/1814-05-17/KAPITTEL\\_5#%C2%A7108](https://lovdata.no/dokument/NL/lov/1814-05-17/KAPITTEL_5#%C2%A7108)
- 3 <https://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Sak?p=52378>
- 4 <https://www.stortinget.no/globalassets/pdf/grunnlovsforslag/2014-2015/grunnlovsforslag1-201415.pdf>
- 5 Unofficial English translation by Gáldu. The proposal by Carsten Smith can be downloaded from: <http://www.sametinget.no/Om-Sametinget/Organisasjonsstruktur/Sametingsraadet/Taler-og-artikler/Hoering-Endring-av-Grunnloven-108-og-Grunnloven-paa-samisk> (Norwegian version only)
- 6 [http://www.nrk.no/sapmi/\\_samene-er-landets-urfolk-ma-inn-i-grunnloven-1.12459634](http://www.nrk.no/sapmi/_samene-er-landets-urfolk-ma-inn-i-grunnloven-1.12459634)
- 7 <https://www.stortinget.no/globalassets/pdf/grunnlovsforslag/2014-2015/grunnlovsforslag1-201415.pdf>
- 8 <https://www.regjeringen.no/no/dokumenter/horing---forslag-til-ny-folkeregisterlov/id2403956/>
- 9 <http://www.samisksprakutvalg.no/files/2015/04/mandat.pdf>
- 10 [https://lovdata.no/dokument/NL/lov/2007-06-15-40?q=reindriftsloven, §57 & 58.](https://lovdata.no/dokument/NL/lov/2007-06-15-40?q=reindriftsloven,%57%20&58)
- 11 The sea Sami have traditionally lived near the sea – in winter in the bottom of fjords, in summer closer to the open ocean – specializing in fishing and hunting of sea mammals and birds (Ed.)

- 12 <http://www.nord24.no/gruvedrift/nussir/reindrif/reineiere-vil-stoppe-gruveplaner-vi-har-ikke-blitt-hort/s/5-32-52203>
- 13 <http://www.abcnyheter.no/nyheter/2015/12/08/195186114/glede-og-raseri-i-finnmark-etter-omstridt-gruvetillatelse-til-nussir>
- 14 <http://www.dn.no/nyheter/naringsliv/2015/12/08/2143/Industri/varsler-rettssak-mot-gruve>
- 15 [http://www.nrk.no/sapmi/nsr-leder\\_-\\_uaktuelt-med-vindmolepark-i-kalvatnan-1.12404064](http://www.nrk.no/sapmi/nsr-leder_-_uaktuelt-med-vindmolepark-i-kalvatnan-1.12404064)
- 16 <http://www.highnorthnews.com/hensynet-til-reindriften-gir-avslag-for-vindkraft/>
- 17 <https://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Innstillinger/Stortinget/2013-2014/inns-201314-240/?lvl=0#a3>
- 18 <https://lovdata.no/dokument/NL/lov/2015-05-22-33>
- 19 <https://www.stortinget.no/no/Saker-og-publikasjoner/Vedtak/Vedtak/Sak/?p=61369>
- 20 <http://www.refworld.org/pdfid/53eb15174.pdf>
- 21 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16330&LangID=E>
- 22 <https://lovdata.no/dokument/NL/lov/2009-06-19-101?q=mineralloven>
- 23 For more on this issue, see Eivind Torp “Sami hunting and Fishing Rights in Sweden”, in *Indigenous Rights in Scandinavia*, (2015) Christina Allard and Susann Skogvang (eds.), p 111.
- 24 <http://reindeerherding.org/blog/herders-blog/girjas-sami-village-and-the-association-of-swedish-reindeer-herders-sue-the-swedish-state/>
- 25 Torp, *Ibid.*, p. 112.
- 26 Mattias Åhren, “To What Extent Can Indigenous Territories be Expropriated?” in Christina Allard and Susann Funderud Skogvang (eds.) *Indigenous Rights in Scandinavia - Autonomous Sami Law*, (Burlington VT, USA: Ashgate Publishing Limited) 2015: p. 173.
- 27 <http://arcticreview.no/index.php/arctic/article/view/76>
- 28 <http://www.ohchr.org/EN/HRBodies/UPR/Pages/SESession21.aspx>
- 29 Jyrki Katainen I hallitusohjelma 22.6.2011
- 30 [http://yle.fi/uutiset/saamelaiskarajat\\_hyvaksyi\\_hallituksen\\_ehdotuksen\\_ilo-sopimuksen\\_ratifiointista/7577205](http://yle.fi/uutiset/saamelaiskarajat_hyvaksyi_hallituksen_ehdotuksen_ilo-sopimuksen_ratifiointista/7577205)
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*The **Gáldu-Resource Centre for the Rights of Indigenous Peoples** was established by the Norwegian government in 2002 in order to increase the knowledge and understanding of Sámi and other indigenous peoples' rights in Norway and internationally. Gáldu is an independent institution governed by its own executive board, and is located in a Sámi area in Guovdageaidnu/Kautokeino, northern Norway. The center is financed by the Norwegian Ministries of Local Government and Modernization and of Foreign Affairs.*

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## RUSSIAN FEDERATION

Of the more than 180 different peoples inhabiting the territory of contemporary Russia, 40 are officially recognized as “indigenous small-numbered peoples of the North, Siberia and the Far East”. These are groups of less than 50,000 members, perpetuating some aspects of their traditional ways of life and inhabiting the Northern and Asian parts of the country. One more group is actively pursuing recognition, which continues to be denied. Together, they number about 260,000 individuals, less than 0.2 per cent of Russia’s population. Ethnic Russians account for 78 per cent. Other peoples, such as the five million Tatars, are not officially considered indigenous peoples, while their self-identification varies.

The latest official population figures from the 2010 national census do not provide disaggregated data on the socio-economic status of indigenous peoples. Indigenous peoples are predominantly rural dwellers, while Russia on the whole is a highly urbanized country.

Indigenous peoples as such are not recognized by Russian legislation; however, the constitution and national legislation set out the rights of “indigenous small-numbered peoples of the North”, including rights to consultation and participation in specific cases. However, there is no such concept as “Free, Prior and Informed Consent” enshrined in legislation. Russia has not ratified ILO Convention No. 169 and has not endorsed the UNDRIP. The country has inherited its membership of the major UN Covenants and Conventions from the Soviet Union: the ICCPR, ICESCR, ICERD, ICEDAW and ICRC.

There is a multitude of regional, local and interregional indigenous organizations. RAIPON, the national umbrella organization, operates under tight state control.

Over the course of 2015, the situation of indigenous peoples in the Russian Federation has deteriorated in a number of aspects. Their prospect to have



their lands protected as “Territories of Traditional Nature Use” (TTNU) has decreased due to changes in the legislation as well as actions by regional authorities and the judiciary in favour of extractive companies. Organisations spearheading the defence of indigenous rights have been pronounced “foreign agents”, thus stigmatising them and exposing them to legal risks. The state has also made efforts to control regional associations of indigenous peoples, most notably by controlling congresses and elections of their leaderships.

While foreign support to civil society organisations has now become very difficult as it carries the risk of the organisations to be declared “foreign agent” (see *The Indigenous World* 2015, p.15), foreign capital and companies remain welcome when it comes to extracting oil and gold in indigenous land. However, western sanctions on Russia along with the low oil price have made it difficult to attract western loans and investments, and China has therefore become more relevant as a source of loan and investment.

In the Far East of the country, indigenous peoples are confronted by a resettlement plan that potentially will impact on their lives and livelihoods. The so-called “Far East hectare” stands for a plan to hand out land for free to settlers coming to the Russian Far East. This attempt to stop the depopulation of the east of the country has been heavily criticised by indigenous peoples who see their land potentially redistributed without their consent. Another new worrying trend is the criminalisation of indigenous activists as witnessed in cases described below.

## **Land and natural resource rights**

Amendments to the Land Code entered into force on 1 March.<sup>1</sup> They can be seen as the latest episode in a long process during which the framework of indigenous rights, established around the turn of the millennium has been slowly eroded away. These amendments have affected the procedure of land allocation, cancelling decision-making powers of local municipalities, which in the past often defended indigenous land rights. In a number of cases, this has had an immediate impact on some indigenous peoples that are engaged in land disputes, which is illustrated by the following cases.

In early 2015, the residents of the Zhilinda settlement in the Oleneksk district of Yakutia learned that the joint-stock company Almazny Anabara had begun exploration of a diamond deposit in the area of the Malaya Kuonapka River, nearby

their settlement.<sup>2</sup> During a public hearing on 23 March 2015, the residents unanimously voted against the diamond extraction since the river supplies them with drinking water and is used for fishing and hunting. It is also considered a sacred place.<sup>3</sup>

The district administration supported the residents and filed a legal complaint against the Yakutia branch of the Russian Federal Agency for Subsoil Resources Management “Rosnedra” demanding that the concession be revoked, on the grounds that its consent had not been obtained. The legal complaint was based on the fact that in 2014 the local authorities had declared the Zhilinda area a territory of traditional use (TTNU).<sup>4</sup> Two federal laws protecting the rights of indigenous peoples,<sup>5</sup> say stipulate that municipal authorities have the right to establish TTNU at the local level,<sup>6</sup> and are also endowed with decision-making powers concerning land acquisition and use in indigenous territories.<sup>7</sup> Nevertheless, the district administration’s complaint was rejected by the Arbitration Court of Yakutia and later by the Appeal Court of Chita. The courts confirmed that TTNU can be established by municipal authorities in the areas of residence and economic activities of indigenous peoples. However, the statutes and boundaries of such areas must be confirmed by the Government of the Russian Federation, which it had not. Besides, the courts ruled that the Land Code does not require that tenders over subsoil resources have to be agreed with the local authorities.<sup>8</sup> This ruling was made possible by the above mentioned amendments to the Land Code.

### **Evenk leader imprisoned after protesting UK based gold mining company**

Another direct impact of the erosion of indigenous peoples’ territorial rights can be observed in the case of the Ivanovskoye settlement in Selemjinski district, Amur region. The indigenous peoples of Ivanovskoye have requested the revocation of a 25 year license for geological survey and gold extraction, issued in 2012 to the UK based mining company Petropavlovsk, on the grounds that a potential gold mine would be in the proximity of brooks that are important freshwater sources for the settlement. The settlement is registered as a settlement area of indigenous people.<sup>9</sup> In a letter dated 19 March 2012, the Minister of Natural Resources of the Amur region V.Yu.Ofitserov had stated that the company had cancelled mining

operations on the Ivanovski and Bogorodski brooks. However, on 9 July 2015, he wrote that the issuing of the licence was in compliance with the law because the Evenki territory was still not an officially registered TTNU.<sup>10</sup> On the same day, Sergey Nikiforov, the head of the Ivanovskoye administration, was summoned to the Blagoveshchensk<sup>11</sup> City Court for interrogation and a case against him that had been closed two years earlier was unexpectedly re-tried. Mr. Nikiforov had headed the protests in 2012 and had signed the community's resolution requesting the revocation of the license. On 10 September 2015, the residents held a community gathering requesting to halt all industrial activities in the vicinity of the settlement within 10 days and to conduct ethnological and ecological expert reviews. They further declared that if their requests were not fulfilled they would, "*protect the settlement and ancestral territories with all lawful means*".<sup>12</sup>

Sergey Nikiforov was arrested and imprisoned soon after this gathering. On 28 September 2015, he was retroactively found guilty of having accepted a bribe in 2013. On 8 December 2015, the Appeal Court of the Amur region convicted him to four years in a penal colony of strict regime and a fine of 3 million roubles (some US\$ 44,000). Judging by the minutes of the court proceedings the criminal case against Sergey Nikiforov was reopened without any new evidence. Since then Sergey Nikiforov has been serving his sentence in a penal colony in the Amur region. This is so far the most severe instance of apparent criminalisation of indigenous rights activism.<sup>13</sup>

Human rights organizations have alleged that the retrial was motivated by his role in the community protests against the Petropavlovsk Group's licenses. The Russian human rights organization "Memorial" publicly proclaimed Sergey Nikiforov a political prisoner,<sup>14</sup> and Amnesty International has adopted his case and demanded his release.<sup>15</sup>

As for the Petropavlovsk Group it continued its operations *slowly, because of severe frosts* as residents reported.

### **Sacred lake threatened by oil extraction**

A similar disregard for the land rights of indigenous peoples is also apparent in the attempt to change the boundaries of the Numto National Park in the Khanty-Mansi Autonomous Okrug in West Siberia in order to allow oil extraction. The Khanty-Mansi Okrug is the heartland of Russia's oil industry; at the same time it is also the homeland of the Khanty, Mansi and Forest Nenets indigenous peoples

and some 300 Khanty and Nenets live within the Numto National Park. The Khanty consider the Numto Lake to be sacred and in the 1930s, a Khanty armed insurrection was sparked off by Soviet fishing activities in Numto Lake.

In 2012, an attempt to allow oil extraction on the Numto National Park territory failed, but on 25 February 2015 a new attempt was made. A “Proposal on redrawing the functional borders of the Numto National Park” was presented at a public hearing in the town of Byeloyarsk. Particularly unusual is the fact that the Environmental Impact Assessment (EIA) attached to the proposal was commissioned by the regional administration rather than by the oil company, which according to the law is in charge of commissioning the EIA. This indicates that the administration is acting in the interest of the industry.<sup>16</sup>

By the end of 2015, no final decision had yet been taken on the proposal to change the boundaries of the Numto National Park. All 80 participants at the public hearing on the Project spoke out against it.<sup>17</sup> Protests have come not only from the region. A number of scientists and indigenous peoples from Murmansk to Kamchatka have also urged the authorities of Khanty-Mansiysk Autonomous Okrug to save the sacred lake.<sup>18</sup>

Meanwhile, in response to the protests, the Russian Ministry of Natural Resources stated that it had not received a draft decision from the regional administration regarding changing the boundaries of the Numto National Park. The Ministry has also promised that it would not make a final decision without taking public opinion into account.<sup>19</sup>

At the same time, Sergey Kechimov, a Khanty reindeer herder who has been in conflict with the oil company LukOIL is facing the possibility of two years imprisonment for allegedly threatening to kill two employees of the oil company. He insists that he merely killed the dogs brought in by the oil workers in order to protect his reindeer, while company employees say he threatened to shoot them. Greenpeace has been supporting Kechimov, whose trial was ongoing in the oil city of Surgut. Thousands of supporters from all over the world signed a petition to general prosecutor Yuri Chaika demanding his criminalisation to be stopped.<sup>20</sup>

### **Yamal Liquid Natural Gas (LNG) project threatens Nenets reindeer herders**

In 2015, the export credit agencies of France and Germany received applications to support the multi-billion Yamal LNG project, which will potentially threaten the livelihood of Nenets reindeer herders in the Northeast of the Arctic Yamal penin-

sula. The project is led by Russia's second largest gas producer Novatek and the leading western company involved is France's "Total". Chinese companies will also be heavily involved. Yamal peninsula is highly inaccessible due to its geographical remoteness but also due to its status as a "border zone", requiring even Russian citizens to obtain special permission before entering the area—something which is very time-consuming and may be indefinitely delayed or withheld. As a consequence, civil society monitoring of the project is next to impossible.

The World Wildlife Fund (WWF) has protested against the project's environmental impact, which threatens the entire Ob Bay in the event of a disaster. The export credit agencies require that the project fulfils the IFC's Performance Standards (PF), including includes PF 7 on Indigenous Peoples. The Environmental and Social Impact Assessment done for the project claims that the indigenous peoples signed what it calls an "FPIC declaration" (FPIC - Free, Prior and Informed Consent). However, a one-off signature does not amount to a genuine FPIC process, and since the date of the signing of the declaration was preceded by tens of thousands of reindeer perishing due to weather conditions, it is likely that reindeer herders gave their signature in the expectation of aid, rather than to express their voluntary and informed consent to the proposed project.

## **UN related developments**

At its 113 session, held in March 2015, the UN Human Rights Committee considered the seventh periodic report of the Russian Federation (CCPR/C/RUS/7). During the interactive dialogue, indigenous issues were dominated by the situation on the annexed Crimea peninsula, where Crimean Tatars, along with Krymchaks and Karaim identify as indigenous. This makes the issue of indigenous peoples even more delicate. IWGIA presented a parallel report focusing on the situation of indigenous peoples of the North, which reported among other on the situation of land rights, citing the right to self-determination, set out in the Covenant on Civil and Political Rights and the persecution of indigenous NGOs as "foreign agents" as well as the desecration of indigenous peoples' sacred sites due to extractive industries' operations.<sup>21</sup>

On 28 April, the UN Committee adopted its concluding observations,<sup>22</sup> which called Russia to "[r]espect and ensure the rights of minorities and indigenous peoples, in particular, that Crimean Tatars are not subject to discrimination and

harassment” thus unequivocally treating the Crimean Tatars as an indigenous people. The situation of indigenous peoples of the North is addressed in paragraph 24. The beginning of the paragraph reflects the situation of the Komi-Izhemtsy or Izvatas mentioned in IWGIA’s parallel report, an indigenous group that continues to be denied recognition:

*The Committee remains concerned (...) about the fact that insufficient measures are being taken to respect and protect the rights of indigenous peoples and to ensure that members of such peoples are recognized as indigenous.*

Further, the denial of land rights and the desecration of sacred sites are deplored in the same paragraph. The latter is likely based on information contained in the parallel report on the destruction of a mountain sacred to the Shors of Kazas village (see also *The Indigenous World 2015*), destroyed by open cast mining.

In spring 2015, the former inhabitants of Kazas asked the UN Committee for the Elimination of Racial Discrimination (CERD) to take urgent measures, after the houses of the remaining villagers who refused to sell their property to the mining company had been burnt down in arson attacks and the village had stopped existing, while its former inhabitants had not received adequate substitute land or compensation. Community leaders had come under threat and the state, orchestrated a campaign against them. In response, CERD sent a letter to the Russian government asking it to provide information on the case. No action seems to have been taken.

In November, the Committee on the Elimination of Discrimination against Women (CEDAW) adopted its Concluding Observations on Russia, which it had considered in October.<sup>23</sup> CEDAW expresses its concern about indigenous women’s access to land and livelihood, their limited representation in local decision-making bodies and the lack of disaggregated data on their situation. It recommends that Russia “Ensure that indigenous women are represented in decision-making bodies at the local, regional and federal levels, and adopt measures to ensure the full and effective participation of indigenous women in all decision-making processes that may affect their rights; (b) Guarantee that indigenous women have full and unrestricted access to their traditional lands and the resources on which they depend for food, water, health and to maintain and develop their distinct cultures and identities as peoples; (c) Regularly collect dis-

aggregated data on indigenous women and girls, using specific health and social indicators.” ○

## Notes and references

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- 2 See IWGIA web site: “Russia: Evenks prevent diamond mining on sacred river in Yakutiam”, 25 June 2015, at [http://www.iwgia.org/news/search-news?news\\_id=1223](http://www.iwgia.org/news/search-news?news_id=1223)
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- 16 The Order #324-p of 27.05.2014 with the amendments of 23.09.2015.
- 17 Public hearings on Numto: aboriginal residents and Greenpeace are against the oil extraction there // <http://www.greenpeace.org/russia/ru/news/2016/26-02-numto/>
- 18 “Renowned scientists and aboriginal residents defend the Numto park: oilmen plan to work at sacred places and burial grounds”. <http://www.nakanune.ru/news/2016/2/24/22428586/#sthash.ExKoJc4N.dpuf>
- 19 <http://www.nakanune.ru/news/2016/3/2/22429253/#sthash.sAEchFIC.dpuf>

- 20 See IWGIA web site: "Russia: Guardian of Khanty sacred lake facing prison for defending himself against stray dogs brought in by oil workers", 15 July 2015, at [http://www.iwgia.org/news/search-news?news\\_id=1232](http://www.iwgia.org/news/search-news?news_id=1232)
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- 23 <http://undocs.org/CEDAW/C/RUS/CO/8>

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NORTH AMERICA

# CANADA

The Indigenous peoples of Canada are collectively referred to as “Aboriginal peoples”. The Constitution Act, 1982 of Canada recognizes three groups of Aboriginal peoples: Indians, Inuit and Métis. According to the 2011 National Household Survey, 1,400,685 people in Canada had an Aboriginal identity, representing 4.3% of the total Canadian population. 851,560 people identified as a First Nations person, representing 60.8% of the total Aboriginal population and 2.6% of the total Canadian population.

First Nations (referred to as “Indians” in the Constitution and generally registered under Canada’s Indian Act) are a diverse group, representing more than 600 First Nations and more than 60 languages. Around 55% live on-reserve and 45% reside off-reserve in urban, rural, special access and remote areas. The Métis constitute a distinct Aboriginal nation, numbering 451,795 in 2011, many of whom live in urban centres, mostly in western Canada.

Canada’s Constitution Act 1982 recognizes and affirms the existing Aboriginal and Treaty rights of Aboriginal peoples. The Supreme Court has called the protection of these rights “an important underlying constitutional value” and “a national commitment”. Canada’s highest Court has called for reconciliation of “pre-existing Aboriginal sovereignty with assumed Crown sovereignty”.<sup>1</sup> Canada has never proved it has legal or *de jure* sovereignty over Indigenous peoples’ territories, which suggests that Canada is relying on the racist doctrine of discovery.<sup>2</sup>

In 2010, the Canadian government announced its endorsement of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which was adopted by the UN General Assembly in September 2007. This decision came as a reversal of Canada’s earlier opposition to the Declaration, which it had pursued together with Australia, the USA and New Zealand, and who have all since revised their attitude towards the UNDRIP. Canada has not ratified ILO Convention No. 169.



## UN Declaration on the Rights of Indigenous Peoples

In October 2015, Canada held a federal election and the Conservative government was defeated by the Liberal opposition. The new administration has committed to implementing the UN Declaration on the Rights of Indigenous Peoples. The new prime minister, Mr. Justin Trudeau, has repeatedly pledged to re-set the relationship with Indigenous peoples.

In the prime minister's mandate letter to the new Minister of Indigenous Affairs and Northern Development, he wrote:

*No relationship is more important to me and to Canada than the one with Indigenous Peoples. It is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership.<sup>3</sup>*

He then went on to list several priorities for the portfolio, starting with the implementation of the Truth and Reconciliation Commission's Calls to Action,<sup>4</sup> including the implementation of the UN Declaration. This is a marked change from the

previous Conservative government which, despite endorsing the Declaration in 2010, continued to undermine and disregard it.

Other priorities listed in the mandate letter include topics that Indigenous peoples have been calling for action on for many years, including an inquiry into Missing and Murdered Indigenous Women, addressing funding shortfalls and inequities, examining and revising existing legislation to respect Indigenous rights, environmental and resource development concerns, education and curriculum development, economic development and job creation, addressing domestic violence, housing needs, and more.

Canada has a long history of failed commitments to Indigenous peoples. The new government has indicated that it understands the failures of the past and vows to correct them. Whether or not this becomes a reality remains to be seen. However, early signs are hopeful. Prime Minister Trudeau also addressed the Assembly of First Nations' Chief's Assembly in December—the first time in the history of the country that a sitting prime minister has done so.

It is noteworthy that the current parliament includes a record ten Indigenous members, including two cabinet ministers. Jody Wilson-Raybould, of the We Wai Kai Nation in British Columbia was appointed Minister of Justice and Attorney General. Hunter Tootoo, an Inuit from Nunavut, was appointed Minister of Fisheries and Oceans.

Under the previous federal government, opposition Member of Parliament Romeo Saganash introduced a Bill on the UN Declaration. Bill C-641, the UN Declaration on the Rights of Indigenous Peoples Implementation Bill, was defeated by the Conservative majority government in April. This legislation would have required that the Government of Canada, "in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that all laws of Canada are consistent with the United Nations Declaration".<sup>5</sup>

## **Truth and Reconciliation Commission**

2015 was the final year of the formal mandate of Canada's Truth and Reconciliation Commission (TRC), marked by closing events and the release of the final report.<sup>6</sup> The six-volume report offers in-depth documentation of the gross and systematic human rights violations suffered in Indian Residential Schools (IRS), over a period of more than 130 years.

In June, at the closing events, the Commissioners released 94 Calls to Action. These Calls to Action are intended to be more than recommendations and are crucial to meaningful reconciliation in Canada. The Commission is calling for the UN Declaration to be the framework for reconciliation and is adamant that the UN Declaration “provides the necessary principles, norms, and standards for reconciliation to flourish in twenty-first-century Canada”.<sup>7</sup> Going further, in its executive summary the TRC states,

*The Commission is convinced that a refusal to respect the rights and remedies in the Declaration will serve to further aggravate the legacy of residential schools, and will constitute a barrier to progress towards reconciliation.*<sup>8</sup>

The Calls to Action have specific implications across broad sectors, including all levels of government, students and educators, health care professionals, the legal professions, people of faith, community activists and beyond.

United Nations Secretary-General Ban Ki-moon welcomed the report of the TRC and emphasized the work remaining, “Truth-telling is important but not sufficient for reconciliation”.<sup>9</sup> If the TRC is to be successful in its work, people and governments across Canada must take up these Calls to Action. The new federal government has committed to the Calls to Action, as have provincial and territorial governments, as well as many sectors of society. The TRC’s work shone an unprecedented light on the history and current situation of Indigenous peoples in Canada. Mainstream media engaged in a manner rarely seen on issues involving Indigenous peoples. Many Canadians learned for the first time of the devastating legacy of the residential schools and the continuing intergenerational trauma.

The ongoing implementation work remains high on the priorities of Indigenous and non-Indigenous people. Healing the relationship across diverse communities will require education, awareness and increased understanding of the legacy and impacts of the IRS.

## **Missing and Murdered Indigenous Women**

The TRC’s Calls to Action included supporting the call for a national inquiry into the crisis of missing and murdered Indigenous women and girls.<sup>10</sup> The previous federal government had strongly resisted this action, even though it was sup-

ported by the provincial governments and many international human rights mandates. The new federal government moved quickly after the election, announcing that an inquiry would be held as soon as possible. As 2015 ended, the new Minister of Indigenous Affairs was already consulting with Indigenous peoples on how such an inquiry would be developed. The formal inquiry is to commence in 2016.

### **UN Human Rights Committee review**

Canada was reviewed by the United Nations Human Rights Committee (HRC) in July.<sup>11</sup> The HRC joined the UN Committee on the Elimination of Discrimination against Women and the Inter-American Commission on Human Rights in urging Canada to hold a public inquiry to address the root causes of violence facing Indigenous women and girls and ensure that attacks and disappearances are investigated appropriately. The committee was highly concerned at this matter and asked Canada to report back in a year's time on developments.

Other key elements of the review and recommendations include concerns regarding the excessive use of force against land rights defenders; Indigenous peoples' access to justice and disproportionate rate of incarceration; funding for social services on reserves; continued gender inequities stemming from the Indian Act; and the disappearance of Indigenous languages.

### **Comprehensive Land Claims review**

In follow-up to what was reported in the 2015 edition of *The Indigenous World*, the report of the Ministerial Special Representative, Douglas Eyford, on his review of the Comprehensive Land Claim process was released in April.<sup>12</sup> Although the Eyford report acknowledges the current process as fundamentally flawed and the federal government as largely responsible, the report is gravely disappointing in other respects.

The Eyford report includes only a passing reference to the UN Declaration, and minimizes the legal effect of the historic 2014 Tsilhqot'in Nation's Supreme Court victory.<sup>13</sup> The report fails to address the doctrine of discovery, despite its racist nature and ongoing adverse effects in the comprehensive claims context. In particular, the report does not consider how the Crown can unilaterally assert sovereignty over Indigenous peoples' title lands.

Indigenous legal orders, jurisprudence, governance and self-determination must all be respected if comprehensive land claim processes are to succeed. Governments cannot show up at the table expecting the status quo to continue. Canada must move past denial and honestly engage in a commitment to change. There is no denying the failure to respect Indigenous peoples' land and resource rights in Canada. In *Tsilhqot'in Nation*, the Supreme Court emphasized: "What is at stake is nothing less than justice for the Aboriginal group and its descendants, and the reconciliation between the group and broader society".<sup>14</sup> Such a statement should guide our collective work.

## **In Bad Faith - Canada's Failure to Resolve Specific Claims**

"In Bad Faith: *Justice At Last* and Canada's Failure to Resolve Specific Claims"<sup>15</sup> is a report produced by National Claims Research Directors and widely endorsed by First Nations and organizations across the country. The report challenges the federal government with regard to the success of Canada's Specific Claims Action Plan: Justice At Last.<sup>16</sup> In Bad Faith concludes that the previous federal government effectively abandoned negotiation as the preferred means of resolving specific claims.

The previous federal government allowed longstanding historical grievances to remain unresolved and, indeed, compounded them. Specific claims are historic wrongdoings committed by the Crown against First Nations. The legacy continues to impact communities to the present day. Unresolved specific claims impinge upon economic opportunities, housing, and access to resources and are often at the root of conflicts between First Nations, their neighbours and various levels of government. This is another critical area where the new federal government will need to produce concrete results to honour their commitment to improving relationships with Indigenous peoples.

## **Climate change**

Canada's history of resource development, including the extraction of oil in Alberta and the creation of pipelines to get oil and gas to markets, has widely disregarded Indigenous peoples' rights, as reported in previous editions of *The Indig-*

*enous World*. This is an ongoing challenge and Indigenous peoples continue to oppose resource development where their rights are being threatened and undermined.

The United Nations Framework Convention on Climate Change's (UNFCCC) COP21 meetings were held in Paris shortly after the change in federal government. The new Liberal government had made campaign promises to be responsive to climate change and environmental challenges. Canada completely changed its positions in Paris from the previous government, and this greatly helped achieve the Paris Agreement and raise standards for the future.<sup>17</sup> Indigenous representatives found the Canadian delegation more accessible and willing to engage in substantive dialogue regarding Indigenous peoples' rights. National Chief Perry Bellegarde of the Assembly of First Nations accompanied Prime Minister Trudeau when he spoke to the opening of the conference, to signify Canada's commitment to working with Indigenous peoples at the conference and beyond.

### ***Chartrand v. British Columbia***

In this important case, the British Columbia Court of Appeal rejected a narrow interpretation of the duty to consult and accommodate First Nations,<sup>18</sup> thereby overturning an earlier decision of the BC Supreme Court. The BC Court of Appeal found that the province had failed in its duty to consult the Kwakiutl First Nation (KFN) regarding decisions to remove private lands from a Tree Farm License and to approve and renew a Forest Stewardship Plan in the Kwakiutl's traditional territory. The province will need to fulfil its duty to consult and accommodate the KFN concerns. This case is another example of the courts rejecting a site-specific assessment of impacts on Aboriginal title, rights and Treaty rights.<sup>19</sup> The case also addresses Indigenous peoples' jurisdiction over their lands. Significantly, the Court rejected the argument that it is impossible for First Nations who have a Treaty with the Crown to also claim Aboriginal title and rights. The Court rejected the government's arguments that the Treaties were intended to extinguish Aboriginal title throughout traditional territories and upheld the finding of the BC Supreme Court that there is a *prima facie* case that the Douglas Treaties did not extinguish Kwakiutl's Aboriginal title and rights.

### ***Hamilton Health Sciences Corp. v. D.H.***

The legal effect of the UN Declaration was affirmed in this case involving an Indigenous child suffering from leukaemia whose parents wished to pursue traditional medicine treatments.<sup>20</sup> The hospital sued, requesting the decisions regarding the child's care be removed from the parents. The judge ruled that the best interest of the child was not to be removed from her parents' decision making. The judgment cited that section 35 of the Constitution Act, 1982 afforded the mother the constitutionally-protected right to pursue traditional medicine in the treatment of her daughter. The judge also cited Article 24 of the UN Declaration, the right to traditional medicine. A few months after the case was originally heard, all sides in the case came together and worked out an agreement and the child finally received both chemotherapy and traditional medicines. The final judgment reflected the judge's approval of the agreement reached by the parties. The case illustrates the balancing of rights, while maintaining the best interests of the child.

### ***Descheneaux c. Canada (Attorney General)***

In *Descheneaux c. Canada (Procureur Général)*,<sup>21</sup> the Québec Superior Court examined whether discrimination on the basis of sex suffered by Indian women and their descendants in the past with respect to their right to be entered in the Indian Register ("the Register") was still present today. In order to eliminate discrimination against Indigenous women, the *Indian Act* was amended in 1985 and again in 2010.<sup>22</sup>

The Superior Court determined that "sex discrimination, though more subtle than before, persists",<sup>23</sup> for the plaintiffs in this case. In particular, the "historical reliance on patrilineal descent to determine Indian status was based on stereotypical views of the role of a woman within a family. ... The impugned legislation in this case is the echo of historic discrimination. As such, it serves to perpetuate, at least in a small way, the discriminatory attitudes of the past".<sup>24</sup> The offending provisions of the *Indian Act* were declared inoperative. However, the effect of this judgment was suspended for a period of 18 months in order to allow Parliament to redress the discrimination.

## ***Xeni Nits'egugheni?an* - Nemiah Declaration**

Following the Supreme Court of Canada's first declaration of Aboriginal title in history,<sup>25</sup> the Tsilhqot'in Nation has enacted its first Tsilhqot'in law, setting out the rules for how the Tsilhqot'in Nation will govern their lands and manage access to the area and its resources.

Entitled *Xeni Nits'egugheni?an* (The Nemiah Declaration, in English), it is the law governing the Aboriginal title lands and the broader territory over which the courts declared Aboriginal hunting, trapping and trading rights.<sup>26</sup>

Tribal Chair Chief Joe Alphonse describes the significance:

*As Tsilhqot'in people, we have our own laws and responsibilities to our lands. It is an honour for us as Tsilhqot'in leadership to enact the Nemiah Declaration as law – a law that comes straight from our people and our elders. There will be many more laws and policies to come as we strive as a nation to express our values, our culture and our vision for the future on our declared Aboriginal title lands and throughout our territory. This has been a long time coming. We firmly believe that recognizing and empowering the laws and values of the First Nations of this province will lead to better decisions and greater opportunities for everyone.* ○

## **Notes and references**

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- 3 Rt. Hon. Justin Trudeau, P.C., M.P. *Minister of Indigenous and Northern Affairs Mandate Letter*, <http://pm.gc.ca/eng/minister-indigenous-and-northern-affairs-mandate-letter>
- 4 Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action*, 2015, [http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls\\_to\\_Action\\_English2.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf) The work of the TRC has previously been reported from 2009 onward in the annual issues of *The Indigenous World*.

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- 9 UN Secretary-General (Ban Ki-moon), "Secretary-General Praises Canada's Truth, Reconciliation Commission for Setting Example by Addressing Systemic Rights Violations against Indigenous Peoples", SG/SM/16812, 1 June 2015, <http://www.un.org/press/en/2015/sgsm16812.doc.htm>
- 10 See *The Indigenous World 2015*, IWGIA 2015, p. 48.
- 11 Human Rights Committee, *Concluding observations on the sixth periodic report of Canada*, adopted by the Committee at its 114th session (29 June–24 July 2015) (advance unedited version), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCAN%2FCO%2F6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCAN%2FCO%2F6&Lang=en)
- 12 Douglas R. Eyford (Ministerial Special Representative on Renewing the Comprehensive Land Claims Policy), *A New Direction: Advancing Aboriginal and Treaty Rights* (2015), <http://www.aadnc-aandc.gc.ca/eng/1426169199009/1426169236218>
- 13 See *The Indigenous World 2015*, IWGIA 2015, p. 48.
- 14 *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44 para. 23.
- 15 National Claims Research Directors, *In Bad Faith: Justice At Last and Canada's Failure to Resolve Specific Claims*, 9 March 2015.
- 16 See *The Indigenous World 2015*, IWGIA 2015, p. 48.
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- 19 See *Tsilhqot'in Nation* case in previous editions of *The Indigenous World*.
- 20 *Hamilton Health Sciences Corp. v. D.H.*, 2015 ONCJ 229 (Ontario Ct of Justice)
- 21 *Descheneaux c. Canada (Procureur Général)*, 2015 QCCS 3555 (unofficial translation).
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- 23 *Descheneaux*, para.10.
- 24 *Ibid.*, para. 111.
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# USA

Approximately 5.1 million people in the U.S., or 1.7% of the total population, identify as Native American or Alaska Native alone or in combination with another ethnic identity. Around 2.5 million, or 0.8% of the population, identify as American Indian or Alaska Native only.<sup>1</sup> Five hundred and sixty-six tribal entities were federally-recognized at the beginning of 2015,<sup>2</sup> and most of these have recognized national homelands. Twenty-three per cent of the Native population live in American Indian areas or Alaska Native villages. The state with the largest Native population is California; the place with the largest Native population is New York City.<sup>3</sup>

While socioeconomic indicators vary widely across different regions, per capita income in Indian areas is about half that of the U.S. average, and the poverty rate is around three times higher.<sup>4</sup> The United States announced in 2010 that it would support the UNDRIP after voting against it in 2007. The United States has not ratified ILO Convention No. 169.

Recognized Native nations are sovereign but wards of the state. The federal government mandates tribal consultation but has plenary power over indigenous nations. American Indians in the United States are in general American citizens.

## Recognition and sovereignty

In 2015, much of the political spotlight rested on the federal recognition of American Indian tribes. In the United States, only those tribes that are officially recognized as American Indian entities are entitled to benefits and operate as sovereign nations. Certain states also recognize Native tribes within their borders but that does not guarantee federal recognition. The government started a process to reform long-criticized recognition processes in 2014 (see *The Indigenous World* 2015). In March, several lawmakers sent a letter to the Department of Interior, which is in charge of the recognition process, opposing the proposed changes

and urging the department to study the issue some more. Some of the changes that lawmakers, as well as some already federally-recognized tribes, opposed were that tribes who had been denied recognition would have been able to appeal and re-petition, and that tribes seeking recognition would only have to prove their existence as tribes since 1934, instead of throughout “historical times”, which would mean since first contact. This is often impossible to fulfill because of a lack of written documentation. The final rules, published in June 2015, do not allow re-petition for denied tribes, and require documentation of existence as a tribe since 1900.<sup>5</sup> In response to the changes, Representative Rob Bishop (Republican, Utah) introduced the Tribal Recognition Act of 2015, which would give Congress alone the final decision—making power over recognition. It would also demand that tribes prove their existence from first contact. In December, the bill saw a hearing in the House Committee on Natural Resources, chaired by Bishop, which considers policies about American Indian affairs in the House of Representatives. Of the two tribes invited to testify, one, the Morongo Band of Mission Indians, welcomed the bill, while the other, the United South and Eastern Tribes, urged lawmakers to leave the Bureau of Indian Affairs (BIA) with the powers of recognition.<sup>6</sup>

In June, the recognition of the Pamunkey Indian Tribe in the State of Virginia became official. The Pamunkey had been state-recognized but became the first federally-recognized tribe in Virginia. Also in late June, the Duwamish tribe in the state of Washington was denied recognition. The tribe, just like the neighboring Chinook nation, has vowed to continue fighting for recognition. Some of the groups opposing Duwamish recognition are neighboring tribes who fear the potential competition from a new tribal casino in the area.

Another major political issue connected to tribal sovereignty in 2015 was marijuana. In December 2014, a memorandum from the Department of Justice was made public. The memorandum responded to tribal inquiries about federal enforcement of drug laws, after several states had made medicinal and/or recreational use of marijuana legal. It reinforced eight priorities in federal law enforcement. Popular press coverage in early 2015, however, reported on this as if the federal government had given tribes the liberty to make marijuana legal as long as they did not go against those priorities. Several tribes started to weigh up the legalization of marijuana and, in February, a Tribal Marijuana Conference was attended by around 75 tribes. In January, the Pinoleville Pomo in California announced a large-scale growing operation with outside investors. In August, the



nation suspended its plan and, in September, the Mendocino County sheriff seized several hundred plants from that operation under state laws. In South Dakota, the Flandreau Santee Sioux Tribe announced that it would open a marijuana resort, catering to non-Indians. However, federal authorities expressed

reservations about selling marijuana to non-Indians and the origins of the seeds for the growing operation, and the tribe burned its crop in November to avoid a potential raid by federal law enforcement. It will evaluate future plans and engage in further discussions with the federal government. In Washington, the Suquamish and Squaxin Island tribes signed agreements with the state government and opened stores selling recreational marijuana under state laws. In these cases, it seems that state laws provide more guidelines and protection for reservations than federal law, under which marijuana is still a prohibited drug.

## Children

In June, both the Senate and the House of Representatives passed the Native American Children's Safety Act, a bill that would require background checks for all adults in homes into which Native children are placed for foster care. The bill was introduced by the North Dakotan delegation, in partial response to cases on the Fort Totten reservation where some foster children had been abused by adults with criminal records. Although the bill has not been signed into law, the BIA decided in August that it would provide criminal background check information to tribal social service agencies.

In March, the United States District Court for South Dakota ruled in favor of the Oglala and Rosebud Sioux Tribes and Native parents in Pennington County, and found that the state of South Dakota had been violating the Indian Child Welfare Act (ICWA) (see *The Indigenous World 2012* and *2014*). In South Dakota, nine percent of the population is American Indian but over half of the children in foster care are Native. The court ruled that Native children are routinely taken from their homes illegally, that the state did not provide adequate notice to parents, and that other constitutional rights of parents had been violated. Under ICWA, Native children fall under the sovereignty of their tribe; this law was enacted to prevent American Indian children from being predominantly placed into non-Native contexts.

In February, the BIA updated ICWA guidelines for the first time since 1979. The new guidelines strengthen efforts to prevent the breakup of Native families, even if children have to be taken care of by foster parents and clarify procedures to determine whether or not children fall under ICWA and to notify tribes. In May, the National Council for Adoption and an organization called Building Arizona

Families filed a federal lawsuit against ICWA claiming that the law prevents Native parents from freely placing their children in the best homes. The lawsuit also argues that the new BIA guidelines impose too many burdens on adoption agencies. In July, the Goldwater Institute filed a separate federal lawsuit against ICWA. This class-action lawsuit on behalf of off-reservation Native children argues that ICWA negatively affects Native children because the power to determine foster and adoptive parents rests with their tribe, and not with the parents or the children, and because under ICWA Native children should be placed into Native homes, regardless of previous exposure or interest in culture or of bonds already in place with non-Native homes.

## Land and jurisdiction

In December, the Supreme Court of the United States heard arguments in the case *Dollar General Corporation v. Mississippi Band of Choctaw Indians*. The case has broad implications for the jurisdiction of tribal courts. The company Dollar General is arguing that tribal courts do not have jurisdiction in civil suits over non-members, even if these have voluntarily entered into a relationship with the tribe, for example, by opening a business on a reservation. Should the court rule in favor of the company, tribal jurisdiction would be limited. Tribes lack criminal jurisdiction over non-members but, so far, an authorization for tribes to regulate businesses that establish consensual relationships with a tribe has been interpreted as also giving tribes civil jurisdiction over non-members in those relations.

Although the federal government argued against it, the Supreme Court also agreed to review a land dispute between the Omaha Tribe of Nebraska and the town of Pender. In *State of Nebraska v Parker*, the state argues that the Omaha reservation was “diminished” - that is, its borders redrawn to a smaller size - in 1882 when half of it was opened for settlement by non-Indians and the state assumed jurisdiction there. If the reservation was not diminished, the town of Pender lies on the reservation, and the tribal government has the authority to regulate its businesses, especially, in this case, liquor stores. The tribe has proposed a licensing requirement and a 10% sales tax for these businesses. The reservation and the federal government are arguing that unless Congress explicitly diminished exterior boundaries of reservations, these have been left intact even if parts of them were opened for settlement by non-Indians. In November, a similar case

over whether the Wind River reservation in Wyoming still includes the city of Riverton went before the courts (see *The Indigenous World 2011*).

In October, a federal judge ruled that bands of the Chippewa tribe in Wisconsin would be able to conduct night hunts on certain lands outside reservation boundaries. Treaties in the 19<sup>th</sup> century had specifically reserved the tribal right to hunt on ceded lands. The state of Wisconsin argued that night hunts would be unsafe but the judge pointed to a stellar tribal hunting safety record and specific tribal guidelines and regulations in agreeing with the tribe.

In December, the Navajo Nation opposed a Senate bill that aims to reform the federal government's process to take land into trust. A need to reform the process has been acknowledged by both Congress and tribes for several years. The Secretary of the Interior, under a 1934 law, can take any land into trust for a tribe; a Supreme Court decision in 2009 limited this to tribes that were federally-recognized in 1934. Because trust lands are not taxed by states and counties, and fall under federal and tribal jurisdiction and sovereignty, the land-into-trust process has been controversial. States and counties fear a loss of tax income and an expansion of foreign sovereignty in their midst, resulting, for example, in tribal casino projects. This proposed bill would fix the time limitation, allowing all federally-recognized tribes to have lands taken into trust, but also encourages tribes to enter into cooperative agreements with other entities, which would limit sovereignty and jurisdiction over these lands.

## **Climate change and presidential support**

In August and September, President Obama paid a visit to Alaska, and included several rural regions in his travels, in part to see the effects of climate change. His visit to Kotzebue, an Inupiat community, was preceded by a short flyover of his plane above the village of Kivalina. That village is being slowly eroded by the sea, in part because warming sea temperatures prevent early ice build-ups that would shelter the shoreline from storms. After the presidential visit, the shoreline at Kivalina was eroded a further 10 feet toward the airport and village in an early October storm. While the ice used to build in August, the sea now freezes in November or December. The president announced a US\$4 million initiative to promote clean energy projects in Native villages. Kotzebue is trying to protect itself

from coastal erosion with a US\$40 million erosion control project. Obama also visited the Choctaw Nation in Durant, Oklahoma, in July.

In November, President Obama rejected the permit application for the Keystone XL pipeline, a planned 1,100-mile project across the plains to increase oil flows from Alberta in Canada to Louisiana. The permit process took seven years and saw multiple protests from Native people, especially in South Dakota, where the pipeline would have crossed ancestral homelands and treaty lands of several Lakota tribes. Obama remarked that, “Ultimately, if we’re going to prevent large parts of this Earth from becoming not only inhospitable but uninhabitable in our lifetimes, we’re going to have to keep some fossil fuels in the ground rather than burn them and release more dangerous pollution into the sky”.<sup>7</sup>

The decision to finally reject the pipeline came a day after the seventh White House Tribal Nations Conference, an annual meeting of tribal leaders with the president. On that occasion, the president remarked that, “I’ve said that while we couldn’t change the past, working together, nation-to-nation, we could build a better future. I believed this not only because America has a moral obligation to do right by the tribes and treaty obligations, but because the success of our tribal communities is tied up with the success of America as a whole.” After listing socioeconomic, health and educational issues faced by Native communities, Obama said, “In these circumstances, sometimes it’s hard to dream your way to a better life. And these challenges didn’t just happen randomly to Indian Country. They are the result, the accumulation, of systemic discrimination”.<sup>8</sup>

## Health

Some of these challenges were found in Indian Health Service (IHS) hospitals on the Pine Ridge and Rosebud reservations in South Dakota during an inspection by the Centers for Medicaid and Medicare in October and November. According to reports obtained by the Associated Press, inspectors found non-working sterilization equipment, errors in patients’ medical records, and medical staff without the necessary documentation to practice. In one case, a patient delivered a baby in the bathroom. One emergency room was a health hazard to patients.<sup>9</sup> While IHS has authorized plans to redress these issues, it has been underfunded for years.

## Water

In April, the Hopi Tribe in Arizona lost its quest to force the federal government to provide clean water to the communities. The water on the reservation shows arsenic levels that are higher than the standards set by the Environmental Protection Agency (EPA). The tribe tried to sue the government to fix the water system under its trust obligations. The Federal Circuit Court of Appeals upheld a lower-level court decision that the Hopi had failed to cite a specific obligation of the federal government that has been violated: “Regardless of the United States’ actual involvement in the provision of drinking water on the Hopi Reservation, we cannot infer from that control alone that the United States has accepted a fiduciary duty to ensure adequate water quality on the reservation”.<sup>10</sup>

In Montana, a water agreement between the state and the Confederated Salish and Kootenai Tribes was signed by the state governor in April. The compact finalizes tribal water rights on the Flathead reservation after more than a decade of negotiations. However, the agreement faces much opposition as it is making its way to Congress for approval, as some people – water users in the state as well as those in general opposed to specific Native rights - argue that the state owns and controls all water within its boundaries.

In South Dakota and Nebraska, a coalition of Native and non-Native people has continued its struggle against new or expanded uranium mining for fear of water contamination. In April, a Nuclear Regulatory Commission (NRC) panel ruled that Azarga Uranium has to complete a cultural resources consultation process with the Lakota according to the National Historic Preservation Act. The proposed mine, which would use an in-situ or solution process, using pressurized water, sits at the headwaters of the Cheyenne River, which is a water source for the Cheyenne River Sioux Reservation. Azarga is seeking an exemption from the Safe Drinking Water Act. The site is also home to several culturally-significant places. In August, Native people were actively involved in an NRC hearing on a planned expansion of the Crow Butte Resources uranium mine in Crawford, Nebraska, also an in-situ operation. The Oglala Sioux tribe maintained that there had been no adequate cultural survey of the site.

## Governance and honors

In December, John Trudell died at the age of 69. A poet, activist, actor and songwriter, Trudell was national chairman of the American Indian Movement (AIM) in the 1970s and was involved in the Alcatraz occupation before that. He had distanced himself from AIM but remained an outspoken advocate for Native rights. President Obama awarded a posthumous Presidential Medal of Freedom to another activist, Billy Frank, Jr., in December, as one of the recipients “who have challenged us to live up to our values”.<sup>11</sup> (see *The Indigenous World 2015*). ○

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MEXICO AND  
CENTRAL AMERICA

## MEXICO

Mexico has the largest indigenous population of all Latin American countries. A total of 16,933,283, representing 15.1% of the total population (112,236,538), have been recorded and some 68 indigenous languages and 364 dialects are spoken within its territory.

Mexico ratified ILO Convention No.169 in 1990. In 1992, the Constitution was amended and Mexico was recognised as a pluricultural nation (Art. 6). In 2001, as a result of the mobilization of indigenous peoples, the Constitution was again amended to reflect the “San Andres Accords” negotiated in 1996 between the government and the Zapatista National Liberation Army (EZLN). From 2003 onwards, the EZLN and the Indigenous National Congress (CNI) began to implement the Accords, creating autonomous indigenous governments in Chiapas, Michoacán and Oaxaca. The state constitutions of Chihuahua, Nayarit, Oaxaca, Quintana Roo and San Luís Potosí have dispositions concerning indigenous peoples, but indigenous legal systems are still not fully recognised. Mexico voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007.

**A**lthough rather delayed, the results of the 2012–2014 poverty measurements were published in 2015. These are fairly rigorous measurements conducted by CONEVAL (National Council for the Evaluation of Social Development Policy). The reports of a reduction in poverty issued by the Ministry for Social Development (SEDESOL) were contradicted by the figures. Although the Mexican population in general has experienced a slight decrease in *extreme poverty* (from 9.8 in 2012 to 9.5 in 2014), *poverty* itself has gone up from 45.5 in 2012 to 46.2 in 2014). In contrast, the indigenous population of Mexico (defined as those living in indigenous households plus those speaking an indigenous language) has suffered in the same period an increase in *extreme poverty* (from 30.6 to 31.8) and a slight decrease in *poverty* (from 41.7 to 41.4). CONEVAL records that more than 8.7 million indigenous people live in poverty or in extreme poverty.<sup>1</sup>



## The indigenous health situation

The health situation of Mexico's population remained largely unchanged in relation to 2014, although poverty indicators (which in Mexico are based on inadequate income, living quality and space, basic services, food, social security, education and access to health services) yet again highlighted the adverse situation in regions and states with significant indigenous populations. Two factors combined to increase the vulnerable health situation of the native peoples: the increase in vector-borne diseases (malaria, dengue, influenza and the surprising appearance of Zika) and hurricanes *Ingrid* and *Manuel*, which afflicted wide sectors of the indigenous population, particularly in Guerrero state. The fundamental demands of the indigenous peoples (above all in rural areas) relate to a lack of medical supplies and medical equipment, the cost of travelling to secondary and tertiary-level health care services from the communities, the provision of care by interns (i.e. students not yet qualified) in primary health care facilities, and their ill-treatment and discrimination in hospitals.

Apart from the figures showing a lag and inequity in health, the suppression of information and manipulation of official reports is also noteworthy. The National Health and Nutrition Survey (ENSANUT) records the questions asked during the last survey (2012). These included specific questions on the health of speakers of indigenous languages: whether they had suffered ailments (of the 22 most common in Mexico) recognised by traditional medicine (fright, stomach ache, evil eye and airs), and also if they had been treated by staff trained in scientific medicine or by traditional doctors and even their use of indigenous medicinal remedies and the cost. The national and state reports published none of the results which, it is assumed, were obtained in this regard.<sup>2</sup> And this was notwithstanding the fact that official documents give the stated aim of:<sup>3</sup> “Promoting scientific medicine in harmony with traditional medicine, for a rational use of alternative resources”.

## Celebrations

During the celebrations for International Day of the World’s Indigenous Peoples 2015, Magdalena Gómez, a lawyer specialising in indigenous issues, noted: “This is why it is no accident that the leaders of resistance to this [government] policy are being criminalised. the Yaqui Mario Luna in his fight against the Independence Aqueduct in Sonora; Marco Antonio Suástegui against the La Parota dam in Guerrero; Nestora Salgado and Cemeí Verdía Zepeda campaigning for community police forces in Guerrero and Michoacán. Accusations have been fabricated against all of these people in order to paint them as thieves or abductors. And these are just a few examples, because there are at least a hundred conflicts of this kind underway with legal remedies being pursued for their defence. And the paradox is that if they eventually obtain judgments in their favour, as in the case of the Yaqui tribe, these rulings will not be implemented”.<sup>4</sup>

On 21 February 2015, during the celebrations for International Mother Language Day, independent linguists from academic institutions and the National Institute for Indigenous Languages (INALI) repeated the call to support the use of native languages (Mexico has 364 dialectal variants, some 120 of which are in danger of disappearing). This measure was in response to the new (appointed in August 2015) Minister of Education’s public statements that English would be promoted as the second language of education, alongside Spanish.

## **Agricultural day labourers and the San Quintín case**

Agricultural day labouring, along with migration, has now expanded to encompass all indigenous regions of Mexico, becoming one of the main activities supporting the family economy. On the one hand, the migration phenomenon is the result of the need for cheap labour to support agricultural development in regions of the country which, given their production potential, have been prioritised for national and foreign capital investment. On the other, it results in a deterioration in the peasant economy which, added to the lack of production alternatives, employment and demographic growth, has ended up with greater number of indigenous individuals taking on paid labour. Different studies conducted by the National Programme for the Care of Agricultural Day Labourers confirm the significant presence of the indigenous population in this economic activity. According to the National Survey of Day Labourers (ENJO) 2009,<sup>5</sup> there are currently around 2,040,414 day labourers of whom 40% are indigenous, i.e., 816,166 individuals, a figure lower than that recorded in the National Survey of Migrant Day Labourer Households in Mexico's Horticultural Regions,<sup>6</sup> which was 1,500,000. The agroindustrial zones are located in various parts of the country but Sonora, Baja California, Baja California Sur, Sinaloa, Chihuahua, Tamaulipas, Durango and Nayarit receive the greatest flows of indigenous population working as agricultural day labourers. Among these migrants can be found Mixtecos, Mixes, Huastecos, Zapotecos, Tlapanecos, Nahuas, Purépechas, Triquis, Totonacos, Popolocas and even Tarahumaras, Yaquis, Mayos, Coras and other groups. Of the population recorded by ENJO, 60% are children and adolescents working in agricultural zones, 10% have a trade and 30% are in domestic service. In addition, the same source indicates that 90% of day labourers lack any formal contract, 48.3% have income from three minimum wages, 37% earn two minimum wages and 54% are exposed to agrochemical products on a daily basis.<sup>7</sup> As an example of the above, we need only mention the case of internal indigenous migration to the agricultural valley of San Quintín, Baja California, where Mixteco, Zapoteco, Tiquis and Purépecha workers live a life of exploitation and misery comparable to that which triggered the Mexican revolution a century earlier. During March and April last year, thousands of agricultural day labourers downed tools in protest but were suppressed by the state and federal authorities, at the request of the transnational companies who impose working conditions that can only be described as

modern slavery. With demands for improved wages, health care due to the use of agrochemicals banned in the US and Europe (the main markets for these goods), an education for their children and a ban on child labour, access to housing and basic services such as clean water, the workers were calling on the federal authorities to reverse a situation that has remained unchanged for decades. It was this that resulted in the creation of a United Front to promote the regional strike, which obtained the support of organisations of emigrants and agricultural workers in California. And yet conditions have changed little if at all, as noted by Fidel Sánchez, spokesperson for the National Alliance for Social Justice of the San Quintín Valley, who explained in an interview that the day labourers sign two contracts, one collective, with the representation of the Regional Confederation of Mexican Workers (CROM) and the Regional Coordinating Body of the Community Authorities (CRAC) which establishes their working conditions such as foregoing the 13<sup>th</sup> month bonus, double pay on Sundays and holidays, holidays, holiday bonuses and profit sharing, with a salary equivalent to seven dollars a day; the other is an individual contract<sup>8</sup> in which they accept even worse conditions.

### **Establishing a public policy of land grabbing**

Unfortunately, lack of space prevents us from listing concrete cases in which there has been a systematic grabbing of the land and resources of Mexico's indigenous peoples and communities on the part of neocolonial extractivism. Suffice it to mention that cases such as the La Parota dam, the Independence Aqueduct, the Lema Highway, to name but a few of the hundreds of cases, are still ongoing. The support bases of the Zapatista National Liberation Army continue to be constantly harassed by the Armed Forces and paramilitary groups and those most recently accused of perpetrating the Acteal Massacre in 1997 still remain at large. The Mexican government responds to demands for justice by harassing and imprisoning indigenous leaders and criminalising their protests. It was in this context that the Mexican state approved what organisations fighting the mining companies' land grabs have coined the "*Guide to Land Grabbing*", the official name of which is the "*Guide to Land Occupations*". Published by the Ministry of Finance, this guide justifies land grabbing on the basis that it is promoting the development of the mining sector. And quoting Julio César Cervantes, a member of the *Central Campesina Cardenista* (CCC) "The government is giving a practi-

cal and very concise guide to land grabbing, even giving the Peñoles and Farallon mining companies as successful examples [of socially and environmentally responsible companies], although we full well know that these companies have an environmental impact. The government is thus not only offering them the facility but also doing the work for them. This is clearly not a state with the least concern for the indigenous and peasant sector”.<sup>9</sup>

Lastly, we include another public policy decision taken by the National Commission for Indigenous Peoples’ Development. In an unexpected turn, this body cancelled the contracts of half the indigenous communicators who were working in at least seven stations run by the Indigenist Cultural Radio Broadcasting System or SRCI (XEPET, XENKA, XECOPA, XEVFS, XEJAM, XETLA and XEGLO). This decision affects a public radio broadcasting system that broadcasts in 32 indigenous languages in a country which, according to official calculations, will lose 15 native languages in the coming 15 years. Not only are more redundancies of indigenous communicators expected but also the gradual dismantling of the SRCI itself. ○

## Notes and references

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*A complete version of this article along with all sources referred to can be found at: [www.nacionmulticultural.unam.mx](http://www.nacionmulticultural.unam.mx)*

## GUATEMALA

The more than 6 million indigenous inhabitants (60% of the country's total population), are made up of the indigenous peoples: Achi', Akateco, Awakateco, Chalchiteco, 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 indigenous population continue to lag behind the non-indigenous population in social statistics: they are 2.8 times poorer and have 13 years' less life expectancy; meanwhile, only 5% of university students are indigenous. The human development report from 2008 indicates that 73% of the indigenous population are poor (as opposed to 35% of the non-indigenous population), and 26% are extremely poor. Even so, indigenous participation in the country's economy as a whole accounts for 61.7% of output, as opposed to 57.1% for the non-indigenous population.

Guatemala ratified ILO Convention No. 169 and voted in favour of the UN Declaration on Rights of Indigenous Peoples in 2007 and.

**T**he social situation of Guatemala's indigenous peoples changed little during 2015 in relation to previous years. The publication of the National Institute of Statistics' report on living conditions revealed an overall increase in poverty in the country, particularly among the indigenous population, women and rural inhabitants. Despite indigenous mobilisations and the different proposals put forward by their organisations following internal discussions, the state continued to ignore their approaches with the result that poverty, discrimination and racism continue to be the main social scourges in the country.

Yet despite the country's serious problems of violence and public insecurity (it is one of the most violent countries in the world), different studies have shown that indigenous areas are extremely peaceful compared to other regions. This could offer interesting insights for the authorities in terms of designing new security methods based on social participation, drawing lessons from how this is organised within the indigenous communities.



The most notable aspects of this article relate primarily to the political crisis that shook the country during the year, in which social mobilisation and criminal complaints resulted in the resignation of both the president and vice-president. Also noteworthy was indigenous participation in the electoral process and the efforts to restore collective rights to land and territories.

### **Political crisis and general elections**

2015 was unparalleled in Guatemala in terms of political crisis, social mobilisation against corruption, and general elections. It all began in April 2015 when the In-

ternational Commission against Impunity in Guatemala (CICIG), together with the Public Prosecutor, brought a number of cases of corruption to light involving the highest governmental authorities, including the then president and vice-president of the country, Otto Pérez and Roxana Baldetti, as well as officials from the tax authority. These civil servants were arrested and brought to justice but the politicians were afforded immunity by virtue of their position. This led to immediate protests from the people demanding the resignation of both politicians and resulting in the vice-president's resignation in May and the president's in September. This latter held out to the very end, but was finally overwhelmed and discredited by a growing indignation on the part of a broad cross-section of society.

Never before had a judicial inquiry of this kind been conducted against serving officials in such high office, far less in relation to accusations of corruption. Corruption in the tax system was merely one expression of the problem, however, as there simultaneously appeared other cases—particularly in welfare and various public investments—that demonstrated that corruption, influence peddling and tax evasion were all deeply rooted in public office.

These events unfolded at the same time as the general election and consequently resulted in a drastic change in the political outlook to the extent that the person who ultimately emerged victorious from the presidential elections was a candidate who previously had not stood the slightest chance of success but whom the electorate chose in order to punish the old-school politicians.

A number of indigenous organisations joined the anti-corruption protests and mobilised to show their disagreement at the way the country was being governed, and how a total disregard for indigenous peoples was almost always justified by a lack of public funds when it was widely known that this was really due to corruption and tax evasion.

It is possible that the war on corruption came too late for the electoral process because the political parties had already decided on their lists of candidates. This is why so few indigenous deputies were elected—15 out of 158—and although indigenous candidates generally won in municipalities where there is an indigenous majority, both deputies and local mayors generally toe the line of the large political parties rather than advocating for the concrete demands of the indigenous peoples. One thing is for sure, however, and that is that only four deputies from two minority political parties will represent the indigenous peoples in Congress.

## **Trial of former members of the military and redress for indigenous peoples**

Efforts continued throughout the year to bring soldiers accused of crimes against humanity during the internal armed conflict to justice, given that these crimes are not subject to statutory limitations, according to the international agreements signed by the country. The case against former president Efraín Ríos Mont, whose sentence was previously overruled by the Constitutional Court, resumed. This trial has been maliciously delayed by the defence team, however, who have argued a lack of mental and physical capacity to continue with the case.

The economic and social reparations ordered by means of a ruling of the Inter-American Court of Human Rights (IACHR) for those communities that suffered massacres during the internal armed conflict began to take shape this year, despite government opposition. The government authorities had initially refused to make the payments and denied that the army was involved in the massacres. In the end, however, international pressure, particularly from large international cooperation agencies, forced the government to establish a payment plan and this commenced during the year.

In addition, significant progress was made in the case against former members of the military accused of raping and enslaving indigenous Q'eqchi' women from Alta Verapaz department during the armed conflict, with a conviction forthcoming at the start of 2016. This case has been emblematic in that it is the first time that former soldiers have been brought to justice for such crimes, thus opening up the possibility of thousands of women victims of the internal armed conflict obtaining justice and redress.

## **Restoration of rights**

Two cases that were emblematic for the restoration of indigenous peoples' collective rights were considered during 2015. The first was a judgment of the Constitutional Court, the highest court in the land, in favour of indigenous Ch'orti communities. The municipal authority of Camotán, Chiquimula department, had suspended their right to be registered as indigenous communities in the municipal records. In its ruling, the court established that the municipality had violated the

indigenous communities' right, and demanded that this right be respected and their registration reinstated. This case sets a precedent for other municipalities, which have long stripped and denied indigenous peoples of their rights.

The second case refers to the judgment of the Constitutional Court regarding the incorrect registration of a state farm in Sierra Santa Cruz, Izabalby department, by private individuals in the area of an ancestral territory inhabited by indigenous Q'eqchi' communities. At the start of the 20<sup>th</sup> century, a number of individuals falsified documents to get this farm registered in their names, and the farm was then sold on several times. The state had always denied the right of the indigenous communities who were claiming ancestral ownership, stating that the farm was private property. However, after an exhaustive investigation, it was demonstrated that the private registration was erroneous and so, after a long trial, the Constitutional Court ruled that said registration should be cancelled, along with all subsequent transactions, and ordered the return of the property to the state. This now offers the indigenous communities a chance of success in their historic claim for restoration of their territorial rights. The case clearly sets an important precedent as there may be many large properties that have their origins in similar anomalous transactions.

## **Socio-environmental disasters and social costs**

On the night of 1 October 2015, following heavy rain, a landslide buried the village of El Cambray in Santa Catarina Pinula municipality, Guatemala department, barely 12 km from the capital. The death toll reached 300 people, with nearly 600 more unaccounted for, many of them indigenous as this village was founded by immigrants from different parts of the country's interior. This demonstrates the clear lack of government investment in disaster risk management, especially at the local level. The country sorely needs land-use plans to be designed and implemented. Failing this, there will be recurrent disasters at a high cost to human life.

There was also serious contamination of the waters of La Pasión River, in Petén department, resulting in the death of thousands of fish and other waterborne life forms on which thousands of families, most of them members of the Q'eqchi' people, depend for their existence. According to specialist sources, the ecological disaster was caused by waste coming from a palm oil processing com-

pany located in the area of the river. Oil palm cultivation has expanded hugely in the south of this department, with companies grabbing the region's lands on a large scale. Many of these lands have been acquired by misleading their indigenous owners, who are unable to resist the pressure placed upon them to give up their rights to the land. These lands are then turned over to large oil palm plantations. The contamination of La Pasión River extended more than 100 km, making any fishing impossible for more than six months. On top of this, some local leaders who denounced this environmental disaster were murdered and no-one has yet been brought to justice.

Another disaster occurred in an indigenous Q'eqchi' community in El Estor municipality, Izabal department, following the flooding of two rivers. This affected more than a thousand families, who lost their homes and their crops. It is notable that the disaster zone is in the area of influence of a large nickel mine. The local inhabitants also indicate that one of the bridges on the main road to El Estor village has been destroyed by the excessive movement of the mining company's heavy goods vehicles.

## **Consultations continue**

A number of the country's municipalities joined the process of holding consultations on the installation of extractive investments on their territory over the course of the year. As with previous consultations, these resulted in an overwhelming rejection of such investments. However, both the companies and the government authorities have refused to accept these consultations as binding, indicating that their results are only indicative and that, in any case, the government has absolute power to grant licences for the exploitation of subsoil resources. Faced with this position, the community organisations have turned to the courts, both national and international.

The case of La Puya community, located scarcely 20 km from the capital, demonstrates the contradiction in state decisions. The courts declared the mining licence granted by the Ministry of Mines void due to a clear lack of community consultations. The ministry ignored this ruling, however, arguing that consultations were not a requirement for the granting of mining licences. These contradictions create uncertainty within the communities and also feed a climate of tension

and government repression of communities and leaders opposed to mineral exploitation, causing clashes between local actors and the security forces.

## **Towards responsible governance of land and natural resources**

Following the publication of the UN Food and Agriculture Organization's Voluntary Guidelines on the Responsible Governance of Tenure of Lands, Fisheries and Forests, government bodies responsible for the agriculture, environment and forestry sectors have begun to implement these recommendations. The Ministry of Agrarian Affairs (SAA) produced a new version of agrarian policy incorporating these guidelines, particularly in relation to recognition of communal lands, indigenous peoples' traditional tenure and own systems of land and natural resource governance.

In this same regard, a number of NGOs contributed to studying the guidelines and conducting research aimed at providing inputs that would support their implementation. The community organisations hope that the adoption and implementation of these guidelines by government bodies will help to reduce the country's land conflicts and also restore the indigenous communities' rights to ancestral land ownership. In addition, the organisations feel that the guidelines are an addition to the approaches already contained in ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples.

The country's legal and institutional framework is still preventing full implementation of indigenous peoples' rights, however. The most conservative sectors of society and business interests are roundly opposed to indigenous peoples being able to exercise these rights, and are using different mechanisms to prevent this. For example, the country's cadastral process continues to make little progress with regard to recognising the communal land system. Moreover, there is still no recognition of indigenous communities' contribution to conservation and protected areas management and so the communities are mobilising and demanding greater recognition. Such was the case, for example, in Semuc Champey, located on the Q'eqchi territory in Lanquín municipality in Alta Verapaz, where local inhabitants occupied an area considered one of the country's most important tourist attractions to demand greater benefits from the income generated by this site.

## Political participation and membership

Indigenous peoples' organisations were very active in terms of expressing themselves politically in national and international fora last year. A number of organisations joined together in the Council of Maya People (*Consejo del Pueblo Maya / CPO*) to make various proposals regarding central issues pertaining to the state and Guatemalan society. Through this organisation, they managed to get three deputies elected to form part of the new legislature, from where they hope they will be able to advocate for indigenous rights. It is clear that the indigenous peoples' organisations need to make great efforts to rebuild the social fabric and, through their representative bodies, draw together interests and proposals for the construction of a more inclusive society capable of reducing the weight of racism and discrimination that currently affects the harmony of Guatemalan society.

Finally, it is important to note that, thanks to the efforts of different organisations, an updated map of Central American indigenous territories, ecosystems, and protected areas has been produced which highlights the contribution made by indigenous peoples to protecting nature and the threats facing them as a consequence of the growing expansion of large-scale investments. ○

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## NICARAGUA

The cultural and historic roots of the seven indigenous peoples of Nicaragua lie both in the Pacific region, which is home to the Chorotega (221,000), the Cacaopera or Matagalpa (97,500), the Ocanxiu or Sutiaba (49,000) and the Nahoia or Náhuatl (20,000), and also on the Caribbean (or Atlantic) Coast, which is inhabited by the Miskitu (150,000), the Sumu-Mayangna (27,000) and the Rama (2,000). Other peoples who enjoy collective rights in accordance with the Political Constitution of Nicaragua (1987) are the black populations of African descent, known as “ethnic communities” in national legislation. These include the Creole or Afro-descendants (43,000) and the Garífuna (2,500). Among the most important regulations are Law 445 on the Communal Property System of Indigenous Peoples and Ethnic Communities of Nicaragua’s Atlantic Coast and of the Bocay, Coco, Indio and Maíz Rivers which, from 2003 on, also stipulates the right to self-government in the titled communities and territories. The 2006 General Education Law also recognises a Regional Autonomous Education System (SEAR). In 2007, Nicaragua voted in favour of the UN Declaration on the Rights of Indigenous Peoples and, in 2010, ratified ILO Convention No. 169.

The Sandinista National Liberation Front (FSLN) came to power in Nicaragua in 1979, subsequently having to face an armed insurgency supported by the United States. Indigenous peoples from the Caribbean Coast, primarily the Miskitu, took part in this insurgency. In order to put an end to indigenous resistance, the FSLN created the Autonomous Regions of the North and South Atlantic (RAAN/RAAS<sup>1</sup>), on the basis of a New Political Constitution and the Autonomy Law (Law 28). Having lost democratically held elections in 1990, Daniel Ortega, of the FSLN, returned to power in 2007. Ortega is in the middle of his third presidential term in office (2011-2016) and has now managed to amend the Constitution to enable perpetual re-election.



Issues of particular significance in the Autonomous Regions of Nicaragua during 2015 included discussions on the construction of the Interoceanic Canal; the removal from office of the national deputy Brooklyn Rivera, for many decades one of the most prominent indigenous leaders in Nicaragua; and the clashes between *mestizo* settlers and Miskitu communities in the Northern Caribbean Coast Region, which led to scores of deaths and hundreds of refugees. Lastly, in the north of the country, the Chorotega communities made progress in protecting their ancestral territory.

## Lack of information about the Nicaragua Interoceanic Canal

In March 2015, the Ecological Society of America (ESA) – the largest society of ecology professionals in the world, founded in 1915 – asked President Daniel Ortega to initiate discussions between scientists, the Nicaraguan government and the Hong Kong Nicaragua Canal Development Investment Company Ltd (HKND Group) regarding the environmental aspects of the canal before continuing with the canal project.<sup>1</sup>

At Florida International University, Miami, USA, a panel of experts met in March 2015 with representatives of the consultancy group Environmental Research Management (ERM), which had been contracted to carry out the Environmental and Social Impact Assessment (ESIA) for the Canal. The panel described the ESIA as scientifically weak and technically inadequate, and the conclusions of the 14-volume study as “scientifically indefensible”.<sup>2</sup>

On 19 and 20 November, the Academy of Sciences of Nicaragua invited 15 international experts to analyze the ESIA at the Central American University (UCA) in Managua. The workshop’s main question was this: what is the basis for claiming that the canal will have “a net positive impact”? Sergio Rincón, a columnist for *Sin Embargo*, indicates that “the document lists a series of recommendations through which companies can anticipate, control, contain and resolve conflicts with communities over land in addition to providing information on how to lease, expropriate and guarantee the area and exploit it.” a claim that has led the government to approve the ESIA and HKND to interpret it as definitive authorization for the construction of the Canal—while the ESIA itself is at the same time pointing out that seven additional studies have yet to be carried out? In summary, the expert panel found

*that there is no basis for concluding that this project is beneficial overall. There are many important issues summarized in the ESIA document which clearly state that there will be Moderate or Major Impacts of Residual Significance which must be remedied prior to construction of the project. The report does not meet appropriate international standards in the analysis of these impacts in several ways. It is superficial, general, and rather too qualitative for assessing environmental and social impacts of this mega-project. We, therefore, recommend to stop the Project, analyze the impacts and risks quantitatively, and to take appropriate actions.*<sup>3</sup>

### **The hearing before the Inter-American Court of Human Rights**

The most significant event following the official inauguration of the canal construction works on 22 December 2014<sup>4</sup> was a sit-down demonstration on the Pan-American Highway by peasant farmers, and the ensuing police clampdowns. A Belgian journalist who covered the event was expelled from the country, and other journalists were detained and interrogated. The police presence in the area of Nueva Guinea lasted for several months, in spite of the local inhabitants' opposition.<sup>5</sup> In December 2014, several representatives of indigenous and Afro-descendant peoples from the Autonomous Region of the Southern Caribbean Coast (RACCS) requested precautionary measures from the Inter-American Commission on Human Rights (IACHR). These measures should ensure that no construction work is carried out until these peoples have been consulted, since 52% of the canal's route goes through the RACCS and will affect their territories. In March 2015, during the 154<sup>th</sup> period of ordinary sessions, the IACHR granted a thematic hearing to the peasant farmers who, together with human rights organizations and members of the Rama and Kriol Territorial Government (GTR-K), had suffered from the police clampdowns in December 2014.<sup>6</sup> The state sent a high-level delegation that tried to play down the importance of the clampdowns and said that a process to obtain the free, prior and informed consent of the Rama and Kriol people was being undertaken. This was denied publicly by the Rama representative, who was a member of the petitioners' delegation to the hearing.<sup>7</sup> The IACHR subsequently requested that the state provide information regarding the group's complaints.

In May 2015, the State of Nicaragua refused entry to lawyers from the international NGO Center for Justice and International Law (CEJIL),<sup>8</sup> which had taken part in the IACHR hearing on the Canal.<sup>9</sup>

### **Submission and approval of the Environmental and Social Impact Study (ESIA)**

Another important event was the submission of the canal's ESIA by ERM to the concession holder, HKND. After 17 months of studies, the report was handed over discreetly by HKND to the government on the night of 5 May. During the preceding month, the executive summary had been available on HKND's webpage. Days after it was approved by the government, ERM put up the full 14,000 pages of the study on

the internet. On 24 September 2015 a presentation of more than eight hours was given to public officials and groups linked to the government. This event was called a “public consultation”, even though the study had already been submitted. It was in this context that the Cocibolca Group,<sup>10</sup> in a press conference, expressed their rejection of the so-called public consultation for not meeting the minimum procedural and legal requirements and for not having invited, in particular, the affected local residents nor the national sectors that had expressed concern at the project. The ESIA was approved by the Nicaraguan government in the same way it had been presented, by means of an unpublished Resolution, and therefore unknown to the general public.<sup>11</sup>

### **The contents of the ESIA**

Among the most significant points in the ESIA is the confirmation that Nicaragua lost nearly 40% of its forest cover between 1983 and 2011. The average rate of loss over the 28-year period was 400 km<sup>2</sup> per year, and the highest deforestation rates in the past 26 years occurred between 2009 and 2011.

The ESIA concludes that the canal will not be able to avoid a direct impact on the Rama people of Bangkukuk Taik and on the lands of the Rama and Kriol territory, which stretches along the entire Caribbean Coast. The canal could also have significant adverse effects on biodiversity, some of which would not be directly mitigable. In addition, the process of expropriation of lands and forcible resettlement has thus far not complied with international standards.

The ESIA also points to the International Finance Corporation (IFC) and the environmental, health and safety guidelines established by the World Bank as international best practice for projects affecting indigenous peoples and their lands. All consultations with indigenous peoples should be carried out in line with international standards, and free, prior and informed consent should be guaranteed before the construction of the canal is begun.

The ESIA also notes that “currently, the Nicaraguan government is carrying out a formal consultation with GTR-K on the project”. However, according to the Black Creole Indigenous Community of Bluefields, which will be affected by the Canal in the same way as the Rama and Kriol peoples, the government has not carried out any consultation process but has instead divided the community by creating a parallel government which is obedient to its interests.<sup>12</sup> In this respect, GTR-K stated publicly that in January 2015 they had formally submitted to the government the “Guidelines on the implementation of a consultation process in the Rama

and Kriol territory in relation to the Nicaragua Interoceanic Grand Canal project and related sub-projects”, which had been approved by the Territorial Assembly of the Rama and Kriol Peoples on 18 December 2014. However, without considering the provisions of that document, the government made a tour of the communities in the Rama and Kriol territory in late January and early February,<sup>13</sup> denying them the right to have an international observer and technical and legal advisors.<sup>14</sup>

In accordance with relevant international standards, the ESIA agrees with the indigenous and Afro-descendant peoples of the Caribbean Coast on the need to conduct a consultation process in order to obtain their free, prior and informed consent, a demand that these peoples have been making since July 2013. They had even lodged a constitutional challenge with the Nicaraguan Supreme Court concerning the lack of consultation of Law No. 840 (the “Special Law for the Development of Nicaraguan Infrastructure and Transport, with reference to the Canal, Free Trade Zones and Related Infrastructure”).<sup>15</sup> They are proceeding with their appeal to the Inter-American Commission on Human Rights.

### **Confrontations between settlers and Miskitu communities**

After weeks of violence that included abductions, rape, fatal and non-fatal shootings, the burning of houses and ranches, the leveling of scores of hectares of crops, and the displacement of an unknown number of settlers and indigenous families, the head of the Nicaraguan Army stated: “We note that these things will not be resolved by force by any of the sectors involved. We are not in favor of the use of force; indeed, on the contrary, we are seeking a means of dialogue and *rapprochement* in order to find a solution”.<sup>16</sup> On 12 September, the Auxiliary Bishop of the Vicariate of Bluefields suggested creating a “Truth Commission to find those responsible and bring them to justice and, in this way, see who the victims are and who has caused the injustices, in order to build a just and peaceful society”.<sup>17</sup> The Indigenous Unity Movement of the Caribbean Coast called on the government to facilitate the creation of such a commission, through a statement from its president on 9 September:

*We urge the establishment of a multi-sectoral commission before the start of this long weekend, so it can begin to address the conflicts in the indigenous territories and, above all, seek a peaceful solution.*

The president of Li Auhbra territory stated that 18 members of communities in the Río Coco region and in Waspám had died since January.<sup>18</sup>

### **Denunciations by YATAMA**

On 16 September 2015, YATAMA (*Yapti Tasba Masraka Nanih Aslatakanka*)—the organization of the Yapti Tasba Nation and a movement for the identity and struggle of the Nicaraguan Miskito people—denounced life-threatening attacks on indigenous leaders, allegedly by members of the Sandinista National Liberation Front (FSLN), together with the police and the army. On 14 September, a drunken group of people armed with pistols attacked YATAMA's building in Waspám, Wangki Territory, where a group of the organization's members were guarding the community radio station because of threats of arson. During the shooting, nine indigenous people were wounded, including Mario Leman Müller, an ex-combatant of the Indigenous Resistance and a member of the Indigenous Board in Wangki. They identified “the ringleaders of the attackers” to be the local town clerk, an ex-regional councilor, the son of a Sandinista ex-mayor and a cousin of a government coordinator. The leader, Leman Müller, died on 15 September. YATAMA reports that the police and the army in Waspám both knew of the attack and that during the shooting the indigenous group requested protection but received no response. YATAMA further reports that on 15 September, a truck coming from the communities of Tasba Raya in Waspám municipality was attacked by a unit of the Nicaraguan army, resulting in three people injured, including the vice-president of the Indigenous Territorial Government of Wangki Twi Tasba Raya, who suffered punctured lungs.<sup>19</sup> They furthermore reported that the Nicaraguan government was militarizing the municipalities of Waspám and Puerto Cabezas, transferring large numbers of specialized anti-riot forces and soldiers by truck.<sup>20</sup>

### **The state's reaction**

The President of the Republic announced on 9 September that an Inter-Institutional Commission had already been created to offer indigenous communities the necessary assistance with communal land titling in the Northern and Southern Caribbean regions, so that they could recover properties protected by the Law on the Autonomy of the Caribbean Coast. This would apply particularly in reserves such as the

Indio Maíz biological reserve. These reserves belong not only to the State of Nicaragua but also to the entire planet, yet they experience serious problems of incursions by settlers.<sup>21</sup> On 23 September, the Office of the Attorney General (PGR) announced that it was re-activating a special commission in the Afro-descendants' traditional territories of the Caribbean and Alto Wangki-Bocay, to be presided over by the PGR. The purpose of the Commission would be to investigate the territorial conflict between indigenous peoples and settlers in Waspám, in the Autonomous Region of the Northern Caribbean Coast (RACCN), where it has already caused several deaths and forced displacements of communities. The Special Commission would include the national police, the Public Prosecutor's Office, and the judiciary. The objective would be to re-establish social harmony and take legal proceedings against all those who were implicated in the "criminal acts related to the trafficking and occupation of Indigenous Communal Lands and other related crimes listed and punishable under the Penal Code which had come to light, and support the efforts of the government to protect the resources of the indigenous peoples and of Mother Earth", according to a communication from the PGR.<sup>22</sup> Nonetheless, indigenous people state that the aforesaid commission has still not been established.

### **Deputy Brooklyn Rivera removed from his seat in Parliament**

On 21 September 2015, the president of the FSLN in the National Assembly demanded the immediate lifting of the immunity of the YATAMA deputy, Brooklyn Rivera, accusing him of the illegal sale of lands in RACCN where, over the past 15 days, there had been clashes between indigenous peoples and settlers who were invading indigenous communal territories. Rivera asked Parliament to create a special commission to investigate the accusations made against him but he was ignored, and the Sandinista deputies removed him from office without observing the correct legal procedures.<sup>23</sup> Nonetheless, to date Rivera has still not been charged by the judiciary for the alleged crimes.<sup>24</sup>

### **Indigenous peoples and Afro-descendants before the Inter-American Commission on Human Rights (IACHR)**

The Center for Justice and Human Rights of the Atlantic Coast of Nicaragua (CEJUDHCAN) and CEJIL raised the matter of the human rights of indigenous peoples and Afro-descendants on the Northern Caribbean Coast of Nicaragua at the

156<sup>th</sup> session of the IACHR, which took place on 16 October 2015. They denounced the invasion and usurpation of their territories in RACCN by settlers; the violation of the right to self-determination in the Black Creole Indigenous Community of Bluefields by means of the creation of parallel authorities who are amenable to the Nicaraguan government; and the lack of consultation over the mega-canal project.<sup>25</sup>

### **The IACHR grants precautionary measures in favor of the Miskitu indigenous people**

Given the increased frequency and intensity of settler attacks, on 14 October 2015 the IACHR granted the precautionary measures requested by members of indigenous communities to prevent irreparable damage to their rights to life and personal integrity. The Miskitu communities concerned were Esperanza, Santa Clara, Wisconsin and Francia Sirpi, in the indigenous Miskitu territory of Wangki Twi Tasba Raya in the RACCN. According to CEJUDHCAN, some 54 indigenous people were assaulted between 2013 and 2015, 24 of whom were murdered. In addition, hundreds of people, principally women and children, have been forced to flee because of the widespread violence. Nonetheless, according to the IACHR, up to now “the Nicaraguan State has done nothing to protect these communities. On the contrary it has undertaken reprisals against the beneficiary communities by suspending social welfare projects”.<sup>26</sup>

### **Nicaragua before the Inter-American Court of Human Rights**

The Inter-American Court of Human Rights gave authorization on 1 October 2015 to begin processing the case “*María Luisa Acosta and Others vs. Nicaragua*”. The case concerns serious irregularities committed by the Nicaraguan legal system during the criminal proceedings related to the murder of Francisco José García Valle, husband of María Luisa Acosta, an advocate of indigenous peoples’ and Afro-descendants’ rights. The murder was carried out by contract killers in the victim’s house in Bluefields on the Nicaraguan Southern Caribbean Coast on 8 April 2002. At that time, the victim’s wife was the coordinator of the Center for Legal Assistance for Indigenous Peoples (CALPI), but she was also the legal representative of the indigenous and Afro-descendant communities of the Laguna de Perlas basin and of

the Rama and Kriol territory, which were affected by the illegal sale of Cayos Perlas and other properties by Peter Tsokos and Peter Martínez Fox.

CALPI, CEJUDHCAN, and the Nicaraguan Center for Human Rights (CE-NIDH) considered it appropriate to obtain accreditation in the Inter-American Court of Human Rights in order to represent the victims. The case presents many of the challenges that Nicaragua needs to address in relation to the protection of human rights advocates, judicial independence and impunity. The Office of the United Nations High Commissioner for Human Rights has indicated that “a lack of investigation into violations against advocates, and of punishment of those responsible, is the most important factor contributing to the risk faced by advocates, because it leaves them defenseless and without protection”.<sup>27</sup>

## **The Chorotega indigenous people of northern Nicaragua**

Since 2012, the Chorotega have been undertaking a process of geo-referencing aimed at documenting their entire territory. By 2014, they had developed an initial outline of the territory. In 2015, through a project with the Nicaraguan Council for Voluntary Certification (CONICEFV), funded by the Danish NGO Forests of the World, they geo-referenced forested areas and water sources in the Chorotega territory and the territory of the indigenous communities of San Antonio and Santa Bárbara in northern Nicaragua. This has helped them gain a better overview of the territory and the natural resources within it.

In order to strengthen indigenous institutions and governance, the Chorotega people have developed a proposal for the consolidation<sup>28</sup> of the indigenous communal property. This is important because it will allow the territorial governments to exercise control over land tenure, as well as put indigenous governance into practice.

In addition, relations with the Nicaraguan Supreme Court have been strengthened. Between 2014 and 2015, three specialized courses on the administration of intercultural justice were organized, targeting officials in the ordinary legal system including judges, magistrates, secretaries, police, prosecutors and public defenders. Spaces are being created to establish mechanisms for better communication and coordination between judges and indigenous authorities for the purposes of conflict mediation and resolution, especially in relation to land tenure. There has also been an improvement in coordination with the Attorney General's Office and the Property Administration in relation to the administration of the col-

lective territories since each territory has its “Royal Titles” granted by the Spanish Crown confirming that the people concerned are the owners of their historical and ancestral territories.<sup>29</sup> ○

## Notes and references

- 1 The letter was presented to ESA's president, David Inouye, at the Nicaraguan Embassy in Washington, and copied to the U.S. Ambassador in Nicaragua, Phyllis M. Powers, the Nicaraguan Ambassador in the USA, Francisco Campbell Hooker, and the president of HKND, Wang Jing. <http://www.laprensa.com.ni/2015/03/09/nacionales/1795420-rechazo-global-al-canal>
- 2 <http://www.circleofblue.org/waternews/2015/world/nicaragua-canal-environmental-assessment-criticized-as-scientifically-weak-technically-inadequate/>
- 3 [http://cienciasdenicaragua.org/images/imagenes/notificas\\_pdf/II\\_Taller/DeclaracionFinal2do-Taller.pdf](http://cienciasdenicaragua.org/images/imagenes/notificas_pdf/II_Taller/DeclaracionFinal2do-Taller.pdf)
- 4 It is relevant to note that apart from a 300-meter extension of a trail in the Brito area of Rivas department on the Pacific Coast, no other infrastructural work has been carried out on the canal.
- 5 <http://www.laprensa.com.ni/2015/01/26/politica/1771409-asedio-policial-en-nueva-guinea>  
<http://www.laprensa.com.ni/2015/01/17/nacionales/1766803-campesinos-impiden-entrada-de-camionetas-con-encuestadores>
- 6 VIDEO of the hearing <https://www.youtube.com/watch?v=oOxVVwrKnBc>
- 7 VIDEO: Members of the Bankukuk Taik/Punta de Águila Community talk about the lack of consultation. <https://www.youtube.com/watch?v=9jYzOGTHCKQ>
- 8 CEJIL is a non-governmental organization founded in 1991 by a group of human rights defenders in the Americas to protect and promote human rights in all member states of the Organization of American States (OAS). A central element of its work is the defense of human rights before the Inter-American Commission (IACHR) and the Inter-American Court of Human Rights. CEJIL is based in Washington D.C. (Ed.).
- 9 <http://www.laprensa.com.ni/2015/05/15/nacionales/1832877-niegan-ingreso-a-abogado-de-cejil>  
<https://www.youtube.com/watch?v=y-75VtGy6MM&feature=youtu.be>
- 10 The Cocibolca Group is a Nicaraguan National Platform of NGOs, academics, technicians, professionals, and people of indigenous and African descent, seeking to inform and promote knowledge on the Canal project and its impact among Nicaraguan society and the world (Ed.).
- 11 <http://www.ondalocal.com.ni/noticias/147-la-consulta-un-acto-propagandistico/>
- 12 [https://www.youtube.com/watch?v=KvWkXU54K4s&feature=em-upload\\_owner#action=share](https://www.youtube.com/watch?v=KvWkXU54K4s&feature=em-upload_owner#action=share)
- 13 <http://www.laprensa.com.ni/2015/02/05/nacionales/1777240-indigenas-exigen-ser-escuchados>
- 14 <http://www.laprensa.com.ni/2015/10/08/departamentales/1915392-ramas-y-kirol-quieren-observador-internacional>
- 15 Published in *La Gaceta Diario Oficial* No. 110, 14 June 2013.
- 16 <http://www.laprensa.com.ni/2015/09/09/politica/1898612-desalojo-de-siete-familias-en-zona-indigena>
- 17 <http://www.laprensa.com.ni/2015/09/13/nacionales/1900960-terror-en-suelo-indigena>
- 18 <http://www.laprensa.com.ni/2015/09/12/departamentales/1900662-creciente-tension-en-tierras-indigenas> y <http://www.laprensa.com.ni/2015/09/15/nacionales/1902137-celebracion-de-fiestas-patrias-en-waspam-termina-en-hecho-sangriento>

- <http://www.laprensa.com.ni/2015/09/16/nacionales/1902585-ejercito-embosca-a-indigenas>
- 19 <http://www.laprensa.com.ni/2015/09/16/nacionales/1902585-ejercito-embosca-a-indigenas>
- 20 <http://www.laprensa.com.ni/2015/09/16/nacionales/1902716-yatama-responsabiliza-al-gobierno-por-muerte-de-dirigentes-indigenas>
- 21 <http://www.el19digital.com/articulos/ver/titulo:33390-gobierno-acompanara-defensa-de-los-derechos-de-las-comunidades-indigenas-frente-a-invasores-y-estafadores->
- 22 <http://www.laprensa.com.ni/2015/09/23/nacionales/1906959-pgr-reactiva-comision-para-investigar-conflicto-territorial-en-waspam>
- 23 Rivera was the plaintiff in the case of *YATAMA vs. Nicaragua* before the Inter-American Court of Human Rights in 2005, in which the Court established the international responsibility of the Nicaraguan state for violating the political rights of YATAMA's candidates.
- 24 [https://www.youtube.com/watch?v=15Mkkmhs\\_Ps](https://www.youtube.com/watch?v=15Mkkmhs_Ps)  
<https://www.youtube.com/watch?v=X1dD57fxzqM&ebc=ANyPxKp78YknhxszcocfhVjvTyRRURxQl1sb1c4wa-dellDSHMSpOehmQcBzOrSC1q5dmKvReD3c>
- 25 <https://www.youtube.com/watch?v=t1tLDq15d4o>
- 26 <http://www.agenciasnn.com/2016/01/cidh-concede-medidas-cautelares-pueblos.html>
- 27 Merits Hearing ("*Audiencia de Fondo*") of the case before the Inter-American Commission on Human Rights [https://www.youtube.com/watch?v=\\_bUfiIT4cP8](https://www.youtube.com/watch?v=_bUfiIT4cP8)
- 28 <http://www.buzzfeed.com/fredam2/murder-and-manifest-destiny-on-the-mosquito-coast>
- 29 Property regularization and awards, rights of possession and leasehold, for members of the indigenous peoples and third parties in the territory.
- 29 Information provided by lawyer Wilmer Gutiérrez of the Chorotega people.

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## COSTA RICA

Eight indigenous peoples occupy 3,344 km<sup>2</sup> of the Costa Rican landmass, divided into 24 distinct territories. There are 104,143 people in the country who self-identify as indigenous. Of these, 78,073 state that they belong to one of the country's eight indigenous peoples while the rest do not specify their belonging. With a total Costa Rican population of around four and a half million, indigenous peoples therefore represent little more than 2.5%. Nonetheless, this percentage belies the fact that they represent a significant sector of society with specific rights, both collective and individual, laid down in national and international legislation. Costa Rica ratified ILO Convention No. 169 more than two decades ago although this does not mean that indigenous rights are recognised in the country. The indigenous peoples continue to be discriminated against and suffer higher levels of social exclusion, in addition to less public investment than other sectors. The indigenous territories continue to be invaded by non-indigenous persons and the organisations designated to administer them lack legitimacy as they do not correspond to the traditional power structures. Quite the contrary, the forms and structures of these associations are alien to indigenous culture and were imposed on them more than three decades ago. The right to consultation continues to be denied them.

Seven of the eight peoples who inhabit the country's 24 indigenous territories are of Chibchense origin and the other is Meso-American (Chorotega in Matambú). Some 48,500 people live on these territories, 35,943 of them indigenous.

**T**he indigenous rights agenda in the country continues to be held back by the State. The authorities who gained power after the 2014 elections had stated that they would introduce public policies in line with fulfilment of ILO Convention No. 169 and, more specifically, that they would take measures to enact the proposed Law of Autonomous Development for Indigenous Peoples and apply the right to consultation. However none of this has occurred. Indeed, in 2015 the



spaces for dialogue that had opened up during the term of the previous government (thanks to indigenous pressure) did not achieve the desired continuity, and indigenous rights once more were relegated to a marginal space in national public policy.

The Inter-American Court of Human Rights has passed precautionary measures to protect the indigenous peoples of Salitre from external aggression, but the fulfilment of these measures is not sufficient. The provocations and attacks continue, for example the burning of indigenous peoples' homes and crops. In 2015 the National Policy for a Society Free of Racism, Discrimination and Xenophobia

(2014-2025) should have been launched. This has still not happened and both indigenous peoples and migrant indigenous temporary workers, especially the Ngöbes of Panama, are still without a rights instrument that would support them in their struggles against discrimination.

## **The right to consultation continues to be denied**

The right to consultation is still being debated in various sectors, but without any progress. In 2015, processes that had been started by the Costa Rican Electricity Institute, an independent institution, were halted by the government, which was preparing a “single consultation protocol”. The latter refers to a sole method of consultation that would be valid for all topics and all peoples, with no consideration of their differences. This initiative, which was supported by the UNDP, was rejected by the leaders of various indigenous peoples.

On this same issue the Presidency of the Republic is developing a Presidential Directive which establishes the basic conditions for the design of participatory consultation mechanisms. If this is done in an inclusive manner, without limiting the dialogue to indigenous organisations with legal status, it is possible that for the first time there will be a favourable environment for mitigating the conflict generated by the denial of the right to consultation. It should be noted that important projects relating to infrastructure, legislation, institutional and environmental development (hydroelectricity, REDD+, environmental conservation, roads, among others) must have processes of prior consultation, since they affect the life and territories of indigenous peoples.

This year the National Fund for Forest Finance has announced that it is initiating a process to design an ethnically and culturally sensitive Payment for Ecosystem Services programme, which is currently in pre-consultation. Some indigenous organisations have indicated that this initiative should involve all the organised institutions in each territory, rather than being limited to associations recognised by the State as the territorial representatives. Otherwise it would fail to recognize the consultation principles established in ILO Convention No. 169.

The proposed Indigenous Autonomy Law has still not been discussed in the national Congress, although it was first presented more than two decades ago after a wide consultation process with indigenous peoples. As a result of the lack of enactment of this law, indigenous peoples and territories continue to be repre-

sented by organisations that have structures which are alien to their cultures. These structures were established at the end of the 1970s by a regulation that lacked any ethnic or cultural sensitivity. The ratification of ILO Convention No. 169 in 1993 did not bring about any changes to the imposition of this political system, and as a result, for many years, the legitimacy of official organisations has been precarious (which are those consulted by public institutions) whilst other organisations have been excluded, some of which correspond to traditional forms of decision-making. In 2015 the conflict relating to representation has continued, and some local initiatives designed to foster dialogue during this period have instead generated conflicts, because of the exclusion of those who were not part of these organisations.

### **Non-recognition of territorial rights**

The territorial rights of indigenous peoples have been recognised in Costa Rica since 1956. Currently more than 300,000 hectares of land have been registered in the name of indigenous peoples and communities across 24 distinct territories, some of them contiguous. Nonetheless, these lands were never consolidated and no measures were undertaken for the regularisation of ownership. The corollary is that in some territories more than half the land area is occupied by various types of landholders who are unrelated to those who make up the community and hold property rights.

The State has tolerated the invasion of indigenous lands, and the Indigenous Development Associations, also legitimated by the State, have registered outsiders as indigenous so that they could occupy the lands. All these facts, together with the dispossession and unpunished occupation of land, have generated high levels of conflict, which impede indigenous territorial governance and human development and constitute the context of poverty and social exclusion of indigenous peoples. The government institution responsible for the legalisation, consolidation and regularisation of indigenous territories is now the Rural Development Institute (INDER) which, in 2015, had practically cancelled its activities concerning indigenous lands and was not fulfilling its legal and institutional responsibilities.

At the end of 2015, as a result of pressure from indigenous organisations and an increase in conflicts, INDER requested authorization from the national budgetary authority to contract a group of officials to take charge of this matter. Indigenous organizations, the office of the Ombudsman and organizations that defend

indigenous rights consider this action as a positive sign and hope that it will lead to genuine processes of consolidation, and to the handover of indigenous territories to their legitimate owners.

### **Salitre: an unresolved land conflict**

*“The territory Bribri de Salitre (...) covers an area of 11,700 hectares. Within this area, approximately 118 illegal occupants are in possession of 7,020 hectares or 60 per cent of the titled lands. They possess 59.49 hectares per person, compared with 3.64 hectares for each indigenous person”.*<sup>1</sup>

In 2011 the authorities of the Bribri indigenous territory of Salitre started a process of internal consolidation or land reclamation, which by the beginning of 2015 had allowed them to recover more than 2,000 hectares that were previously in the hands of Ladinos who had arrived when the lands were already recognized by the State as indigenous territory. In 2015, the progress in land reclamation in Salitre generated other consequences, the most visible of which was the imprisonment of Sergio Rojas, the president of the Indigenous Association of Integrated Development of Salitre and director of the National Indigenous Peoples' Front (FRE-NAPI), who was accused of improper use of funds from the Environmental Services Programme. A range of discriminations have also erupted in the local public services: in Buenos Aires, the capital of the municipality that contains Salitre and another five indigenous territories (of the Brunka, Teribe, Cabécar y Bribri peoples), the indigenous peoples reported discrimination in the Social Security clinic, one of whose doctors had been an illegal occupant in Salitre and had had his farm reclaimed. There have been additional cases of discrimination in the local municipality, where some officials had also been in illegal possession of lands that have now been recovered. This also occurred in the secondary school, where the indigenous students stated that they were discriminated against by teachers who supported the landholders. Companies and people in Buenos Aires are practising discrimination against all indigenous peoples, regardless of whether they originate from Salitre or not.

The reclamation of lands by the Association for the Integral Indigenous Development of Salitre (ADIIS) constitutes one of the strategic lines of the National Indigenous Peoples' Front (FRENAPI) of Costa Rica. The movement of the land

reclaimers, as they are known locally, refers to Costa Rican legislation and the international framework that promotes and legitimates indigenous rights related to land and territory. The latter seems to be clear for the local population and for the population of the indigenous territories in the area. But the process has generated a climate of tension that stigmatizes diversity. The elected authorities and the local communication media repeat daily that low development indices are due to the presence of indigenous peoples in the area. This is very important in the sense that it shows that a conflict is provoking a series of related discriminations in apparently unrelated spheres.

The current conflict has its roots in a history of repeated dispossessions. During the first half of the nineteenth century, the Bribi, Cabécar, Brunka and Bröran (also known as Térraba, Teribe and Naso), occupied the territory called la Gran Talamanca<sup>2</sup> which extended from coast to coast. This meant that the ancestral indigenous territory contained significant ecological diversity, which was used according to a system of production based on altitudinal and agro-ecological zones. In Salitre, for example, the production system combined activities in the savannahs, the coasts, the lowland forests and the mountains, which are now within La Amistad International Park. The Bribri clans' traditional sacred areas of origin are found within the Park. Successive plundering by agricultural colonisation, by executive decrees such as the one that created indigenous reserves in 1956 with conservationist arguments (such as the one that created the La Amistad International Park), by invasion of indigenous lands, etc, have not only reduced the living space of the Bribri, but have destroyed their traditional production systems and their ways of life. The indigenous peoples of Costa Rica, and indeed those of the rest of the tropical part of the American continent, based their social and material reproduction on tropical forest production systems. That is to say that they cultivated the forest extensively for permanent use.

For the Bribri of Salitre, the reclamation of lands is directed not only at the recognition of a right that has been violated, but also at the reconstruction of the production systems that have allowed them to survive in the tropical environment without deteriorating their resources. Thus this reclamation, according to the reclaimers, will not lead to the reproduction of the cattle-ranching model practised by non-indigenous people, but to the natural recovery of forest cover and an economy that is amenable to biodiversity and the environment. It is important to note that because of the fragility of tropical soils in the region, sedentary, permanent cultivation techniques destroy its low fertility (as is the case of the ancient

savannahs, which are now cultivated with pineapples by global food corporations) and make production dependent on massive doses of agrochemicals and industrial cultivation techniques which, as well as contaminating the soils and the rivers, generate few jobs in comparison to small-scale production.

In this scenario, where ancestral territory has been reduced to a minimum that is insufficient for the social, cultural and material reproduction of the indigenous population, the preservation and evolution of indigenous society and its culture depend on the recovery of their territory. Discrimination prevails and stigmatises indigenous peoples as the cause of under-development. In addition, non-indigenous landholders in Salitre are not generally endowed with rights in accordance with the national and international legislation, and even within Salitre itself indigenous peoples have differing opinions. It is therefore necessary to establish some basic premises in order to understand what is happening:

- The ancestral territory of indigenous peoples in the canton of Buenos Aires was significantly larger than the delimitation of indigenous reserves in 1956 and its later modifications.
- The loss of ancestral territory had a dramatic impact on the indigenous population and on the environment. The dispossession of indigenous territories has meant the substitution of ancient, well-adapted tropical forest production systems with cattle pastures and, on a smaller scale, sedentary agriculture, which is inappropriate for the tropical soils of the region. The dispossession of indigenous lands has been running in parallel with the deforestation and degradation of natural resources and deterioration of production potential.
- The boundaries of the indigenous territories (in the 1956 decree and subsequent amendments) were fixed arbitrarily, without prior analysis of the socio-spatial configuration of indigenous peoples in the region. On the contrary, they appear to correspond to the advance of agricultural frontiers and the occupation of territory by non-indigenous people. That is to say that the 1956 decree corresponded to the processes of agricultural colonisation in the first half of the twentieth century, and that of 1982 to the interests of the company that was growing pineapples in the area. The result has been the destruction of indigenous livelihoods.

The conflict in Salitre is possibly the most intense that the country has experienced in relation to indigenous lands since the 1950s. In 2015, the dialogues initiated by the Viceministry of the Presidency collapsed, partly due to a lack of understanding of the problem by the institution, and partly because of the absence of a perspective based on intercultural analysis and action. Because of this, the Presidency referred actions to address the conflict to the Ministry of Justice and Peace, which re-initiated dialogue, in the second half of the year, with indigenous organisations and with INDER, the institution responsible for indigenous land consolidation.

The overall picture, as in previous years, has been characterised by advances and setbacks. This is the result of the lack of inclusive, transparent spaces for dialogue, the continued impunity enjoyed by land occupiers and the intensification of racism in the region of Buenos Aires due to the Salitre conflict. The Office of the Ombudsman has stated its concern publicly about these issues, but the response from the government continues to be inadequate. Territorial conflicts are structural phenomena, with multiple causes and characteristics. They cannot be resolved unless they are understood in depth. Possibly, because of the lack of this understanding, the actions of the State in this case—the most important of the year—are of limited relevance. ○

## Notes and references:

- 1 Fergus MacKay and Alancay Morales Garro. *Violaciones de los derechos territoriales de los pueblos indígenas. El ejemplo de Costa Rica*. Moreton-in-Marsh, UK, Forest Peoples Programme, 2014. Page 31.
- 2 See Alejandra Boza Villarreal. *La frontera indígena de la Gran Talamanca 1840-1930*. Cartago, Editorial Tecnológica de Costa Rica, 2014.

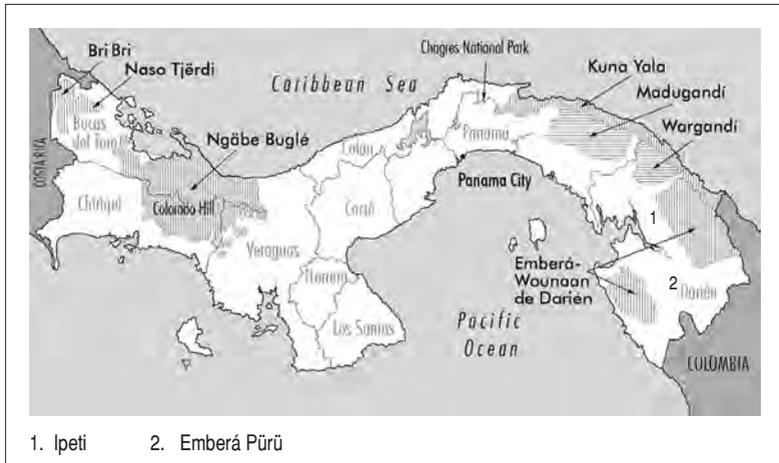
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## PANAMA

The seven indigenous peoples of Panama (Ngäbe, Buglé, Guna, Emberá, Wounaan, Bribri, Naso-Tjërdi) numbered 417,559 inhabitants in 2010, or 12% of the total Panamanian population.<sup>1</sup> The following five regions (*comarcas*) are recognised by independent laws and are based on their constitutional rights: Guna Yala (1938), Emberá-Wounaan (Cémaco and Sambú) (1983), Guna Madungandi (1996), Ngäbe-Buglé (1997) and Guna Wargandi (2000). These *comarcas* cover a total area of 1.7 million hectares. The Afro-descendant population, which is significant in Panama, does not claim its rights as collective subjects.

There has, since 2008, been another way of obtaining the titling of collective lands. Law 72, which sets out the *special procedure for awarding collective title to the lands of indigenous peoples not within comarcas*.<sup>2</sup> To date, only three territories have been titled under this law, and these were smaller in size than the actual area of traditional territory claimed. It is estimated that, once the process of collective land titling has been completed, either by means of *comarcas* or Law 72, a total area of 2.5 million hectares will have been returned to the indigenous peoples, incorporating an estimated 75% of the country's forests. A number of protected areas have been superimposed on these territories, without consulting with or having gained the consent of the indigenous peoples. The titling of 25 outstanding territories is an urgent need given that it has been shown to be an effective way of preserving Panama's forests, which have been cleared at a rate of around 16,000 hectares a year over the last 10 years. The indigenous peoples are organised into 12 representative structures (10 congresses and two councils) affiliated to the Coordinating Body of Indigenous Peoples of Panama (*Coordinadora de los Pueblos Indígenas de Panamá / COONAPIP*).<sup>3</sup>

Since 2010, the government has announced on various occasions that it would ratify ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries but no progress has yet been made in this regard.



## Important recognition by the state

2015 was a year in which the government of President Juan Carlos Varela, of the Panameñista Party, and Panama's judicial body showed a willingness to implement actions to respect indigenous rights, enforcing a judgment handed down against the country by the Inter-American Court of Human Rights (IACHR); the Panamanian Supreme Court of Justice has in this way corrected past failures. At the same time, important issues remain pending such as the full implementation of the titling process and ratification of ILO Convention No. 169.

With regard to this last issue, it should be noted that Panama became a member of the UN Human Rights Council in 2015, for a three-year-period. If we add to this all the recommendations made by international human rights institutions and the urgent petition submitted and signed by all 12 indigenous congresses and councils and presented to the President of the Republic (via the Minister for Health) during an event in Guna de Madungandi *comarca* in December, it is hoped that ILO Convention No. 169 may be ratified by Panama in 2016.

On 13 October of this year, President Varela agreed compensation for the Guna de Madungandi people (US\$2.0 million) and for the Emberá communities of Ipetí and Piriati (US\$560,000) in fulfilment of the sentence imposed on the Panamanian state by the IACHR as a consequence of its violation of their territorial rights caused by the Alto Bayano hydroelectric dam, built in 1972.<sup>4</sup>

Following strong indigenous protests in 2014, the Attorney-General investigated a ruling of the Supreme Court of Justice that indicated that the *mestizo* occupation of the Emberá-Wounaan *comarca* was not unconstitutional. The results of the investigation and the position of the National Land Administration Authority (ANATI) led the Court to demand, on 8 April 2015, the eviction of the occupiers from the Sambú area of this *comarca* in order to resolve the conflict once and for all. Another similar case exists in the Wounaan de Puerto Lara community.

In 2015, as a result of the indigenous peoples' demand for a public policy on indigenous issues from the Ministry of the Interior, the state agreed to draft a Comprehensive Development Plan for Indigenous Peoples. This was in practice produced by the Vice-Ministry of Indigenous Affairs, with technical advice from the UN and the involvement of all traditional authorities from the 12 structures and their technicians. The World Bank subsequently showed an interest in financing the Plan during 2016. Indigenous concern for control and transparency in its execution has led a group of indigenous lawyers to prepare a draft bill recognising both the Plan and the Coordinating Committee by legislative means.

### **Indigenous peoples' unity moves titling process forward**

The government changed its policy in 2015 and issued a decree ordering ANATI's central office to take over the "special procedure for awarding collective title to the lands of indigenous peoples not within *comarcas*" (Law 72) through its regional offices. The most significant progress, however, was made in the titling of two territories: Arimae for the Arimae and Emberá Pürü communities (8,191 hectares) and Ipetí (3,191 hectares). In the case of Ipetí, the title is for the lands to which they were relocated as a result of the flooding caused by the Alto Bayano hydro-electric dam, and was a clear requirement of the IACHR judgment in this case.

Originally, i.e., before the construction of the Pan-American Highway, the Emberá of Arimae had a territory nine times the size. The rest of it has gradually been carved up and handed over to private individuals, with the most recent titles awarded in 2013. It was at this time that the same community, under pressure from the state institutions, accepted the titling of plots of their land in the names of 13 *mestizo* families. They had been led to understand that if they agreed to this the state would give them the title to whatever remained. Within two years, by 2015, all of these plots had been bought up, deforested and reforested by logging companies.

The first three territories titled via Law 72 in 2012 and 2014 were also reduced in size, arguing that they overlapped with protected areas, mangrove swamps or other special regimes governing state interests.

Faced with these violations and delays in applying the Law, an alliance between all 12 traditional congresses and councils of the seven indigenous peoples of Panama has been strengthened with the aim of working for the titling of the outstanding territories, defending and regularising their territories, and ratifying ILO Convention No. 169. The alliance is now known as the “Unity Forum”, and also incorporates the National Coordinating Body of Indigenous Women of Panama (*Coordinadora Nacional de Mujeres Indígenas de Panamá / CONAMUIP*) and the leadership of the areas annexed to the Ngäbe-Buglé *comarca*, which remained outside its boundaries when it was established in 1997. This unity initiative does not mean, however, that a parallel structure to COONAPIP is being created as it has a very specific thematic focus on territorial rights, seeking to “Live without territorial concerns”, and COONAPIP is participating in the Forum’s meetings. The 12 authorities implemented their Strategic and Operational Plan in 2015.<sup>5</sup>

The Forum is seeking three concrete contributions from the state in order to undertake the titling jointly: an adequate budget for ANATI; a public titling plan and effective instructions so that ANATI and the judicial institutions do not resolve appeals against titling through court proceedings but as Law 72 requires; and an administrative process to be established within ANATI itself.

The Forum has also established a “Titling and Territorial Defence Office”. Their authorities have come to recognise the legal similarities and differences between a *comarca* established by Law and the titling of territories via the administrative process conducted in accordance with “Law 72 of 2008”. They are in actual fact two different—although not necessarily incompatible—methods of titling.<sup>6</sup> Emphasis has been placed on establishing a logical titling procedure based on current standards; internal organisational issues have been resolved in order to better define the subjects of each claim, as have some conflicts of adjacency and overlap between territorial authorities; and files have been updated on digital maps with clear reference to indigenous jurisdictions.<sup>7</sup> All this is with the aim of preparing the files and being able to introduce the correct claims, in an orderly fashion, throughout 2016 and 2017.

Concrete progress has at least been made in the files for the Emberá Éjuä So, Majé Chiman, Tule de Tagarkunyal and Bribri territories and the requested Naso-Tjërdi *comarca*.

The Emberá Éjuã So territory (Corazón Territory) has the particular feature of being completely superimposed on a protected area (Chagres National Park) and, additionally, a special administrative regime as it is located in the watershed of the Panama Canal, which generates a significant share of the water resources for the canal's operations. For this reason, the Emberá authorities have placed great emphasis on raising the national authorities' awareness of the fact that they actually share the state's objectives of forest and water conservation and that, by titling the whole watershed (88,850 hectares) as indigenous territory, the state would gain a better ally in this work.

In complete contrast, however, the environmental authorities have thus far been violating the rights of these communities. Based on an erroneous logic that indigenous exploitation of the forest will culminate in the disappearance of the forest and water resources, public officials have been hindering access to the area's natural resources, leaving the Emberá with no possibility of producing their own food and, instead, having to depend almost 100% on the tourist industry for their income, with no alternative.

Fundamental to consolidating the indigenous support for conservation aims, five communities from the basin have merged three initially uncoordinated claims into one single territory the boundaries of which have now been agreed on a digital map.

For the Tagarkunyal territory, which is the birthplace of Guna culture and government, a map has for the first time been produced that includes their sacred mountain of the same name (156,559 ha).

Three international cooperation agencies supported the titling process during 2015: Forests of the World,<sup>9</sup> Rainforest Foundation US and the Rights and Resources Initiative (RRI), with its project "Strengthening the Collective Rights of the Indigenous Peoples of Panama to Land and Territory". This initiative only commenced in June as an RRI pilot project for the titling of the Emberá de Bajo Lepe, Pijibasál and Majé Cordillera/Unión Emberá communities and the creation of a legal advice clinic. Despite building on concrete titling processes supported for a number of years by Rainforest Foundation US and an idea for legal assistance that emerged from among the 12 authorities, RRI has experienced a number of challenges in project implementation and administration in Panama.

By the end of 2015, there was a continuing lack of legal recognition for 25 indigenous territories, covering a total area of 847,922 hectares. Of these, 22 belong to the Emberá and Wounaan peoples, one to the Guna (Tagarkunyal) and

one to the Bribri, plus the *comarca* to be created for Naso-Tjërdi, and the areas adjacent to already recognised *comarcas*, as in the case of the Ngäbe-Buglé.

### **A new system for managing protected areas on indigenous territories?**

The new Ministry for the Environment (MiAmbiente), created by Law 8 of 2015, has observed that before various management plans can be reviewed in 2016, there is a need to re-visit the concept of “shared management” as used in the Protected Areas System (SINAP). The draft of this new proposal still does not fully recognise the indigenous people as owners of their territories, however, but rather as an object of participation in the conventional sense whereby the “local population’s” cooperation is sought for a form of joint management. This is very different, for example, from the concept of “joint management” that applies to similar situations in Nicaragua, where indigenous peoples’ right to self-determination is recognised, at least in theory via its Titriling Law—Law 445—thus involving the signing of specific agreements between the indigenous authorities and the state with regard to the management of protected areas that overlap with their territories.

### **Indigenous contributions to the climate change negotiations**

The Panamanian government conducted two parallel processes on national climate policy in 2015. Firstly, MiAmbiente convened all 12 indigenous structures on four occasions to discuss a document that the government finally presented to COP21. Secondly, the UN agencies (UNDP, UNEP and FAO) consulted COONAPIP, through MiAmbiente, regarding its preferred way of participating in the REDD+ process in the context of the Joint Programme. In neither case did the indigenous authorities feel that the Panamanian government was going to incorporate or understand the importance of the forests on indigenous territories, however, and nor did any indigenous authority participate in the official delegation to Paris. Even so, the indigenous parallel participation in COP21 gained much publicity. Through the Meso-American Alliance of Peoples and Forests (*Alianza Mesoamericana de Pueblos y Bosques /AMPB*) and the “young activists for climate change in Panama”, in coordination with indigenous youth from Bolivia and Nicaragua and Forests of the World, the Emberá-Wounaan and Guna Yala *comarcas*

presented the results of research conducted with their elders, revealing a number of practical climate solutions.

## **Negotiations for the Barro Blanco hydroelectric power plant**

The Barro Blanco hydroelectric power plant is being developed on Ngäbe-Buglé territory adjacent to their *comarca*, under the supervision of the Clean Development Mechanism (CDM) of the Kyoto Protocol, and with funds from the German Development Bank, a subsidiary of the German funding agency (KfW) and the Dutch Development Bank (FMO). It is being built by the *Generadora del Istmo* (GENISA) company. Work ground to a halt at 95% complete in 2015 because the Ngäbe-Buglé communities directly affected by the project—Kiad, Quebrada Caña and Nuevo Palomar—along with local peasant farmers, were claiming that they had not given their consent for the project, which will flood part of their lands, including sacred sites, and create problems for their farming. In general, the *comarca's* population fear that the generation of this electricity is linked to the interest in exploiting copper around Cerro Colorado, within the *comarca*, something they have been resisting for decades. After road blockades, indigenous deaths (during the administration of former president Martinelli in 2012), and the obstruction of construction access, the government indirectly ceded to the conditions demanded by the affected indigenous peoples by ordering, in February 2015, a temporary halt to the project. This was based on the following arguments: the lack of agreements reached with the communities affected, the lack of an archaeological management plan, the dumping of materials in the river and sedimentation without the application of management standards, plus the extraction of materials without environmental impact studies and the cutting of vegetation without permission or the corresponding environmental compensation. After eight months, and having supposedly resolved the problems, MiAmbiente removed the suspension, imposing a fine on GENISA for the violations occurred. As for the consultation with the Ngäbe-Buglé, the company reached an agreement with the chief of the *comarca*, Silvia Carrera, but this was opposed by the communities directly affected. By the end of the year, this thus left the Ngäbe-Buglé in open internal conflict and the state and corporate interests holding a dubious agreement. ○

## Notes and references

- 1 According to the 2010 National Census.
- 2 Regulated via Executive Decree No. 223 of 29 June 2010.
- 3 The number of councils and congresses affiliated to COONAPIP varies in real terms depending on the issues it is working on and the level of representativeness perceived by the authorities of each territory/people in the different political environments. As of the end of 2015, the following were not involved in COONAPIP's dynamic: Congress of the Guna Yala Comarca, Guna Congress of the Madungandi Comarca and the Wounaan Congress.
- 4 For more information see *The Indigenous World 2015*.
- 5 This plan is supported by the "Rights- and Poverty Reduction-based Forest Conservation" programme of the Danish NGO Forests of the World.
- 6 Each and every indigenous *comarca* is established under its own law with reference to Article 5 of the Political Constitution: "*The Panamanian state territory is divided politically into provinces; these in turn into districts and the districts into villages. The law can create other political divisions, either to subject them to special regimes or for reasons of administrative convenience or public service,*" referring to *comarcas*. Law 72 has been interpreted as an implementation of Art. 127 of the Constitution: "*The state will guarantee the indigenous communities the reservation of the lands necessary and their collective ownership to ensure their social and economic well-being. The Law will regulate the procedures that need to be followed to achieve this aim and the corresponding boundaries within which the private appropriation of lands will be prohibited*". For its part, a *comarca* establishes, in addition to the size of the territory, the nature of self-government and autonomy recognised as a consequence of negotiations during the legislative process. In the case of titling under Law 72, this aspect does not form part of the titling process. Article 3 of the same Law 72 states simply that "*the title to collective ownership of the lands guarantees the economic, social and cultural well-being of the people living in the indigenous community. To achieve these ends, the traditional authorities will maintain close cooperation with the municipal, provincial and national authorities*".
- 7 For the production of maps using the geographic information system (GIS), Forests of the World provided support through its project "Eyes in the sky – feet on the ground", administered by the Emberá and Wounaan Youth of Panama (*Jóvenes Emberá y Wounaan de Panama / OJEW*) organisation. The original aim of this project was in actual fact to install "only" a forest monitoring system that would draw on radar and satellite images of the indigenous territories using free information and programmes (open code). When the Titling and Territorial Defence Office of the 12 authorities was set up, however, a synergy was created.
- 8 A Danish NGO that has been supporting COONAPIP in the process of enacting Law 72 and the Guna people in gaining recognition of Wargandi *comarca* for a number of years now.

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SOUTH AMERICA

## COLOMBIA

The National Statistics Department (DANE) puts Colombia's indigenous population at 1,500,000 inhabitants or 3.4% of the national population. The Andean zone and Guajira are home to 80% of this population. Regions such as Amazonía and Orinoquía, where demographic density is very low, are home to the most peoples (70) some of them on the verge of extinction. Sixty-five different Amerindian languages are spoken in the country, with five of them classified as dying (no possibility of revival) and another 19 "in serious danger" of disappearing. Almost a third of the national territory is made up of indigenous reserves, a large proportion of them in conflict with oil and mining companies, banana and oil palm plantations, loggers, livestock rearing and illicit crops. The armed conflict has been the driving force behind the expropriation of the ethno-territorial peoples' land and has resulted in their marginalisation and exclusion. Over the 1990-2000 period, funds from drugs trafficking were used to grab more than five million hectares of the country's agricultural land.

Nationally, the indigenous peoples are represented by two organisations: the National Indigenous Organisation of Colombia (*Organización Nacional Indígena de Colombia* / ONIC) and the Indigenous Authorities of Colombia (*Autoridades Indígenas de Colombia* / AICO). Regionally, the Amazonian peoples are represented by the Organisation of Indigenous Peoples of the Colombian Amazon (*Organización de los Pueblos Indígenas de la Amazonía Colombiana* / OPIAC).

The 1991 Political Constitution recognised the fundamental rights of indigenous peoples and ratified ILO Convention No. 169 (now Law 21 of 1991). Colombia supported the UN Declaration on the Rights of Indigenous Peoples in 2009. By means of Order 004 of 2009, the Constitutional Court required the state to protect the fundamental rights of 34 indigenous peoples at risk of disappearance because of the armed conflict, a situation it described as "an unconstitutional state of affairs". President Santos signed Decree 1953 of 7 October 2014 creating a special system



2015 saw widespread discontent in Colombia at the contradictory policies of Juan Manuel Santos, who is seeking a favourable vote in the referendum on his peace agreement with the Revolutionary Armed Forces of Colombia (FARC) while simultaneously promoting an economic policy that is damaging vast swathes of the country and peasants, indigenous and Afro-Colombian peoples. This policy involves an extractivist model that includes the privatisation of companies such as ISAGÉN<sup>1</sup> and enactment of the ZIDRES Law,<sup>2</sup> benefiting economic powers that have illegally stockpiled lands declared “empty” but which are actually part of the ancestral territories of the semi-nomadic indigenous peoples of the Colombian Altillanura. Let us consider the facts in trying to understand this situation.

## **Analysis of the country**

The Colombian government’s areas of work are generally agreed via public discussion and opinion polls indicating the people’s main concerns. The role the “peace process” played in the two previous presidential campaigns that brought Juan Manuel Santos to power and kept him there should not be under-estimated. However, while the peace process naturally remains the most important issue for Colombians, particularly now that the negotiations are entering their final stages (barring any unforeseen events, a peace accord is likely to be signed in March 2016), the current employment situation, the lack of security in the towns, the consequences of the extreme drought—caused by the El Niño phenomenon—and the concomitant environmental damage, which has left peasant farmers seriously exposed, are all now gaining greater public traction. And given the future need to accommodate the demands arising from the peace agreement, economic decisions are obviously taking on more importance.

Bearing in mind the above, the country’s bankrupt financial state remains a concern, due in large part to the collapse in oil prices: in 2013, the Colombian oil company (Ecopetrol) contributed some 20% of the national budget but this has been declining ever since. This year the figure will be close to zero, without any alternative local production that could offset this deterioration in the state’s finances.

The Global Competitiveness Index (GCI), an instrument used to measure key aspects related to growth and development, offers key information with regard to

the country's poor economic situation. According to this index, Colombia comes 61<sup>st</sup> out of the 140 countries analysed.

For the GCI, the worst thing in Colombia is the poor functioning of its institutions: here it falls to 114<sup>th</sup> position, and this is reflected in the low public trust in its politicians and diversion of public funds, where it is in 131<sup>st</sup> place, and in favouritism in decisions of government officials (115<sup>th</sup>). Especially shameful is the place it occupies in relation to the quality and coverage of primary education (10<sup>th</sup> and 109<sup>th</sup> place respectively). Not even justice is spared this institutional deterioration, where the country ranks 114<sup>th</sup> for judicial independence.

The area in which Colombia is most overwhelmingly condemned is that of "Goods market efficiency". The country is suffering from a serious inability to export goods other than *commodities*<sup>3</sup> and has made little progress in reforming the way in which markets operate or in modernising international trade. According to the GCI, Colombia has one of the most closed economies in the world: in terms of exports as a percentage of Gross Domestic Product, it comes 132<sup>nd</sup> and in terms of imports as a percentage of GDP, 135<sup>th</sup>. As was expected, Colombia did not do well in the area of corruption, which is eating away at the country's finances, where it took 132<sup>nd</sup> place.

This analysis of the country is, according to experts, due to the high costs that terrorism, organised crime and violence have on its economic development, for which it occupies 135<sup>th</sup> place, only five countries from the bottom of the scale.

## **Peace process and post-conflict situation**

There is, however, hope that the peace process with the FARC will significantly reduce terrorism and violence and, although a solution to the problems of the BACRIM<sup>4</sup> (criminal gangs), the dissenting guerrillas and other forms of organised crime has yet to be found, it is hoped that the signing of the agreement will create exceptional economic growth sufficient to finance the economic and social reforms resulting from the peace accords. This is all in the realms of futurology, however.

In the here and now, the country is facing an alarming financial situation and the government is putting off the necessary structural tax reforms recommended by the advisory commission to fill the holes in the state finances. Most seriously, they do not know where the money will come from to cover the costly demands of

the post-conflict situation, although here there is a disproportionate reliance on the belief that friendly countries “will dig deep into their pockets” to help the country.

The tax reform has been postponed because of worries it could affect the outcome of the referendum on the Havana accords, given that its impact on ordinary people’s incomes is likely to be unpopular.<sup>5</sup> This is Juan Manuel Santos’ choice as his neoliberal government is convinced that increasing taxes on big business would put a brake on investment and form an obstacle to the country’s competitiveness and economic growth over the coming years.

Where then is the contradiction that this discontent has caused? It lies in the fact that no-one is taking responsibility for the victims of the armed conflict. The FARC, which have accumulated an enormous fortune as a result of drugs trafficking, acknowledge that their military action has resulted in numerous victims. And yet they have stated that, in addition to “having no money” it is up to the state to compensate the victims. And the paramilitaries, some of whom are in prisons in the United States while others are still profiting from illegal drugs trafficking and land grabbing, declare that they had nothing to do with the political violence. Many even claim that they themselves are victims of the armed conflict. Self-confessed paramilitaries have reported paltry proceeds from their illegal activities in order to access reduced prison sentences. And so it is down to the population at large to compensate the victims through the tax system. The tax reform as it stands will therefore legalise the fact that it will be the victims themselves who provide compensation and not the aggressors. A kind of self-compensation, if you will.

The problem does not stop there, however. The state owes an enormous debt to the country and to the population as a whole, a debt that must be paid if total collapse is to be avoided. Consider the environmental deterioration of the Magdalena-Cauca basin, which is most serious. Seventy-seven percent (77%) of its plant cover has been destroyed and the damage to the moorlands and wetlands caused by the water from this basin is continuing to grow. Seventy-eight percent (78%) of the area is eroded and the build-up of sediment in the Magdalena River has increased by 30% over the last decade, with the result that the volume of fish has declined by 50% over the last three decades.

The damage to the country is not only of an environmental nature. The socio-economic impact on the population is of enormous proportions, as this basin covers 24% of the country’s surface area and is inhabited by 32.5 million people (66% of the population). The Cauca and Magdalena rivers and their tributaries generate

70% of the country's hydropower. More important still, 75% of the country's agricultural production takes place in this basin, 90% of its coffee production and 50% of its freshwater fish production. In 2015, all the inhabitants of this basin, along with other regions of Colombia, suffered the consequences of the extreme drought caused by the El Niño phenomenon. If the basin's deterioration is not halted, or if new settlements are permitted in the foothills of the Andes, then the destabilisation of the water cycle—insufficient water in dry season and too much in the rainy season—will result in environmental displacements of the most serious proportions, to be added to the displacements already caused by the violence.

### **The agrarian sector**

The National Agrarian Strike of August 2013 highlighted the fact that 14 million peasants were living in poverty, and more than a million peasant families were lacking land. In October 2013, the so-called Indigenous Social and Popular Cooperative (*Minga Indígena Social y Popular*) also mobilised the indigenous and Afro-Colombian sectors to demand government attention for their communities, raising the country's awareness of the real problems affecting Colombia's rural sector. These two major protests by rural sectors included a demand for measures and actions to resolve the crisis in agricultural and livestock production, and for access to land ownership and social investment in education, health, housing, public services and roads. More than 200 agreements were reached with the rural sectors at that time. The government nonetheless issued the 2014-2018 National Development Plan at the end of 2013, entitled "All for a New Country", in which no response whatsoever was given to the stated needs of the peasants, Afro-Colombians and indigenous peoples. Quite the contrary, the plan continues to base the country's economic development on the exploitation of raw materials in exchange for royalties that do not even cover the social and environmental liabilities of such exploitation, at a time when the prices of these commodities have fallen tremendously. The government is also continuing to insist on an agrarian reform in line with its own interests, promoting a bill of law that aims to avoid the legal restrictions on concentration of "empty" lands in the so-called Rural, Economic and Social Development Interest Zones (ZIDRES), and allocating the lands not to landless peasants as stipulated in the "empty lands law" (Law 160 of 1994) but to large agro-industrial investors. This has led to a stockpiling of land,

facilitating evictions via the concept of expropriation, encouraging the transfer of land, water and common assets to foreigners and encouraging asymmetric production alliances between peasant farmers and agro-industrial corporations, all of which will exacerbate the inequality and disparities suffered by Colombia.

Two years have now passed and most of the 200+ agreements signed by the government with the rural sectors remain unimplemented. This resulted in the Agrarian, Peasant, Ethnic and Popular Summit (*Cumbre Agraria, Campesina, Étnica y Popular*) calling for *protests of peasant, ethnic and popular outrage* on 30 November 2015 to demand the Santos government fulfil its agreed commitments, including financial support for agricultural production, a decline in which has led to an enormous escalation in the price of food. The Minister of Agriculture, in best Chávez style, blamed the food price hikes on a supermarket and shop conspiracy and announced new “high-impact agrarian plans” such as *Colombia Sows* to expand production by a million hectares. New words for old unfulfilled promises.

### **What of the indigenous peoples in this context?**

Some 90% of the indigenous reserves are located in the Andean area, and these are home to 80% of the country’s indigenous population. The environmental deterioration of this basin is also affecting these peoples. This is not only because the territory available for the expansion of small, eroded reserves is ever decreasing but also because the pressure from landless peasants on these territories is growing. This may disrupt relations between the rural sectors, which are currently united in demanding comprehensive agrarian reforms that will guarantee land for the peasants, returning it to those evicted, and sufficient and appropriate land for the indigenous and Afro-Colombian communities.

The major problem is that while food is becoming scarcer, the indigenous peoples have spent more than a year trying to reach a support agreement for an own economy system that will guarantee food security. This situation has created a scenario of discontent among the indigenous population, heightened by the 18-year prison sentence handed down to well-known indigenous leader, Feliciano Valencia, the most visible face of the indigenous protests in Cauca. The irony here is that this indigenous leader was charged with ill-treatment (20 lashes) of an army corporal who was arrested by indigenous security after infiltrating a 2008 indigenous demonstration and yet, when the indigenous security arrest three

members of the FARC for killing an indigenous community member and they are sentenced to 40 years by the indigenous justice system, the government welcomes this decision.

One truly alarming situation for the indigenous peoples would be if the FARC have managed to obtain agrarian “advantages” in the Havana Agreements to the effect that the peasant and settler population they claim to represent will receive lands on indigenous territories not yet titled or in areas intended for their territorial expansion. This would be an unacceptable political bias. It would be downright brazen, however, if armed actors were to continue to exert pressure on the country’s indigenous peoples to hand over their lands for mining without any statement having been made against this in Havana by the FARC. Mining and coca farming are an ever more likely scenario in some indigenous areas given the poverty caused by the deterioration of their lands.

According to the indigenous organisations, the decisions taken at the negotiating table should be approved in a popular consultation of the indigenous peoples if they have an impact on their territories, because an eventual agreement in this regard could seriously affect them. This political requirement has an ethical basis insofar as it must be remembered that the indigenous peoples, like the FARC, have always called for deep reforms of the Colombian agrarian sector and they want to be involved in the design of these precisely because they know that once the peace agreements are signed demobilised combatants will move into Peasant Reserve Zones, and they are worried that these will overlap with indigenous zones or border their reserves, potentially giving rise to new conflicts over land. As the indigenous people say, these guerrilla combatants will not transform into angels the day they are demobilised.

While the government is thinking one thing and the FARC another, they are quite possibly saying something completely different in Havana. And whatever actually happens may be something different again. Is it possible to rebuild a state with words that are disconnected from the reality, bearing in mind that the root of all problems lies in such a disconnection of words from their meanings? ○

## Notes and references

- 1 State energy generation company. With five hydroelectric and one thermal power stations, this is the third-largest energy generator in the country. It was sold in January 2016 to the Canadian Brookfield Asset Management. This was the largest privatisation ever to occur in Colombia. The

- ISAGEN auction was engulfed in protest as Brookfield was the only bidder and President Santos proposed a sale price of 6.5 billion pesos. The Attorney-General announced that the president could be investigated for possible damage to state assets.
- 2 Rural and Economic Development Interest Zones.
  - 3 The decline in value of raw materials (commodities) and the slowdown in China are the main factors behind the crisis in most Latin American countries.
  - 4 According to the state, the BACRIM are the remains of the paramilitary Colombian Self-Defence Units (*Autodefensas Unidas de Colombia*), after they were brought to justice during the last government of Álvaro Uribe Vélez.
  - 5 In terms of tax collection, the proposal's design intends that the necessary additional resources should come from structural changes in VAT and other indirect taxes. Basing the new system on indirect taxes such as VAT would affect those on lower incomes and favour the wealthier, as indirect taxes are regressive and fall wholly on the end user regardless of income. Reducing corporation tax for companies and multinationals and increasing indirect taxation (VAT) on private individuals is the most unfair there is in Colombia, and is in line with IMF and OECD recommendations.

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# VENEZUELA

For the first time in history, the 1999 Venezuelan Constitution recognised the multiethnic, pluricultural and multilingual nature of Venezuelan society. There are more than 40 recognised indigenous peoples in the country. Of the 30 million inhabitants, 2.8% self-identify as indigenous.

ILO Convention No. 169 was ratified in 2002 and a series of laws has been approved aimed at directly implementing the specific indigenous rights recognised in the constitution. These include: the Law on Demarcation and Guarantee of Habitat and Lands of the Indigenous Peoples (2001), the Organic Law on Indigenous Peoples and Communities (2005), the Law on Indigenous Languages (2007), the Law on Cultural Heritage of Indigenous Peoples and Communities (2009) and the Law on Indigenous Artisans (2009). Venezuela voted in favour of the UN Declaration on the Rights of Indigenous Peoples.

## Socio-economic situation

**T**he Venezuelan economy is largely reliant on oil, the price of which continued its sharp decline throughout 2015. In addition, there were continuing signs that some national and international companies, particularly in sectors dominated by monopolies or oligopolies, were continuing to hoard, boycott and plan shortages of foods, personal hygiene products and medicines. This whole situation is significantly affecting the people's ability to enjoy their rights, particularly in terms of food and health. High levels of smuggling into Colombia were also detected during the year, particularly of essential goods that are subject to state price regulation, but also of fuel, causing significant losses for the country's economy. These circumstances culminated in a state of emergency being declared and the border with Colombia closed.

It should be noted that Gross Domestic Product has declined<sup>1</sup> and there has been no further reduction in poverty or extreme poverty in recent years. And yet

the employment rate has remained constant over the same period and there has been an increase in the minimum wage, with public social investment remaining at the same level. One example of such investment was Venezuela's house building policy, the "Great Housing Mission", for historically-excluded sectors, particularly indigenous peoples.

## **Elections and political polarisation**

The socio-political situation during 2015 was characterised by the usual dynamics and tensions of an electoral year, set against a backdrop of high political polarisation. However, there were also a number of highly complex situations present, involving violations of the population's rights. These included the constant sabotaging of the electrical system via power cuts, a significant and induced shortage of essential products in the days running up to the elections, and high inflation. Despite this adverse outlook, elections to the National Assembly took place in December, with the opposition winning a majority of the seats (65.27%). The elections took place in a climate of peace and electoral transparency, and the national government, through President Nicolás Maduro, immediately recognised the unfavourable result, acknowledged the triumph of democracy and called on the whole population and opposition sectors to work together for the general good.

## **Trial and punishment of the murderers of Chief Sabino Romero**

The indigenous world was shaken in 2013 by the murder of Chief Sabino Romero, the indigenous leader who was at the forefront of the Yukpa people's campaign for their ancestral lands in the Perijá Mountains, Zulia state. The murder trial came to its conclusion in 2015, handing down a 30-year prison sentence to Ángel Romero Bracho for causing the death of the leader. In 2014, five people were also sentenced to 10 years in prison for being accessories to murder before the fact, and for personal injury to Sabino Romero's partner. Although these sentences are of fundamental importance to the indigenous peoples' struggle for access to justice and their fight against impunity, the social movements are continuing to call for the conviction of the intellectual authors of these acts and are



stating their concern at the possibility of reprisals, therefore requesting the authorities ensure the safety of Sabino Romero's family.

### **The Venezuelan state's UN participation**

During 2015, Venezuela took up its position as a non-permanent member of the UN Security Council, and was also once again elected a member of the Human Rights Council. Such involvement showcases the state's strengths in terms of

respect for and fulfilment of human rights, while also offering the indigenous peoples opportunities to improve their rights.

Alongside this, the Venezuelan state submitted reports to the Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights, where it explained the progress and challenges it is facing in guaranteeing indigenous rights. Many indigenous peoples' organisations also presented alternative reports to those submitted by the state in which they explained the progress and challenges in obtaining recognition of their rights. In this regard, while both committees welcomed the progress in recognising indigenous rights in Venezuela, they recommended further action to complete the demarcation and titling of the ancestral lands and territories of the indigenous peoples and to guarantee that prior consultation takes place in line with the constitution.<sup>2</sup> It will be a challenge for the state to adopt these recommendations in 2016.

### **Joint responsibility for public policy implementation**

An innovative co-government concept is being established through the Presidential Councils, with the aim of managing public policy. In order to establish the Presidential Council of Popular Government for Indigenous Peoples and Communities, 1,569 consultative assemblies were held in 2,194 indigenous communities and 38 prime spokespersons were elected.<sup>3</sup> This Presidential Council has implemented a joint working agenda throughout 2015 that included historic demands in pursuit of their rights. One achievement was the joint design of housing that is respectful of indigenous peoples' architectural legacy, along with the approval of funding for the construction of 5,000 new houses that will benefit 23,692 members of the different indigenous peoples.<sup>4</sup>

The public consultation held on the draft National Human Rights Plan is also worthy of note, in which indigenous peoples played a fundamental role through the discussion and submission of a proposal for the consolidation of their rights.

### **Right to intercultural health**

The constitution recognises indigenous peoples' right to a comprehensive health care that takes their practices and cultures into consideration, along with their

traditional medicine and complementary therapies. In 2003, the Ministry of Popular Power for Health took the first step towards creating – in 2006 – the Department for Indigenous Health, responsible for the design and implementation of health policies aimed particularly at indigenous peoples. The Department for Indigenous Health has implemented a series of projects over the years that seek to ensure indigenous access to culturally-appropriate health services. However, there has been a decline in the quality of this work since 2010, due to constant changes of minister and gradual budget reductions, all of which has resulted in institutional weakness. In more recent years, the National Public Health System has also been suffering the brunt of stock outs and a consequent shortage of medicines and medical supplies. This means many products are difficult to obtain and this has had a negative impact on the indigenous communities.

One of the most serious situations arising in this regard is that of the Warao, the second largest indigenous people in the country (around 50,000 members). They live in the immense network of rivers and islands of the Orinoco Delta. The health centres established for the medical care of 345 communities spread across a territory of 22,500 km<sup>2</sup> are insufficient and they suffer from a chronic shortage of fuel and motorboats with which to visit the communities and transfer patients, along with a lack of doctors and supplies. The Warao have one of the highest infant mortality rates in the country, more than 20 times the national average, and their children die primarily of easily preventable diseases such as diarrhoea and other gastrointestinal illnesses.<sup>5</sup> Tuberculosis and malaria are among the main causes of illness and death but, in addition, an HIV epidemic was detected in 2007 that is spreading rapidly. According to research published in 2013,<sup>6</sup> among 576 inhabitants of eight communities, it was found that 9.55% were infected with the HIV-1 virus, with an estimated doubling of the carrier population every year. This dramatically high prevalence may be disastrous for the Warao people. The Venezuelan state urgently needs to implement HIV prevention, care and treatment programmes that take into account the specific cultural features and involvement of the Warao people.

## **Demarcation of indigenous lands**

Through the 1999 Constitution, the Venezuelan state guarantees indigenous peoples' right to the land and habitats they have ancestrally inhabited. The demarca-

tion process involves Regional Demarcation Commissions that are present in all states with indigenous population and which are responsible for conducting the technical work to validate the historical and ancestral use of the lands by the indigenous peoples and delimiting the area before passing the case over to the National Demarcation Commission. As of 2014, less than 90 collective property titles had been issued to indigenous peoples and communities.<sup>7</sup> During 2015, however, no further collective property titles were handed out, giving rise to a statement from the Coordinating Body of Indigenous Organisations of the Amazon (*Coordinadora de Organizaciones Indígenas de Amazonas / COIAM*). COIAM called on the national government to conduct an urgent review of all requested demarcations and to produce and implement, with the active participation of the indigenous organisations, an action plan to move the demarcation process forward, with clear criteria and giving priority to collective demarcations for indigenous and multiethnic peoples, on the basis of the requests made for self-demarcation.<sup>8</sup> Despite this poor outlook, the Horonami Organisation's preparation of the necessary requirements for the Yanomami people's requested land demarcation was noteworthy in 2015. This is now in the process of being submitted to the corresponding bodies for their approval. In addition, publication of the first binational map of the Yanomami and Ye'kwana of Brazil and Venezuela is also worthy of note. This was conducted by the Horonami and Hutukara (Yanomami) organisations, with the support of the Socio-environmental Institute (Brazil) and the Socio-environmental Work Group of the Amazon – Wataniba (Venezuela).

## Indigenous movement

The Venezuelan indigenous movement is organising and mobilising right across the country in demand of indigenous peoples' human rights in the face of extractivist projects, the more rapid demarcation of their lands, prior consultation, and improved health and education services, among other things. These organisations are monitoring the implementation of public policies, as can be seen through their requests and protests, along with their involvement in public consultations and sectoral work groups where their voices have been heard calling for improved enforcement of their rights. Examples of this are the recommendations made in the context of the National Human Rights Plan, their participation in the UN com-

mittees with alternative reports, and their takeover of public spaces to restore their rights.

One notable example is the work undertaken by COIAM, which groups together more than 15 grassroots indigenous organisations, and the Regional Organisation of Indigenous Peoples of Amazonas (*Organización Regional de los Pueblos Indígenas de Amazonas / ORPIA*). Together, they have created a permanent space for information exchange, debate and decision making on the actions need to move forward an agenda aimed at demanding their rights, particularly in the priority areas of land demarcation, health, intercultural education, environment and training for organisational strengthening.

Another interesting example is that of the Horonami Organisation, a Yanomami organisation whose members organised a march at Puerto Ayacucho, capital of Amazonas state, to demand guarantees for their right to life and health due to the problems being suffered by the Yanomami communities of the Upper Orinoco, and to call for a working group to be established to address the Yanomami people's health care needs. In response to this request, the Vice-President of the Republic called a high-level working group involving representatives from the Ministry of Health, Armed Forces, Ministry of Indigenous Peoples, CorpoAmazonas and Horonami to address the Yanomami people's health issues. It was agreed that a Health Care Plan for the Yanomami People would be designed and submitted to the Vice-President, who would negotiate the necessary resources from the Presidency of the Republic. In addition, in response to the Horonami's request, some improvements were made throughout the year to the health care facilities in the Upper Orinoco, including repairs to infrastructure, the provision of supplies and the dispatch of medical staff to treat the Yanomami people.

## **Mining and indigenous peoples' rights**

### **Coal mining project and thermoelectric plant in Zulia state**

On 10 February 2015, President Maduro approved Decree No. 1,606, published in *Official Journal* No. 40,599, giving the National Army (as body of the Ministry of Popular Power for Oil and Mining) direct responsibility for coal and other associated mineral exploration and exploitation activities over an area of 24,192 hectares, corresponding to five mining concessions in the municipalities of Mara and

Guajira, Zulia state. He further appointed the Carbones del Zulia company, a subsidiary of PDVSA, to conduct the exploration and exploitation activities.<sup>9</sup>

Enactment of Decree No. 1,606 came as a surprise to the social and environmental movements, particularly the indigenous Wayúu communities who inhabit the Guasare, Socuy, Maché and Cachirí river basins in the Perijá mountains, and who would be affected by this extension of the decreed exploitation area. These groups have been confronting coal projects and companies for a number of years now, particularly two active concessions, the Paso Diablo and Mina Norte mines, given the threat they represent to the environment, the indigenous communities themselves and the watersheds from which drinking water is taken for Maracaibo (capital of Zulia) and other towns in the state. Faced with this decision, the Zulia Environmental Resistance Front (*Frente de Resistencia Ecológica del Zulia*), which groups together different environmental associations, members of social movements and inhabitants of communities to the north of the Perijá mountains, organised protests against coal mining and the construction of a coal-powered electricity plant, promoting alternatives for clean energy generation (wind and solar), such as the La Guajira Wind Park. In response to these demands from the social movements and indigenous peoples, the government amended Decree No. 1,606 in their favour, reducing the area in question.

### **Illegal mining in Bolívar and Amazonas states**

Illegal gold, diamond and coltan mining is still continuing in Bolívar and Amazonas states, and government action in this regard has been insufficient to halt the damage being done to the ecosystem, as important river systems are being degraded through mercury contamination, affecting the health and social fabric of the indigenous peoples.

#### **Caura River basin**

Despite the state's efforts to combat illegal mining, through (among other things) the Caura Plan, this problem is an ongoing one, affecting the guarantee and enjoyment of indigenous rights. In this regard, the "Kuyujani" Indigenous Organisation of the Caura River Basin, which groups together 53 Ye'kuana and Sánema communities, has denounced the increasing levels of illegal mining along the Caura River, Bolívar state, where more than 3,000 miners are extracting gold. In

a press release, they called on the national government to prevent the ecocide of the Caura and protect the indigenous communities of the area.

Kuyujani has been denouncing the communities' difficulty in obtaining fuel and calling on the army to improve distribution since 2014. As a consequence of these protests, a commander of the Bolivarian National Armed Forces unilaterally and arbitrarily proceeded to burn down houses in two indigenous communities on 18 February. The Ye'kuana and Sánema detained the aggressor and nine soldiers in an action of protest at the violation of their human rights and demanded that senior state authorities visit to commence a process of dialogue, that they withdraw the military from Pie de Salto and Salto Pará, get rid of all mining and recognise their rights to the land they have ancestrally and traditionally owned.<sup>10</sup> The Minister for Indigenous Peoples duly visited and undertook to implement Kuyujani's demands. The soldiers being held were then released.

### **Middle and upper Ventuari River basin**

On 30 January, the 4th General Assembly of the Kuyunu Indigenous Organisation of the middle and upper Ventuari (Manapiare municipality, Amazonas state) was held in the community of Cacurí. Here the Ye'kuana and Sánema communities discussed the problem of illegal mining and urged respect for their territory and habitat. They rejected mining in all its forms, denouncing the presence of 15 machines for extracting gold in the Parú River. These are being illegally operated by Colombians, and the organisation demanded that the government take action to put a stop to this activity.<sup>11</sup>

### **Canaima National Park**

In 2014, more than 400 indigenous Pemón Kamarakoto blocked the road to the Canaima National Park airport, Bolívar state, in protest at illegal gold mining along the Carrao River. In response to this situation, senior government officials, including the Minister for Indigenous Peoples, the Minister of Tourism and the heads of the Armed Forces in the region, undertook to respond to the communities' proposals for eradicating illegal mining, as well as proposals in the areas of health, education, food and housing.

## Notes and references

- 1 <http://www.telesurtv.net/news/Precios-del-petroleo-en-Venezuela-cayeron-528-en-2015-20160115-0044.html>
- 2 CESCR Concluding Observations on the third periodic report of the Bolivarian Republic of Venezuela.(24<sup>th</sup> and 25<sup>th</sup> Sessions, 2-3 July 2015) UN Doc. E/C.12/VEN/CO/3 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/150/11/PDF/G1515011.pdf?OpenElement> and Human Rights Committee, Concluding Observations on the fourth periodic report of the Bolivarian Republic of Venezuela (3191<sup>th</sup> and 3193<sup>th</sup> Sessions, 20 - 21 July 2015). UN Doc. CCPR/C/VEN/CO/4, at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/VEN/CO/4&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/VEN/CO/4&Lang=En)
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- 6 Villalba, J.A. *et al.* 2013. “HIV-1 epidemic in Warao Amerindians from Venezuela: spatial phylogenetics and epidemiological patterns”. *AIDS*, 27(11):1783-91.
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- 8 *Ibid.*
- 9 Petróleos de Venezuela, S. A., company owned by the Venezuelan state.
- 10 Organización Indígena de la Cuenca del Caura Kuyujani. “Comunicado a la opinión pública”. 19.02.2015. <http://venezuelaoriginaria.blogspot.com/2015/02/comunicado-de-la-org-indigena-de-la.html>
- 11 Asociación Civil Indígena Kuyunu. “Declaración Urgente de la IV Asamblea de la Organización Indígena Kuyunu sector Medio y Alto Ventuari sobre la minería ilegal”. 30.01.2015.

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## SURINAME

The indigenous peoples of Suriname number approximately 20,344 people, or 3.8% of the total population of 541,638<sup>1</sup> (census 2012). The four most numerous indigenous peoples are the Kali'ña (Caribs), Lokono (Arawaks), Trio (Tirio, Tareno) and Wayana. In addition, there are small settlements of other Amazonian indigenous peoples in the south of Suriname, including the Akurio, Apalai, Wai-Wai, Katuena/Tunayana, Ma-wayana, Pireuyana, Sikiiyana, Okomoyana, Alamayana, Maraso, Sirewu and Sakëta. The Kali'ña and Lokono live mainly in the northern part of the country and are sometimes referred to as “lowland” indigenous peoples, whereas the Trio, Wayana and other Amazonian peoples live in the south and are referred to as “highland” peoples.

Suriname is one of the few countries in South America that has not ratified ILO Convention No. 169. It did vote in favour of adopting the UN Declaration on the Rights of Indigenous Peoples in 2007 but the legislative system of Suriname, based on colonial legislation, does not recognize indigenous or tribal peoples, and Suriname has no legislation governing indigenous peoples' land or other rights. This forms a major threat to the survival and well-being of indigenous and tribal peoples, along with respect for their rights, particularly given the strong focus that is being placed on Suriname's many natural resources (including bauxite, gold, water, forests and biodiversity).

**T**he past year saw quite some ups and downs for the indigenous peoples of Suriname. An absolute climax was the judgment of 25 November 2015 of the Inter-American Court of Human Rights in favour of the Kali'ña and Lokono indigenous peoples of the Lower Marowijne region, ordering the State Suriname to, among others, legally recognize their collective land rights, legal collective personality and legal protection. National elections for a new National Assembly were held in May 2015, in which two female indigenous members of Parliament

were elected, one of those the village leader of an Indigenous village. Threats to indigenous rights continued, however, including the discovery that the international airport of Suriname had been given a land title covering two indigenous villages, increasing the threat of forcible relocation of these villages.

## Land rights issues

The village Pikin Poika in the district of Wanica was once again subjected to yet two other threats, namely the construction of a road through the village and only a few months later the clearcutting of their forest and plots by someone who claimed to have a land title for a large-scale agricultural project. Thanks to strong protests from the village chief, the road construction was stopped but the agricultural project is still moving forward, without the possibility of legal recourse for the community, in the absence of any protective legislation for indigenous peoples in Suriname.

A similar case took place in Cabendadorp, where an individual obtained an agricultural land lease title in the middle of community land, and subsequently sued the village chief because she tried to stop him from clearing and working the land.

Another major issue made it to the newspaper headlines in Suriname, when the villages Hollandse Kamp and Witsanti discovered that the Johan Adolf Pengel International Airport of Suriname obtained a land title in 2012 which covers most of their residential land. They came to know about this only in May 2015, when the airport authority started to put up markers for the new runway fence, right in the front yards of villagers. Alarmed by his villagers, the village chief demanded explanation of what was happening and only then did the airport authorities inform the villagers that they have a land title to their lands. Talks with the government did not result in the withdrawal of the land title as requested by the two villages, supported by the Association of Indigenous Village Leaders in Suriname, VIDS. Although “assured” by the government that they will not have to be relocated “at this moment”, the villages are currently preparing steps for yet another complaint against Suriname, at the Inter-American Commission on Human Rights (IACHR). It would be the second time that the villages have to make place for the airport. At the time of the initial construction of the international airport in the 1940s, when



the runway was constructed to allow for cargo airplanes to land in Suriname, the village Bisri and other settlements were already forced to relocate.

Another long-standing case concerning the community of Maho, whose 2009 petition to the IACHR was declared admissible in 2010,<sup>2</sup> also did not move at domestic level.

These and other issues led VIDS but also VSG, the Association of Saramaka Authorities, to issue a joint letter to the President of Suriname, Mr. Desiré Bout-erse, stating that they are no longer willing to work with the presidential commissioner on land rights, Mr. Martin Misiedjan, who took a strong, negative position against the indigenous peoples in these and other cases. Mr. Misiedjan was also the agent of the State in the case Kali'ña and Lokono Peoples against the State of Suriname before the Inter-American Court of Human Rights.

## Kali'ña and Lokono case

The victory in the Inter-American Court of Human Rights was an absolute high-point and provided a big boost to the morale of Suriname's indigenous peoples. The Kali'ña and Lokono peoples of the Lower Marowijne region had started their case at the IACHR in 2007. The complaint was found admissible, and in the absence of meaningful State responses to the complaint and questions by the Commission, a merits report was finalized in July 2013 and submitted to the Court in January 2014. The Court did not need a very long time to consider this case, because it already had similar cases from Suriname, again without concrete improvements of the situation. A previous judgment of 2007 in the Saramaka case which obliged Suriname to legally recognize the land and resource rights of the Saramakaner has to-date not yet been implemented.<sup>3</sup>

The judgment<sup>4</sup> of the Court of 25 November 2015 was similar to the Saramaka case, ordering Suriname to, among others, recognize the collective legal personality of the Kali'ña and Lokono indigenous peoples, their collective property rights to their traditional lands and resources, and the protection of their rights in Suriname's legislation. Because of the repetitious nature of Suriname's violations of indigenous and tribal peoples' rights, the Court also ordered similar measures for all indigenous and tribal peoples of Suriname.

The Kali'ña and Lokono case also involved protected areas which were established before Suriname's ratification of the American Convention on Human Rights and acceptance of the jurisdiction of the Court. The Court ordered the State to take the appropriate measures to ensure the access, use and participation of the Kali'ña and Lokono peoples in the Galibi and Wane Kreek Nature Reserves, and also to rehabilitate the area affected by mining in the Wane Kreek Nature Reserve. ○

## Notes and references

- 1 The population is highly ethnically and religiously diverse, consisting of Hindustani (27.4%), Maroons ("Bush negroes", 21.7%), Creoles (16%), Javanese (14%), mixed (13%), Indigenous peoples ("Amerindians", 3.8%) and Chinese (1.5%) (*census 2012*). At least 15 different languages are spoken on a daily basis in Suriname but the only official language is Dutch, while the *lingua franca* used in less formal conversations is *Sranan Tongo* (Surinamese).

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## ECUADOR

Ecuador has a total population of 16,189,044 inhabitants, including 14 nationalities that together comprise around 1,100,000 people. These peoples are organized into a number of local, regional and national organizations.<sup>1</sup> 60.3% of the Andean Kichwa live in six provinces of the Central-North Mountains; 24.1% live in the Amazon and belong to 10 different nationalities; 7.3% of the Andean Kichwa live in the Southern Mountains; and the remaining 8.3% live along the coast and in the Galapagos Islands. 78.5% still live in rural areas and 21.5% in the towns and cities. A number of nationalities have very low population numbers and are in a highly vulnerable situation: in the Amazon, the Aï Cofán (1,485 inhabitants); Shiwiar (1,198); Siekopai (689); Siona (611); and Sápara (559); in the coastal areas, the Epera (546) and the Manta (311). Article 1 of the 2008 Constitution of the Republic recognizes the country as a "...constitutional state of law and social justice, democratic, sovereign, independent, unitary, intercultural, plurinational and secular". Despite clear progress in the law and in recognizing collective rights, the trend over the last few years has continued to be towards disagreements and conflict between the state and the indigenous peoples. Ecuador ratified ILO Convention No. 169 in 1998 and voted in favour of the adoption of the UN Declaration in the Rights of Indigenous Peoples in 2007.

**T**he final phase of the national government, and the so-called "Citizens' Revolution", confirms predominant post-neoliberal tendency in national-popular policy. This is based on the predominant role of the state, the strengthening of alliances with certain factions of the national bourgeoisie involved in agro-exports, agro-industry and trade, the development of road, hydroelectric and telecommunication infrastructure, import substitution, and the continuation of projects for the exploitation of "commodities" associated with multinational oil and mineral corporations from China, Brazil, South Korea, Spain and Chile. All of this has pushed



concerns regarding the risks and negative impacts on cultural and territorial integrity into second place, as well as the violation of various rights pertaining to indigenous peoples.

Whilst Article 1 of the 2008 Ecuadorian Constitution recognizes the country as a “constitutional state of law and social justice, democratic, sovereign, independent, unitary, intercultural, plurinational and secular”, in practice the dynamics of relations between indigenous peoples, the state and capital have been marked by constant misunderstandings and conflicts. The government, led by President Rafael Correa, has imposed an economic model that is focused on the role of the state, or on what some researchers define as “social capitalism”, as expressed through improvements in some macro-indicators associated with the reduction in social inequality. According to the UNDP, Ecuador had by the end of 2015 achieved seven of the eight Millennium Development Goals.<sup>2</sup> Although these so-

cial advances are obvious at the macro level, they do not necessarily translate into the full guarantee of indigenous peoples' collective rights. The global crisis, and the fall of oil prices by US\$74 between July 2014 and the end of 2015 in a country that exports some 526,000 barrels of crude oil per day, has had an impact: "Just in the first quarter of this year, Ecuador lost more than two thousand million dollars in export income which, in a dollarized economy, directly determines the level of working capital," Correa explained.<sup>3</sup> In this context, uncertainty about the future of social programs in education and health—and thus the guarantee of socio-economic rights—is increasing.

And although a policy of wealth redistribution has improved living standards and respect for indigenous peoples' economic and social rights (education, health, social security and workers' rights), these policies have not necessarily translated to the same degree into a full guarantee of a set of other collective rights, such as territorial, civil and political rights (participation, consultation and consent; indigenous institutions and self-determination), which conflict with the rationale that is being imposed by the return of the state and its alliances with certain business factions and related policies.

### **Tundayme, the aggressive presence of the mining industry in Shuar territory**

At the close of this report, and after more than a year of preliminary inquiries in the Criminal Court (*Tribunal de Garantías Penales*) in Zamora Chinchipe, on the southern border of the Amazon Region, court hearings into the assassination of the Shuar leader José Tendetza are about to be resumed. "In early December 2014, residents of the Chucumbletza sector found his body floating in the Zamora River, in El Pangui canton. He showed signs of having been beaten in the face, and he was bound with a rope around the waist and shoulders."<sup>4</sup> The autopsy showed that he had been strangled, and experts for the prosecution indicated that this had happened before he was thrown into the river.<sup>5</sup> This incident is one of a series of violent acts that have affected local Shuar leaders, who are the victims of threats or physical violence in the context of the aggressive presence of mining projects in the area.

In the very same sector, on 30 September, 135 riot police entered to guard the heavy machinery that had been used to knock down the homes of Shuar families.

Over two decades ago, the state granted the Ecuacorriente S.A. (ECSA) consortium 11 concessions covering 9,928 hectares for the large-scale exploitation of a copper deposit, known as the “Mirador” project.<sup>6</sup> In recent years, various violent incidents have been noted, both when operations started and during the construction of encampments and the movement of equipment and machinery. According to the government and the National Police’s Mining Crimes Investigation Unit (UIDM), the September incident happened even though people had received notification regarding a monitoring operation to ensure free access of the ECSA company to the sector. The affected families in the Amazonian Social Action Community “Cordillera del Condor Mirador” (Cascomi), however, maintain that ECSA personnel were accompanied by police and soldiers, and that several of the families from the community of San Marcos were evicted. According to the Shuar leader Domingo Ankuash, “They were never informed or consulted about this eviction from their territory. There are copper and gold mines in the area and the company wants to mine freely. Our brothers who have been affected have valid and registered title deeds and there is no reason for them to be evicted. The police forces have knocked down houses and made a pit where they buried the remains of the homes so that there would be no trace left. This is a violation of human rights and of international treaties”.<sup>7</sup>

### **Road in Achuar and Shuar territories: between timber trafficking and the right to mobility**

The “Cordillera del Transkutukú” corridor is without a doubt the most biodiverse hot spot in the Achuar and Shuar territories. It is a transfrontier ecosystem (between Ecuador and Peru) which is absolutely critical for hydrological processes; it connects the upper Amazon, which reaches an altitude of 2,500 meters above sea level, with the lower Amazon, at less than 300 meters above sea level. The vegetation is mostly tropical rainforest with high rainfall, diverse ecological niches and high biodiversity. The area covers around 383,650 ha and includes the “Kutukú and Shaimi Protected Forest”, located in Taisha canton in the province of Morona Santiago. Although there is no official management plan, Achuar and Shuar organizations have defined their own management systems based on participatory mapping and communal protected areas.<sup>8</sup>

This territory has been coveted by oil, mineral and timber companies for several decades. As early as 1936, the Shuar experienced the arrival of the oil company Royal Dutch Shell to the area, and exploratory operations took place until 1951. In 1956, the Salesian missionary Otto Riedmater settled there and started to promote the creation of primary and secondary schools, establishing an educational model that turned former warriors and hunter-gatherers into cattle ranchers.<sup>9</sup> The armed forces, too, in the context of the border dispute with Peru, installed military posts to control and recruit young Shuar into the army. In this context, the Makuma Shuar have, since the 1960s, formed various organizations.<sup>10</sup> Decades later, by the end of the 1990s, other North American oil companies, such as Atlantic Richfield Co. (Arco) and Burlington, signed exploration contracts (Block 24) and attempted to enter the area albeit without success given strong opposition from the Shuar and Achuar.<sup>11</sup> Indeed, one of the main aspects of this conflict focused on the need to strengthen territorial control and prevent roads from being constructed that could be used for the transit of vehicles.

Nevertheless, as early as June 1999, the state was authorizing feasibility studies, engineering studies and environmental impact assessments and, in December 1999, the Ministry of the Environment (MAE) approved an Environmental Impact Assessment (EIA) for the Río Makuma-Makuma-Taisha section. Two years later, on 17 July 2001, the same Ministry resolved to “grant an environmental license to the Provincial Council of Morona Santiago, for the construction of the Río Macuma-Macuma-Taisha road”.<sup>12</sup> The project remained suspended for almost nine years but was taken up again at the end of November 2010 by the prefect Marcelino Chumpi, a Shuar elected by the Pachakutik Movement.

By 2011, the road project was being questioned by the environmental authority but the provincial government, headed by Chumpi, was “continuing the construction of the road without considering technical and environmental parameters (...). There are signs of alterations and impacts on water sources and vegetation within the Kutukú-Shaimi Protected Forest”.<sup>13</sup>

The critical assessment of the environmental authorities provoked a protest from Shuar organizations in support of the prefect Chumpi and his road project. In August, in the context of protests in various provinces by indigenous organizations opposed to the Correa government, the Shuar blocked the main highway to Zamora Chinchipe for two days (13-14 August) and took control of some public buildings in Macas, the provincial capital.

According to the Ministry of the Environment, the direct impacts of the project have already affected 108 hectares of native forest, and this has prompted some questions from President Correa in this regard: “Where are Yasunidos<sup>14</sup> and CONAIE? (...) given the absence of these groups, there is evidence that their actions in favour of nature are pure politicking”.<sup>15</sup>

## **Expansion of the oil frontier in Napo and Pastaza**

The Ecuadorian State has attempted to expand the oil frontier towards the centre and south of the Amazon region, where there are important protected areas and ancestral territories. It should be borne in mind that, in February 2014, the Committee for Hydrocarbon Tendering (COLH) convened the so-called “Southeastern Ecuadorian Round”, which put out to tender 13 oil blocks covering approximately 2,600,000 ha, and corresponding to the territories of eight indigenous nations. The invitation certainly did not generate great interest among the oil companies, and only two confirmed their interest. Andrés Donoso Fabara, the Minister of Hydrocarbons indicated that the bids submitted by the Spanish company Repsol for Block 29 and by the Chinese consortium Andes Petroleum Ecuador Ltd. for Blocks 79 and 83 fulfilled the requirements and received the maximum rating in the evaluation of their economic solvency and operational capacity.<sup>16</sup> For these three blocks, the government signed exploration contracts with a duration of four to five years.

The conditions under which the state is promoting the expansion of the oil frontier differ from those applied in previous years to oil fields that were more profitable. This includes, for example, giving less attractive service contracts, when the oil reserves are located in an ecologically sensitive area, and when there exists opposition from indigenous organizations and environmentalists. In addition, it must be noted that these areas do not have transport infrastructure or access roads and the information on the oil reserves is very sparse. The Government of Ecuador has not been able to replace those reserves whose production is now running out.<sup>17</sup>

The blocks in question, each between 150,000 and 200,000 hectares, will in turn involve important portions of the Kichwa’s Napo territories (Block 29) and of the Kichwa Pastaza’s and Sápapa’s territories (Blocks 79 and 83). They also include an important part of the Sumaco-Napo Galeras National Park— the second

Biosphere Reserve to be declared by UNESCO in continental Ecuador (after the Yasuni National Park).

News of the signing of these exploration contracts generated reactions from various indigenous organizations that would potentially be impacted by the exploration projects. Félix Santi, president of the Kichwa people of Sarayaku, indicated that they would not permit entry onto their territories by the Chinese company Andes Petroleum for seismic explorations because they have a “life plan” (*Plan de vida*), and they do not want their ecosystem to be affected. According to the leader, this decision has been taken by consensus of all the communities. Santi indicated that: “The Ecuadorian State is in violation of the ruling of the Inter-American Court of Human Rights on the non-continuation of oil exploration in their territories”.<sup>18</sup>

### **CONAIE: mobilization and national strike**

In the 1990s, the Confederation of Indigenous Nationalities of Ecuador (CONAIE) had the capacity to organize a memorable Indigenous Uprising and other mobilizations with clear, well-defined demands—including the legal recognition of ancestral territories, the recognition of collective rights and the proclamation of Ecuador as a plurinational, intercultural state.<sup>19</sup> Today, CONAIE is weak and fragmented; its agenda is unclear and subordinate to the demands of other opposition groups who are questioning the government’s political and economic model.<sup>20</sup>

A number of more specific—although never explained—demands were put forward by CONAIE during its Ordinary Assembly on 18 July in Salasaca, Tungurahua, Sierra Central, including the repeal of the Water Law, the shelving of the Land Law, the revival of intercultural education, an end to the political persecution of and litigation against social leaders, and the rejection of policies that favour extractive activities in indigenous territories.<sup>21</sup>

As a central point in their repertory of actions, CONAIE organized the so-called “March of the People” from 2 to 13 August from Tundayme, in the Zamora Chinchipe province, to Quito. It should be noted that, since the beginning of June, protests against the government had intensified in cities including Guayaquil, Cuenca and Galapagos, headed by right-wing leaders such as the banker, Guillermo Lasso, the Christian Social mayor, Jaime Nebot and National Assembly member, Andrés Páez. This latter led the protests in Quito of the so-called “citi-

zens in mourning” who, dressed in black shirts, demanded the resignation of Correa, the departure of the government and the installation of a new Constitutional Assembly. Amidst widespread media coverage, these protests lasted for several days and at times became violent, attacking government supporters with sticks and blunt instruments.<sup>22</sup>

A second wave of protests started on 13 August, after the visit of Pope Francis to the country, and was headed by the leaders of CONAIE and the United Workers’ Front (FUT). The central action of this alliance revolved around marches to the centre of Quito under the slogan “Take the Government Palace by Force”.<sup>23</sup>

These days of protest resulted in more than 30 indigenous persons being arrested, including leaders such as Pérez Guartambel, president of Ecuarrunari, and Salvador Quishpe, prefect of Zamora Chinchipe and senior leader of the Pahakutik movement. In addition, more than 104 police were injured. None of CONAIE’s planned demands were the focus of any debate or dialogue, only the slogan “Out with Correa, Out!”<sup>24</sup>

On 17 August, the clashes intensified in two places in the south of the country: Sucúa in the Amazon region of Morona Santiago province and Saraguro in the Andean Loja province. In the latter, 30 people were detained, police were injured and the Loja-Cuenca road was closed for several hours. In Sucúa, there were confrontations between Shuar demonstrators, who closed the roads and who, led by Agustín Wachapa, president of the Interprovincial Federation of Shuar Centres (FICSH), marched to the seat of the provincial government demanding the restoration of the environmental permit for the Macuma-Taisha road.

In contrast to these actions in the provinces, other indigenous organizations allied to the government mobilized in support of the regime, including the Ecuadorian Federation of Peasant Farmers’ Organizations, the Federation of Indigenous and Black Organizations (FENOCIN), the Ecuadorian Federation of Indians (FEI), the National Federation of Free Peasant Farmers’ Associations of Ecuador, and the National Confederation of Peasant Farmers’ Social Security Associations.

## **Approval of the Land Law**

After almost two years of debates and revisions, the National Assembly approved the “Law on Rural Lands and Ancestral Territories”. Gabriela Rivadeneira, president of the Assembly, indicated that:

*In Latin America and in Ecuador, rural poverty is rooted in the lack of access to land and production. Land must belong to those who work it. The current legislation, from 1994, had a high neoliberal content, talking of the rationing of community land and the stimulation of land concentration and speculation. Because of this, a new perspective was necessary, in order to prevent the agricultural sector from becoming a source of evictions of farming families. This law has been submitted by social organizations and therefore marks a major milestone in participation and co-legislation. The new law promotes a redistribution of land and, above all, credit and technical assistance to improve production.*<sup>25</sup>

The regulatory body establishes that lands will be titled in all the provincial capitals and not just in the regional centres of Quito, Guayaquil, Cuenca or Riobamba, traditionally controlled by power groups. This could open up the possibility of small landowners enjoying more legal security. According to National Assembly member Mauricio Proaño, “It is estimated that more than 130,000 families who were beneficiaries of the agrarian reforms still have not received their title deeds”.<sup>26</sup>

Assembly member Miguel Carvajal maintains that all the state lands that are assigned to ministries and do not have any function in terms of education, security, defense or health should be included in a land redistribution program. This should also be the case for private lands that are owned by people who have died without heirs; as well as private lands exceeding 25 ha in the Sierra, 75 ha in the Coast region and 100 ha in the Amazon region and that do not fulfill any social function, have been abandoned for the past two years and have no means of production. These properties will be taken over by the National Land Fund and be redistributed between organizations of poor or extremely poor peasant farmers or peasant farmers with land of poor quality, according to the Law.

For its part, the national indigenous organization, CONAIE, has questioned the draft legislation and described it as an “agrarian package”, proposing as an alternative the nationalization of landholdings exceeding 300 ha in the Amazon region, 200 ha in the coastal region and 50 ha in the Sierra,<sup>27</sup> something that Carvajal is questioning and describes as a confiscatory proposal, which is prohibited under the current Constitution. He concludes: “The country is not uniform, 100 ha in Chota Valley are not the same as 100 ha in Mejía... it will be the agrarian authorities who define the maximum area based on each agro-ecosystem, the

altitude, the soil quality and the type of products that are cultivated”. Carvajal adds that if CONAIE’s proposal were accepted “we would have to go through a land redistribution that could lead to the conversion of the country into an importer of sugar or oil, and this would affect our food sovereignty”.<sup>28</sup> ○

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## PERU

Peru has 28.2 million inhabitants (Population Census 2007). The indigenous population represents 14% of the national population—or more than 4 million persons who belong to some 55 different indigenous peoples. Of these, 83.11% belong to the Quecha people; 10.92% to the Aymara people, and 1.67% to the Asháninka people. The remaining 4.31 % belong to 52 different indigenous peoples in the Amazon region, who are organized in 1786 communities according to the Census of Indigenous Communities (2007). This census, however, did not include nine peoples “due to the fact that certain ethnic groups no longer are organized in communities having been absorbed by other villages; there are, furthermore, other communities who because of their isolated location are of very difficult access”.

According to the Ministry of Education there are 47 indigenous languages in the country. Peru’s constitution stipulates in its Art. 48 “The official languages of the State are Spanish and, wherever they predominate, Quechua, Aymara, and other native tongues, in accordance with the law.” Almost 3.4 million are Quechua speakers and 0.5 million are Aymara-speakers. Both languages predominate in the Coastal-Andean part of the country.

The country’s land mass covers 1,285,215 km<sup>2</sup> which can be divided in three regions: the “coastal region” (10.6 %), the “Andean region” (31.5 %) and the “Amazon region” (7.9 %). These regions all enjoy a great variety of ecosystems, a rich cultural and linguistic diversity and a wealth of natural resources. Today, however, 21 % of the national territory is covered by mining concessions that overlap with 47.8 % of the territories of rural farming communities. Nearly 75% of the Peruvian Amazon is divided up into oil and gas concessions.

The overlapping rights on communal territories, the enormous pressure of extractive industries, territorial disorder and deficient prior consultations, are sharpening the land and social-environmental conflicts in Peru, a country that has ratified ILO Convention No. 169 and voted in favor of the UN Declaration on the Rights of Indigenous Peoples in 2007.



## National context

### The “paquetazos normativos” or legislative bundles

Ollanta Humala’s government (2011-2016) was characterised by its issuing of what became known as “*paquetazos normativos*”, rather confusing and disparate bundles of special legislation aimed at promoting investment and addressing a wide variety of issues: administrative, tax, environmental, etc. These were

approved in violation of a number of territorial rights in addition to which they have weakened environmental monitoring and environmental institutionality.<sup>1</sup> The bundles began to be issued in 2013 and continued into 2015 with the aim of unblocking public and private investment, i.e., simplifying and eliminating all obstacles to economic growth. However, they risk leaving the environment and indigenous peoples' territories defenceless and at risk of land grabbing.

It was in this context that Supreme Decree 001-2015-PCM was issued, the most harmful aspect of which is that it simplifies the procedural steps required for obtaining a mining concession. With this regulation, companies "are able to co-opt, as some have already been doing, the leaders of a community with the aim of getting them to sign agreements over the community's lands without clear and transparent information and behind the backs of the Community Assembly".<sup>2</sup>

Another regulation is Law No. 30327, the Law on Promoting Investment for Economic Growth and Sustainable Development, or "fourth bundle", which establishes the shared use of baseline data to produce new environmental management instruments, and approve the granting of easements over under-utilised lands and the provisional handover of those lands to large-scale projects. Moreover, it sets out a single administrative procedure for requesting a Global Environmental Certificate for an environmental impact assessment (EIA) and authorising licences over water and forest resources.

In this way, the government is thus continuing to impose a logic of "administrative simplification" in favour of investment, ignoring rights such as prior consultation and even violating rights to property, possession and community autonomy over the use of land. It is also criminalising the use of indigenous peoples' territories by invoking the concept of aggravated encroachment when it occurs over "rights of way to or an area awarded for investment projects".

Numerous civil society organisations have expressed their rejection of the legislative bundles and Law No. 30327 as they put the lands and territories of indigenous peoples and other settlements at risk, and weaken the process for an appropriate review of EIAs. The law is ambiguous because it contains provisions that could jeopardise the ownership of peasant and native community territories in order to encourage the implementation of large-scale projects. They warn that, in terms of easements, right of way permits and the expropriation of real estate for large projects, the law offers no guarantees that indigenous peoples' territories will be protected from these measures.

Although the regulation summarily indicates that it will apply only to under-utilised state lands and that it excludes the peasant and native communities, the threat nonetheless still remains given that a large number of communities have not yet obtained recognition and titling of their lands and there is therefore no up-to-date record or information on them. The indigenous organisations therefore consider that this exclusion “is insufficient to ensure protection of the indigenous territories, bearing in mind their current situation of defencelessness and will, in practice, make recognition, titling or possession of their territories difficult within the short timeframe proposed” and could “generate conflicts of different kinds”.

The indigenous organisations and allied civil society organisations decided to confront the bundles by constitutional means. In April 2015, they submitted an appeal for unconstitutionality to the Constitutional Court with regard to Law No. 30230, known also as the “second bundle”. The action was lodged with the support of more than 6,000 signatures gathered from the public by the Unity Pact of Indigenous Organisations of Peru, the Amazonian organisation AIDSESEP, the National Human Rights Coordinating Body and organisations affiliated to the Muqui Network, among others. However, in an unusual turn of events, as of December 2015 the case had not yet even been declared admissible by this highest court, raising the possibility of very strong political pressure being exerted to prevent a review of Law No. 30230.

For the lawyer, Juan Carlos Ruiz Molleda, the appeal requires the Court to assess whether Law No. 30230 is in line with the Constitution and international treaties or not. He explains that the regulation is being challenged for violating rights to prior consultation, territory and a balanced and appropriate living environment. “This is a law that was not put out for consultation despite the fact that it directly affects important rights of indigenous peoples, particularly the right to territory. As there was no consultation, its legality is defective,” he states.

## **The enormous debt of communal titling**

The demand for communal titling is one of the Peruvian state’s main historic debts and it has been raised in both national and international settings, gaining great visibility during 2015 due to pressure from indigenous organisations in different spaces and climate forums.<sup>3</sup> This has enabled various environmental funds to be created with the aim of land titling in Peru.<sup>4</sup>

Nonetheless, the state's lack of political will to embark on serious titling actions for the communities has to be noted. Richard Smith from the Institute of the Common Good (*Instituto del Bien Común* / IBC), one of the few institutions with a georeferenced record of native communities, gives the following example: "Today, 90 years after Indigenous Communities were recognised in the Constitution, there are no official figures for these communities, no official map or cadastral survey of them, and no state agency with responsibility for systematising and updating whatever information does exist."

Although the Ministry of Energy and Mines has an information system on the 55,000 mining concessions, the state has no such system for communities, a task that should be in the hands of a body responsible for regularising agricultural and rural property. According to figures from the IBC and the Campaign for Secure Territories (*Campaña Territorios Seguros*), there were 3,303 peasant communities with no title in 2015 and, in the Amazonian area, 666 native communities with their titling pending. There are also 918 coastal communities whose recognition and titling is still outstanding.

There are basic problems with the titling of land, such as the fact that the Amazonian communities are being given title only to areas suitable for agricultural and livestock farming while forestlands are being "ceded for use".<sup>5</sup>

## Deficient prior consultation

The Law on Prior Consultation was enacted in September 2011 and came into force in April 2012 following the approval of its implementing regulations. These regulations were, however, questioned on various counts by the indigenous and civil society organisations.<sup>6</sup> As of December 2015, 22 consultation processes regarding national policies, hydrocarbon concessions, mining projects, infrastructure projects and natural protected areas had been recorded and commenced. According to the Ministry of Culture, 19 of these processes have culminated in agreements, "generating benefits" for more than 20 indigenous peoples.

In July 2015, a newspaper report<sup>7</sup> was published containing a database of peasant communities that had been kept secret by the state for almost three years. This database was being used as a reference to indicate which communities were able to exercise the right to prior consultation with regard to extractive industry operations and other matters affecting their rights. Up until that point,

only the database on native forest communities had been made known. The report showed that the delay in publishing the list—a preliminary version of which was known to the Ministry of Energy and Mines—was aimed at ensuring the viability of mining operations on peasant communities' territories without conducting prior consultation processes.

It should be noted that three prior consultation processes for mining, in the regions of Ancash, Cusco and Apurímac, only commenced in 2015 but the questions raised were the same given that, in the case of Cusco (Aurora mining project): “the consultation did not cover the impacts of the mining project nor the prevention and mitigation measures” as the environmental certification had already been granted.<sup>8</sup>

To all this must be added the challenge of reviewing what the consultations need to cover. In the case of hydrocarbons, the Ministry of Energy and Mines established in 2012 that the Supreme Decree approving the signing of the contract would be put out for consultation and, in the case of mining, the director's resolution authorising the commencement of exploration work. There was, however, an expectation that other measures would be opened up to consultation, such as the environmental impact assessments, in accordance with ILO Convention No. 169 which states that consultations must take place on “legislative or administrative measures which may affect them directly”.

One further issue in this regard is the need to officially publish the measures for which consultations have been conducted. Of all the consultations, only six have had their measures published in the official daily paper *El Peruano*. To give just one example, publication of the decree on the Intercultural Health Sector Policy, consultation of which ended in 2014, has yet to take place.

Prior consultation on legislative measures, which involves amending the Congressional Regulations, has also come up against a series of obstacles. A draft bill of law that had the support of the Peoples Commission and the indigenous organisations was archived at the end of the year. The Ombudsman urged the Constitutional and Parliamentary Regulations Commission to consider the recommendations made in a report produced in 2014 by his institution's Indigenous Peoples' Programme in this regard.<sup>9</sup>

Moreover, in October, the Ministry of Education commenced the process of prior consultation of the National Bilingual Intercultural Education Plan with the main national indigenous organisations, the final stage of which was completed in

January 2016. This is the first consultation process that has resulted in agreements on both sides and no disagreement.

## **Coastal Andes Region**

### **Tía María: agriculture versus mining**

In August 2014, the Ministry of Energy and Mines approved the second Environmental Impact Assessment for the Tía María copper project of the Southern Peru Copper Corporation. The project's first EIA was cancelled in 2011 after being challenged by organisations including the United Nations Office for Project Services (UNOPS). Conflict over this project, located in the Arequipa region very close to the agricultural Tambo Valley, reached a peak in April and May 2015 when three civilians died as a result of police repression.

The main fear of the inhabitants of the districts of Cocachacra, Deán Valdivia and Punta de Bombón, which are all located in the valley, is that the operations will affect agriculture, an activity that employs at least 30,000 people. This project involves operations across two open pits: La Tapada and Tía María, the first located only a short distance from the valley, in an area very close to population centres, irrigation channels and micro-basins.

Given the above, the population was demanding that the EIA be evaluated by an independent body, as was the case with the first study. However, the government and the company managed to avoid such a review by finding all sorts of pretexts. Serious technical observations regarding the second EIA subsequently came to light and actions were uncovered such as the fact that gold mining, which would have required the EIA to provide control measures for such activity, was being concealed.

Another serious omission in the study was that it did not specify how the operations would be closed down when the concession came to an end. For this stage, the company has to specify what soil and wastewater remedial works will be required. The government described those opposed to the project as "ignorant" and "enemies of development" and it played a decisive role in escalating the conflict, given that its supposed openness to dialogue was demonstrated as being tainted and dishonest. Using the forces of law and order, and with the help of a large sector of the media, it sought to "tarnish reputations and plant evidence"

on innocent people, as in the scandalous discovery of the planting of sharp objects by the police.<sup>10</sup>

It is clear that, in Islay province, the location of the Tambo Valley, there are half a dozen companies planning to develop different mining projects. Tía María is likely to be the largest. Nonetheless, it is a crude project that is threatening the agricultural and livestock activity of this prosperous valley. The Ombudsman has stated that this project, which relies on Mexican capital, is socially unviable.<sup>11</sup>

### **Las Bambas: latent conflict**

One of the most important events of 2015 was the conflict arising around the Las Bambas copper project in Apurímac department, which is expected to extract 6.9 million tonnes of copper a year. The project is being run by the Chinese company MMG Limited which, in April 2014, bought the project for seven billion dollars from Glencore-Xstrata.

Problems began when MMG Limited amended the project no less than five times in barely 20 months. According to a special report of the Observatory on Mining Conflicts (*Observatorio de Conflictos Mineros*), the environmental impact assessment was amended twice and, on another three occasions, an instrument known as a Supporting Technical Report was used, a procedure created by the first legislative bundle (SD 054-2013-PCM) which enables changes to be approved rapidly within 15 days and without any civic participation mechanisms.

The project's amendments, implemented without consulting the population, triggered a crisis and open conflict in September 2015 culminating in three deaths and several more people injured. One of the main issues is the installation of a molybdenum plant, which is considered highly polluting and which was originally intended to be established in Espinar province in Cusco region, where the minerals would have been carried via a slurry pipeline. With this amendment, the minerals will be transferred by road through the communities' territories.

The peasant communities demanded that they be consulted about the project amendments and also felt that communities located within the Electrical Transmission Line (Grau) and the Heavy Goods Transport Route of the districts of Challhuahuacho, Mara and Ccapacmarca should be considered as falling within the area of influence. The year ended with the communities' evident frustration as they were awaiting the organisation of a round table on the Las Bambas mining project after two meetings had already been postponed by the Presidency of the

Council of Ministers, simply prolonging the conflict and giving rise to the possibility of further protest action.

## **Amazonian Region**

### **Wampis territorial government**

One clearly notable event of the year was the formation of the first autonomous indigenous government in Peru: the Government of the Wampis Nation. This took place on 29 November in Soledad community, in the Santiago River basin, where 300 representatives from 85 communities of the Wampis people elected their first government, approved their constitutive statutes as a regulatory framework and issued their first ordinance as an act of government. For Wrays Pérez Ramírez, elected as first *pamuk* or president of the Autonomous Territorial Government of the Wampis Nation, it is an “historic decision” aimed at protecting the Peruvian Amazon from climate change. The Wampis government covers the whole of its ancestral territory, comprising 1.3 million hectares of rainforest.

Andrés Noningo Sesen, one of the *waimaku* or Wampis visionaries, explained that they have taken this decision: “in part as a strategy for territorial defence; as a response to the efforts to divide us into communities (...) We will still be Peruvian citizens but this unity will give us the political force we need to explain our vision to the world and to states and companies that only see gold and oil in our rivers and forests”. “Nor do they see the spiritual beings such as Nunkui, Mother Earth and Tsunki, who care for our lands and waters”.<sup>12</sup>

### **General elections: more of the same?**

Oil activity continued to represent a danger for indigenous communities and peoples in 2015. Not specifically due to the number of spills occurring in the case of Amazonia—which were fewer this year than in the past—but due to the consequences, often irreparable, that they entail. To this must be added the lack of a strong state capable of ensuring compliance with environmental laws and the ineffectiveness of regulations, which leaves important state offices such as the Environmental Evaluation and Supervisory Body virtually powerless to punish offenders.

To give just one example, on 29 August, the Argentine company Pluspetrol pulled out of its operations in Lot 192 (previously 1AB) as its contract had come to an end, leaving the way clear—without any adequate prior consultation—for the entry of the Canadian company Pacific Stratus Energy for two years. This lack of dialogue and consultation between state and indigenous peoples is a reality that has serious consequences for issues such as deforestation, the havoc caused by mining (formal as well as informal and illegal), illegal logging and other activities that overwhelm the weak capacity of the Peruvian state.

In this context, and just a few months before the next presidential elections are due to be held, the candidates' plans for the environment and renewable natural resources largely lack any adequate measures to face up to this situation. For the expert, Marc Dourojeanni, these plans are "unbalanced, inconsistent, incomplete and, moreover, do not explain how they will achieve each of the points proposed".<sup>13</sup> This is the case, for example, with the issue of reforestation both the mountains and forests, for which the political groups are proposing quite ambitious objectives. Dourojeanni does, however, observe some awareness among the political class of what needs to be done in terms of the environment, although their proposals do not carry the necessary weight to be termed "truly sustainable development".

With regard to the issue of forest management, the Peruvian Society for Environmental Law (*Sociedad Peruana de Derecho Ambiental / SPDA*), for its part, maintains that "few candidates are emphasising the value of the Protected Natural Areas System as fundamental to the country's development in areas such as tourism, scientific research, identity or culture". Another important point highlighted by the SPDA is the lack of specific proposals on corruption, along with the state's presence throughout the whole territory and the illegal trafficking of wild animals.

It should be noted that Peru's forests cover 57.3% of the national territory, or 73,280,424 ha. according to the Ministry of the Environment, and that there are three main and direct causes of deforestation: agricultural and livestock farming expansion, illegal and informal activities such as logging, mining and coca growing, and the expansion of communication infrastructure and extractive industries. ○

## Notes and references

- 1 The legal bundles are: First bundle (May 2013): SD 054-2013-PCM, SD 060-2013-PCM and Law 30025. Second bundle (June 2014): Law 30230. Third bundle (January 2015): SD 001-2015-EM. Fourth bundle (May 2015): Law 30327, Law on Promoting Investment for Economic Growth and

- Sustainable Development. Fifth bundle: Legislative Decree 1192 and Legislative Decree 1210, issued under the protection of Law 30335, which granted legislative powers to the government to issue regulations on economic, financial and administrative matters.
- 2 Red Muqui and Grufides: *Paquetes normativos 2013-2015 y su impacto en los derechos fundamentales en el Perú. Manual*. Lima, October 2015, p. 13.
  - 3 See report: "Titulación: la gran deuda del Estado frente a las comunidades", at Servindi: <http://www.servindi.org/actualidad/141121>
  - 4 The Inter-American Development bank approved a loan of US\$40 million in December 2014 to fund the third stage of the "Rural land titling and registration project in Peru-PTRT3". It is contemplating a further 16 million dollars devoted exclusively to native communities, with which the PTRT 3 would title 403 native communities and 228 peasant communities. The World Bank announced the allocation of 7 million dollars to titling native communities over a seven-year period, with the involvement of the regional governments, beneficiary native communities and indigenous organisations. The World Bank approved a donation of 5.5 million dollars to the Strategic Climate Fund in early September to demarcate and title 130 indigenous communities and record another 310 communities on the Ministry of Culture's database of indigenous peoples, among other things. GIZ's Pro-Ambiente programme in Peru announced its commitment to devote up to three million dollars to the titling of, primarily, native communities in San Martín and Ucayali.
  - 5 See article: "Estado debe eliminar obstáculos para titular integralmente a las comunidades nativas", at: <http://www.servindi.org/actualidad/123329>
  - 6 DAR-CNDDHH: *Análisis crítico de la Consulta Previa en el Perú. Informes sobre el proceso de reglamentación de la Ley de Consulta y del Reglamento*, Lima, 2012.
  - 7 Ojo Público: <http://ojo-publico.com/77/los-secretos-detras-de-la-lista-de-comunidades-indigenas-del-peru>
  - 8 See note from Cooper Acción: <http://cooperaccion.org.pe/main/advanced-stuff/cooperaccion-informa/440-primer-consulta-previa-en-mineria>
  - 9 See recommendations at: <https://ia801306.us.archive.org/15/items/InformeN0012014DPA-MASPIPI12/Informe%20N%C2%B0%20001-2014-DP-AMASPI-PPI-1%20%282%29.pdf>
  - 10 See Servindi: <http://www.servindi.org/actualidad/129063>
  - 11 See La República: <http://larepublica.pe/politica/713600-defensoria-del-pueblo-tia-maria-es-socialmente-inviable>
  - 12 "Pueblo Wampis conforma primer gobierno autónomo indígena del Perú". See at: <http://www.servindi.org/actualidad/144577>
  - 13 Environmental news, information portal of the Peruvian Society for Environmental Law (*Sociedad Peruana de Derecho Ambiental / SPDA*): <http://www.actualidadambiental.pe/?p=35159>

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# BOLIVIA

According to the most recent data from the 2012 National Census, 2.8 million people over the age of 15—41% of the total population—are of indigenous origin. Of the 36 recognised peoples, the Quechua and the Aymara are most prevalent in the western Andes while the Chiquitano, Guaraní and Moxeño are the most numerous of the 34 peoples living in the lowlands, in the east of the country. To date, almost 20 million hectares of land have been consolidated as communal property under the concept of Community Lands of Origin (*Tierras Comunitarias de Origen / TCO*). With the approval of Decree No. 727/10, the TCOs changed their name constitutionally to Peasant Native Indigenous Territory (*Territorio Indígena Originario Campesino / TIOC*). Bolivia has been a signatory to ILO Convention No. 169 since 1991. The UN Declaration on the Rights of Indigenous Peoples was approved, via Law 3760, on 7 November 2007. With the entry into force of the new Constitution, Bolivia became a Plurinational State.

## Elections for departmental and municipal authorities

**T**he 2014-2015 national and regional elections significantly reduced the political plurality being created by indigenous peoples within the Parliament and departmental authorities. Only in a few departmental assemblies where direct election according to practice and custom is still connected in some way to the indigenous organisations did their representatives manage to get elected without the patronage of political parties. Elsewhere, either President Morales' Movement to Socialism (MAS) or the opposition groups control the indigenous seats. The seven indigenous representatives to the national Parliament were elected under the banner of the MAS and there has so far been no sign that they are likely to distance themselves from the party line. In this context, there are serious difficulties in indigenous peoples exercising their political rights in line with an agenda constructed by their own organisations.

## **Adoption of oil decrees in violation of indigenous rights**

Between November 2014 and May 2015, the national government approved three supreme decrees that affect indigenous peoples' rights to their territories when hydrocarbon extractive activities are undertaken there without any consultation.

The first decree was No. 2195/14 laying down the criteria for providing compensation for the impacts of these activities on their territories. An initial criterion is that the maximum possible amount is a percentage of the total project investment—1.5%, thus amending the Hydrocarbons Law, which indicated that compensation had to be economical. A second criterion is that the scope of compensation must be established according to the specific area in which the operation is taking place and the number of inhabitants living in its immediate vicinity, thus placing conditions on the scope of the environmental impact assessments and subsequent compensation. A third criterion is that a time limit has been established for completing the negotiations—180 days—after which, if there is no agreement, the State can then take the decision. The aim of these criteria is to reduce the cost of company operations and the levels of conflict being suffered by these activities, in a context of State openness towards and incentives for foreign investment.

The second decree is No. 2298/15, which has completely amended the consultation process established in Supreme Decree No. 29,033/07 on Consultation and Participation in Hydrocarbon Activities on Indigenous Territories.<sup>1</sup> Supreme Decree No. 2298/15 removes the indigenous peoples' right to receive accurate, prompt and appropriate information from the State with regard to projects, and to be provided with specialist advice on taking part in the consultation (Art. 2). In addition, it stipulates that the mere presence of the communities at meetings is sufficient to ensure the continuation of the consultation process, regardless of the participation of their representative organisations and traditional authorities (Art. 3). Furthermore, when the Competent Authority<sup>2</sup> or company is unable to obtain the free, prior and informed consent of the peoples, it will be possible to end the process with an Administrative Resolution, turning the consultation into an administrative procedure devoid of meaning and objectives.<sup>3</sup>

A provision of Supreme Decree No. 29,033/09 which established that a consultation process would be null and void if it took place in violation of the initial



Memorandum of Understanding has also been repealed. This thus gives the State the power to override the agreements made with indigenous peoples without any consequences whatsoever.

Lastly, the final provisions establish that the Environmental Licence and Administrative Resolution of the Consultation Process thus modified gives operators the authority to implement their projects without any interruption, and that this can be guaranteed, if necessary, by the use of the Security Forces (Additional Provision II para. I).

Finally, the third decree is Supreme Decree No. 2366/15, which enables hydrocarbon extraction operations to be conducted in any protected area of the

country, even those with maximum protection such as the national parks (Art. 2 I). So called natural sanctuaries or monuments and RAMSAR sites are excluded (Art. 2 IV). With this provision, the national parks located in the sub-Andean strip are thus affected and more than 43% of this area is now set aside for oil exploitation. However, this area also overlaps to differing degrees with at least 17 indigenous territories in the Amazon and Chaco regions.<sup>4</sup>

These decrees were challenged as unconstitutional by the Ombudsman but rejected in the first instance by the Constitutional Court, citing a failure to comply with the formal requirements.

## Repression in Takovo Mora

On 19 August, Guaraní from the Takovo Mora territory were violently repressed by the security forces during a road blockade they were holding at Km 90 on Highway 9, which connects Santa Cruz de la Sierra with the Argentine Republic. Days after these skirmishes, two women suffered miscarriages as a result of the blows received. Some ten or so indigenous people were wounded and 26 taken into custody—including two children and five women—several of them snatched from the Yatirenda community, close to where the action was taking place, but who were not involved in the protest. The decision to stage the demonstration was taken by various assemblies of the Captaincy of Takovo Mora and the Assembly of the Guaraní People (APG) following the decision of the State company *Yacimientos Petrolíferos Fiscales Bolivianos* (YPFB) to drill three exploratory oil wells in the El Dorado block located on the Guaraní territory of Takovo Mora without any prior consultation. The protest was also demanding repeal of Decrees 2195, 2298 and 2366 due to their lack of consultation and violation of their rights.

In a public statement, the Ombudsman severely condemned the repression, calling for clarification of the police action and for those responsible for the aggression to be identified. He denounced the fact that these actions related to the imposition of a predatory model of natural resource extraction that respects neither the environment nor indigenous rights and he called on the Legislative Assembly to convene the indigenous organisations to consider a new Law on Consultation.<sup>5</sup>

The government tried to deflate these demands through the “pro-government” national organisation CIDOB,<sup>6</sup> getting it to approve the document validating the

three decrees at a national meeting. The government maintained that other hydrocarbon operations in Takovo Mora had been put out to consultation and compensation subsequently provided, clinging to an agrarian interpretation of indigenous rights based on Decree No. 2195/14 by which the indigenous territory ends where there are recognised rights of private third parties, ignoring the concept of living environment established in ILO Convention No. 169, the UN Declaration and the Bolivian Constitution itself. In addition, the Takovo Mora territory is one of the few territories that do not hold the title to its land, making it vulnerable to the granting of other rights over it. None of these concerns were addressed. On the contrary, the government militarised the whole zone, and took CIDOB's statement as valid with regard to the legitimacy of the three decrees, the titling being once more postponed.

## Two laws to extend the agricultural frontier

In September 2015, two laws were enacted that had been much-awaited by the agribusiness sector because they will enable them to extend the agricultural frontier from its current 3.7 million hectares to 20 million hectares by 2020.

Law No. 740/15 was initially enacted, extending the period for verification of the agricultural use of medium- and large-sized properties. In other words, businessmen can retain their right of ownership over their lands for five years without the State being able to enter the property to check if the land is being worked or not. This rule addresses the concerns of businessmen, and above all the private banking sector, who hold large areas of unused land in the hope of making a good return on its sale or attracting foreign investment. This concession contradicts the constitutional principle that *the land is for those who work it*.

Law No. 739/15 was also enacted, which applies a 90% reduction in the amount of fines payable by those who illegally logged an estimated 3.5 million hectares on agricultural properties between 1996 and 2011. In actual fact, it means that the constitutional grounds for reversion<sup>7</sup> do not apply to properties that conducted this deforestation without prior permission, and the fine will be reduced accordingly, if they commit to signing up to a reforestation and production programme. This provision resulted in a hike in deforestation, albeit now "legal", increasing Bolivia's annual deforestation rate from 250,000 to almost 350,000 hectares, or 20 times higher than the world average.<sup>8</sup>

## Corruption in the Indigenous Fund

In February, the Comptroller-General published a report detailing the embezzlement of more than 70 million *bolivianos*—a little over one million US dollars—from 153 productive development projects of the Native Indigenous and Peasant Communities Development Fund (FDPPIOYCC), funds that had apparently been siphoned off into the personal accounts of the indigenous and peasant leaders that sit on the Fund's Board. In 2013, President Evo Morales had instructed the Comptroller to conduct an audit as he suspected irregularities in the handling of this institution's resources.

The Indigenous Fund was created with the oil contributions established by Hydrocarbons Law No. 3058.<sup>9</sup> This was the first time that indigenous and peasant communities had had an opportunity to finance programmes and projects in line with their own development priorities.

Initially, a shared management structure was envisaged with the State and so the Board was made up of members of national rural organisations involved in the Unity Pact and the Ministries of the Environment, Economy and Rural Development, which held the presidency. In actual fact, the Board's composition charted the historical alliance between the social movements and a government born out of those movements. The breakdown in the social alliance of the Unity Pact, under the influence of the conflict over the Isiboro Secure National Park Indigenous Territory (TIPNIS) in 2011, and the usurpation of CIDOB's representation on the Board by leaders allied with the government in 2012-13, along with that of the Andean organisation, CONAMAQ, ended up completely undermining the Fund's whole operation.

The initial complaints affected a number of pro-government candidates in the departmental and municipal elections. It is thought that it was one of the factors behind the MAS's poor performance in the Santa Cruz, Tarija, La Paz, Chuquisaca and Beni governorships. In fact the party did end up securing a victory in these two latter departments, but only by a tight margin, after a second round of voting.

Faced with this scandal, President Morales dissolved the FDPPIOYCC and, by means of Decree No. 2493/15, created the Indigenous Fund. This fund has no space for the social organisations on its Board,<sup>10</sup> which is now entirely controlled by the State, with functions directly linked to government policies. It has thus wrested all decision-making power from the indigenous peoples in terms of the plans and projects to be financed. The resources will now be distributed along

criteria of *equitability*, i.e. according to the level of poverty, population, territory and so on (Art. 12 Supreme Decree No. 2493/15). There was at no point any consultation of this decree with the indigenous peoples' organisations.

The scandal and media pressure forced Nemesia Achacollo, former peasant leader with close links to Evo Morales and President of FDPPIOYCC's Board, to resign as Minister for Rural Development and Lands. The lawsuit was used politically by the opposition to weaken the government in the context of the referendum for re-election, called for February 2016,<sup>11</sup> although the government party also used it to unleash a crackdown on leaders of CONAMAQ and CIDOB who are critical of the government, with the aim of silencing them. The current Jiliri Apu Mallku of CONAMAQ, Félix Becerra, has thus been in prison since October and CIDOB's President, Adolfo Chávez, has fled to Ecuador.<sup>12</sup>

### **Charagua lyambae is autonomous**

On 20 September, a referendum took place in the Guaraní municipality of Charagua on the final adoption of its statutes and the entry into force of the "Charagua lyambae" Indigenous Autonomy. The referendum was the final stage in a long process that commenced in 2009 and in which the municipality's population has approved the decision to convert the municipal authority into a "Native Peasant Indigenous Autonomy", to use its constitutional name. The vote was won by a majority of 53.25% in favour and 46.75% against. This is an important result given the social diversity of the municipality and the political tensions it has experienced, resulting in a polarisation of views around this issue.

Charagua is the administrative capital of the municipality of the same name, and is located in the centre of the Chaco Boreal, in the south-east of Bolivia. It is the country's largest municipality, with 71,745 km, inhabited by 70 Guaraní communities. The lack of consolidated indigenous territories and the significant presence of other actors in the municipality led the Guaraní to opt for accessing indigenous autonomy via municipal conversion rather than the feared "territorial" path, which would have involved demanding self-government in the territories titled by the State and would have exacerbated the territorial dispersion generated by the land titling process.

One important element noted in the Autonomy Statutes is that the main functional bodies must include the direct participation of the social groups living in the area. They themselves will determine who represents them on these bodies,

based on their own rules and procedures, i.e., the system of community democracy recognised in the State Political Constitution. The Statutes also recognise Indigenous Native Peasant and Natural Resource Jurisdiction, although this is limited to the powers defined by the Constitution and special laws on the subject, which have in any case sharply reduced the powers that can be exercised by the Indigenous Autonomy.<sup>13</sup> The Indigenous Autonomy's system of authorities and bodies has not yet been fully established and so the institutions of the new indigenous government are not yet up and running. This will be the first indigenous autonomy to come into force on the basis of the Political Constitution resulting from the 2006 Constituent Assembly. ○

## Notes and references

- 1 The Regulation on Consultation and Participation on Hydrocarbon Activity is governed by Supreme Decree No. 29.033/07 of 16 February, a regulation that underwent a long and in-depth process of consultation and participation and which develops Chapter VII of Law No. 3058/05 of 18 May (Arts. 114-128).
- 2 State representation generally exercised by a division of the Ministry of Hydrocarbons.
- 3 Incorporated as Articles 19 and 20 of Supreme Decree No. 29033/15. In actual fact, these articles seek to resolve the social section of the Environment Impact Assessment Studies (EEIA) that are required for approval of the Environmental Licence for these projects.
- 4 <http://lapatriaenlinea.com/?nota=222547>
- 5 <http://www.defensoria.gob.bo/draft/19-0815%20COMUNICADO%20DE%20PRENSA%20CONFLICTO%20TAKOVO%20MORA.pdf>
- 6 In 2012, with the material and political support of the national government, an indigenous faction stormed CIDOB's offices and took over as the organisations new Board, redirecting the organisation's position to one of support for President Evo Morales. This CIDOB has been nicknamed "pro-government" as opposed to the legitimate displaced Board, which became known as "organic".
- 7 These are the grounds that enable the State to recover private lands without compensation, if they are not being put to good use.
- 8 <http://noticias.universia.com.bo/en-portada/noticia/2013/11/18/1064252/deforestacion-bolivia-paises-indice-perdida-bosques.html>
- 9 Supreme Decree No. 28571/05 of 22 December.
- 10 According to Article 10 of Supreme Decree No. 2493/15, the previous Board has become the Indigenous Fund's Consultative Council, with ex-post supervisory functions but no real power.
- 11 This is the Referendum to amend Article No. 168 of the Constitution, to be held on 21 February 2016, and which will endorse the candidacy of the Evo Morales Ayma – Álvaro García Linera coupling for a third term in office.
- 12 Adolfo Chávez was initially brought to trial but the Attorney-General's Office ruled the case null and void because Chávez was never questioned in his mother tongue, indicating that he had not understood why he was being prosecuted.
- 13 Such is the case of the Law on Jurisdictional Domain No. 073/10 of 29 December.

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## BRAZIL

Brazil has a territory of 851,196,500 ha. A total of 698 Indigenous Lands (ILs) cover an area of 115,499,953 ha, equivalent to 13.56% of the national territory. Most ILs are located in the *Amazônia Legal*, which covers an approximate total area of 113,822,141 ha. The remaining 1.39% ILs are found in the northeast, southeast, south and mid-west of Brazil.

The indigenous population in Brazil accounts for some 800,000 inhabitants, or 0.42% of the national population. Of these, 383,298 live in urban areas. Grouped into 246 different peoples, only four of these—including the Guarani—have populations in excess of 20,000 individuals. Half of these peoples comprise less than 500 members. It is estimated that 46 peoples live either in isolation or voluntary isolation. The indigenous population boasts great linguistic diversity, with 150 different languages spoken.

The 1988 Brazilian Constitution recognizes indigenous peoples as the first and natural owners of the land and guarantees their right to land. Prospecting and mining of mineral wealth on indigenous lands may only be done with the authorization of the National Congress, after hearing from the communities involved, who must be guaranteed participation in the benefits of the mining. Removal of indigenous groups from their lands is prohibited.

Indigenous peoples in Brazil faced a number of unresolved challenges in 2015, linked to the regulation and demarcation of their lands. This situation was exacerbated by the ongoing debate over the Proposed Amendment to the Constitution (PEC-215), the implementation of Brazil's Growth Acceleration Plan (PAC) and issues related to mining activities on indigenous lands.



## Problems relating to the regulation of Indigenous Lands (ILs)

The aim of demarcating an Indigenous Land is to guarantee the indigenous right to that land, recognized as an original right by the 1988 Constitution. Demarcation, which is merely administrative in nature, involves a systematic process of recognition, established by the Executive, which has undergone various modifications over the last decades. Decree 1,775, issued in 1996, sets out the different

stages of the process, including identification studies, declaration, physical demarcation, homologation and, finally, registration at federal level by the *Secretaria de Patrimônio da União* (SPU).

The current 698 Indigenous Lands represent areas at different stages of recognition: 67.48% are homologated or reserved, while some 228 ILs (or 33%) are still awaiting the finalization of their demarcation processes as they are currently either in the identification phase (which is the responsibility of FUNAI), have been identified, or have been declared by the Ministry of Justice as land traditionally occupied by indigenous peoples or land with use restrictions protecting the habitat of isolated peoples while their lands are still awaiting study or identification.

In 2015, a report from CIMI<sup>1</sup> recorded 118 cases of neglect and delays in the regulation of lands, more than double the 2013 figure of 51 cases. Cases were recorded in the states of Acre (1), Amazonas (3), Bahia (4), Ceará (2), Goiás (1), Maranhão (5), Mato Grosso (1), Mato Grosso do Sul (24), Minas Gerais (1), Pará (42), Paraná (1), Rio Grande do Sul (14), Rondônia (7), Santa Catarina (11) and Tocantins (1).

In Pará, the state with the highest number of cases of neglect and delays in the regulation of lands, the failure to recognize indigenous lands is directly linked to federal government intentions to build large dams, such as the *Hidroelétrica São Luiz do Tapajós*, which—if built—will flood villages, forests and cemeteries in Sawré Muyby indigenous territory, belonging to the Munduruku people.

In Mato Grosso do Sul,<sup>2</sup> where 24 instances of neglect and delays were recorded, the indigenous communities live along the sides of the roads in canvas shelters and surrounded by gunmen disguised as security officers. They are subjected to violence of all kinds, including violent evictions. One example of this is the Terena people, from the Buriti Indigenous Land, whose members have already been forced out of many areas. Tired of waiting, Terena members have taken back their ancestral lands. In response, the federal government set up a “negotiating table”, which achieved no practical result. The Terena group is still subject to eviction orders, given the failure of the government to make any effective progress. Since then, a number of meetings have been held between the government authorities and the Federal Supreme Court. None of them have come to anything. In August 2015, given the neglect and lethargy of the federal government and the judiciary, the Terena began to occupy farms. During the farmers’ counter-attack, Semião Fernandes Vilhalva, one of the leaders of the

Guarani-Kaiowa people was fatally shot, bikes were burned and the climate of tension spread to the town.

## **PEC 215/2000 and its possible impacts on ILs**

As mentioned in *The Indigenous World 2015*, the Proposed Amendment to the Constitution, PEC 215/2000 has, from the very beginning, been seen as a threat to the demarcation of indigenous lands. 2015 did not bring any solution to the matter, and the possible approval of PEC 215/2000 poses a number of threats.

One of PEC 215/2000's proposal is to transfer the power of final decision on demarcations from the Executive to the Legislature, thereby upsetting the systematic process for recognizing Indigenous Lands. This would directly affect all lands currently in the process of being recognized and which have not reached the final stage of the demarcation process, namely homologation by the President of the Republic. Such is the case of the 228 lands mentioned above still waiting to be homologated, a process which would effectively be paralyzed. These lands represent an area of 7,807,539 hectares and a population of 107,203 indigenous people. Another 144 lands where the demarcation processes are under legal review would also be affected. These lands cover an area of 25,630,907 hectares and have a total population of more than 149,381 people.

It is worth emphasizing here the strategic importance of Indigenous Lands for environmental conservation. The accumulated deforestation in ILs in Amazonia represents just 1.9% of the original forested area contained within them, while overall deforestation in the biome is 22.8% (of the total original forested area of Amazonia).<sup>3</sup> Even outside Amazonia, where ILs are smaller in area, they have played an important role in safeguarding Brazilian biodiversity, as in the case of the Mangueirinha IL, in Paraná state, where one of the world's largest surviving areas of native *Araucaria* (*Araucaria angustifolia*) forest is found.

PEC 215/2000 will also mean the opening up of lands recognized as indigenous to economic enterprises and high-impact activities. This includes lands defined as being of significant public interest to the Union—allowing the possibility, as defined in Supplementary Law Bill 227, of mineral exploration, hydroelectric projects, the construction of oil and gas pipelines, ports, airports, energy transmission lines and so on; and infrastructural works—roads, railways and water-

ways as well as non-indigenous rural settlements and farming activities, including land leasing.

These activities would have a particularly negative impact on the peoples and lands of the central-west, south, southeast and northeast regions. It is in these areas that the interests of agribusiness and the large landowners are concentrated and land conflicts in these indigenous areas are therefore more intense.

PEC 215/2000 also proposes a ban on expanding the already demarcated indigenous lands. There are currently 35 ILs with territorial boundaries under review. These are lands whose demarcation processes were undertaken prior to the 1988 Constitution or which were declared reservations during the process of colonizing the country in order to free up land for farming production. In most cases, as well as being tiny, these areas do not correspond to the territory traditionally occupied by the peoples concerned and are insufficient to guarantee their physical and cultural reproduction. This is the reality of many indigenous lands in states such as Mato Grosso do Sul and Mato Grosso where indigenous communities survive on very small lands and are fighting to regain their traditional territories. If approved, the PEC will seriously affect these 35 lands, and a population of more than 33,000 indigenous people across different regions of the country.

Finally, PEC would also mean the inclusion of the category of “temporal landmark” in the constitutional text. This would affect several Indigenous Lands already demarcated, homologated and registered, besides others which are undergoing the demarcation process.

It should be added that the retroactive application of PEC 215/2000 to Indigenous Lands that are currently under judicial consideration (*sub judice*) would affect at least 144 indigenous lands.

## **ILS and the Growth Acceleration Plan - PAC**

The implementation of Brazil's Growth Acceleration Plan PAC 2007, now in its second phase, has been marked by tensions between Brazilian government policies and indigenous rights. Most significant has been the government's lack of commitment to demarcating the indigenous territories, creating tension between the large landowners, small farmers and the indigenous population. Failures to comply with ILO Convention No. 169 clearly illustrate the government's position with regard to indigenous issues.

In addition to these issues, there is a growing interest within government in promoting mining and logging companies and, above all, in establishing hydroelectric power plants, as set out in the PAC. According to national projections, the “Ten-year Energy Plan 2021” states that the share of hydropower, such as smaller hydroelectric power plants,<sup>4</sup> the Belo Monte Hydroelectric Project, Madeira River Hydroelectric Complex Stations (PCH), and thermoelectric plants powered by biomass and wind energy, will continue to grow over the next 10 years, with the Brazilian electricity mix remaining reliant on renewable energy sources, which will account for 83.9% by 2021. The area of indigenous lands that these hydroelectric power plants are going to occupy is around 91,308 ha; it will threaten the culture, wildlife and plants of the indigenous territories and is in flagrant violation of ILO Convention No. 169 and the 1988 Brazilian Constitution and their provisions regarding free, prior and informed consultation.<sup>5</sup>

It has often been the case in Brazil that consultations are simply mere formalities that do not truly take indigenous peoples’ views regarding these ventures into account. This happened, for instance, in the case of the Belo Monte Hydroelectric power station on the Xingu River and the São Luiz do Tapajós and the Jatobá Hydroelectric Dams on the Tapajós River. The Tapajós River is now the scene of one of the biggest environmental conflicts in Brazil. The national government is trying to install more than a dozen power stations on the Tapajós and its tributaries, the real impact of which is impossible to assess, in terms of either people or the environment. These dams will produce energy for the rich mining hub of Tapajós and Carajás. In addition, there are different bauxite mines operating in the river delta, such as Alcoa, in Juruti, and Mineração Rio do Norte, on the left bank of the Amazon. There are also new gold, bauxite and nickel mining projects in the region.

The Federal Public Prosecutor’s Office has defended the right of the indigenous Arara, Juruna and Munduruku peoples to consultation, along with that of the peoples of the Xingu, Tapajós and Teles Pires rivers. A fourth legal action is being considered in defense of the right of the Kayabi, who are affected by the São Manoel Dam and who were never consulted. The concession for the dam is currently being negotiated but is at a standstill because the license did not even anticipate an assessment of the environmental impact on the indigenous peoples. The Teles Pires Hydroelectric dam being built on the Teles Pires River has been the object of two public civil actions on the part of the Federal Public Prosecutor’s Office, which highlighted serious violations of rights and deficiencies in the study

of the indigenous component. It was decided to call a halt to the works in September 2013; however, yet again, at the request of the Government Attorney's Office, a so-called Suspension of Security was enforced by the President of the Federal Supreme Court, alleging "serious violation of the economic order" and enabling "the works to be continued to the detriment of fundamental human rights." In the case of the hydroelectric dam on the Contingó River, in the Serra Raposo do Sol IL, the Mining and Energy Committee of the Chamber of Representatives approved Draft Legislative Decree 2540/06 of the Senate authorizing the construction of a hydroelectric power station on the river in a region overlapping with indigenous lands, since the power station will affect an area in which groups such as the Macuxi and Ingarikó live, as well as threatening the peoples of Guiana.

### **Mining legislation on Indigenous Lands**

The invasion of Indigenous Lands by non-indigenous people for the illegal exploitation of natural resources is a reality that affects nearly every indigenous territory across the country. A recent example is the invasion of the Roosevelt Indigenous Land by some five thousand prospectors following the discovery of gem-quality diamonds. This IL is one of the four villages that form part of the Arupuaná Indigenous Park, a demarcated area between the states of Rondônia and Mato Grosso, and home to about 1,500 indigenous Cinta Larga.

With a subsoil rich in cassiterite, diamonds and other minerals, the Cinta Larga people have been suffering incursions from non-indigenous prospectors onto their lands virtually since their very first contact with the surrounding society. Over time, indigenous people have established conflictive relationships with invaders and with the so-called development projects that have been imposed on the region. In December 2015, the Federal Police launched an operation to put end to the practice of environmental crimes linked to the extraction of diamonds in the indigenous areas of Rondônia. According to the Military Federal Police, businessmen, prospectors, tradesmen and even indigenous people were participating in the exploitation of diamonds on the indigenous reserve.

Such invasions happen in flagrant disrespect of the Federal Constitution which, besides guaranteeing indigenous peoples' right to land and to the natural resources within it,<sup>6</sup> also stipulates that the affected "communities should be consulted and heard and receive shares in the results of said extraction".<sup>7</sup> In relation

to prospecting on these lands, the Constitution clearly prohibits the activity from being carried out by non-indigenous peoples under any circumstances and furthermore states that “the survey and exploration of mineral resources [...] may only be performed through the authorization or concession on behalf of the Union [...], which will establish the specific conditions when these activities develop along the borders of or within indigenous lands”.<sup>8</sup> Finally, the Constitution charges the Union with the duty to protect and ensure the respect of all indigenous assets. This means that it is the Federal Power’s responsibility to quash these invasions and to supervise indigenous areas in order to guarantee these communities the continuation of the natural resources necessary for their physical and cultural development.

The National Congress has debated these constitutional dispositions and their implications for many years without resolving the matter. However the debate has re-emerged after the discovery of gem-quality diamonds within the Roosevelt Indigenous Land. In the National Congress, the mining lobby, supported by government interests, is presently looking for the best way to decide on the ratio of said share, as well as the basis for working out the calculation.

Congress is currently considering two bills that deal with these issues, along with a proposal from the government and one from Representative Valverde.<sup>9</sup> The bill PL No. 1,610/96 provides exclusively for the exploration and exploitation of mineral resources in indigenous areas while PL No. 2,057/91 proposes the creation of a Statute on Indigenous Societies, with a whole chapter on how to deal with these issues and setting a minimum percentage of 2% based on the gross income resulting from the sale of the processed but not industrially transformed mineral product. Both bills allow for up variations in this percentage up or down, and even up to 25% when in the mining concession request stage.

The government proposal and Valverde’s alternative bill, on the other hand, guarantee a 3% and 4% share respectively, based on the gross income resulting from the marketing of the mineral product obtained. These two proposals are innovative and also important because they expressly declare that mining deeds and interests granted before the change in the law will become invalid.

Besides the stipulated percentage, questions are also being raised as to what information should be made available to the indigenous community in order for them to know whether the amount they are being paid corresponds to the agreed percentage of the income made by the mining company. Will the indigenous community receive information from the tax office on the taxes collected by the mining

company and thus be able to monitor their earnings and ensure that they receive the correct remuneration for their share? Will the community have access to the mining company's accounts?<sup>10</sup>

Another constitutional requirement for mining on Indigenous Lands is that consultations must be carried out with the affected indigenous communities in this regard. This is in order to ensure the participation of indigenous communities in the decision process for commercial projects that will be developed on their lands, and to categorically ascertain the real impacts on the community involved. It also means that indigenous peoples would be fully within their rights to reject the development of mining activity on their lands, as it is they who will suffer the greatest consequences of the socio-environmental impacts generated by said mining.

The bills at hand do mention that consultations are a requirement; they do not, however, specify how these consultations should be carried out. There is no provision, for example, regarding whether a consultation should take place within the indigenous community, nor how a community should be consulted.

The proposals presented by the government and by federal Representative Valverde specify that prior consultation of the indigenous communities should take place after the socio-cultural compatibility report completed by FUNAI. In addition to the already highlighted points regarding consultation, it is also necessary to take into consideration the fact that consultations should happen at every phase of the decision making process and not just once, as proposed by the government. Participation of the indigenous community involved is fundamental for this process, and cannot therefore be limited or restricted in any way. ○

## Notes and references

- 1 Brazilian Constitution 1988, Art. 231 & 232 at [www.constituteproject.org/constitution/Brazil\\_2005.pdf](http://www.constituteproject.org/constitution/Brazil_2005.pdf)
- 2 Recognition of a number of indigenous lands in that state was set out in a TAC (*Termo de Ajustamento de Conduta: Conduct Adjustment Commitment*), signed in 2007 by the MPF (*Ministério Público Federal: Federal Public Prosecutor's Office*) and FUNAI. In that commitment, FUNAI agreed to demarcate the indigenous lands in Mato Grosso do Sul by June 2009. As FUNAI missed the deadline many times and it had accumulated a fine in excess of R\$ 2 million, the MPF decided to enforce the TAC by legal means.
- 3 These statistics were calculated using data from Prodes/INPE up to 2013.

- 4 In other words, plants the installed capacity of which is more than 1 MW but less than 30 MW and whose reservoirs do not exceed 3 km<sup>2</sup>.
- 5 ILO C.169, Art. 6 and Brazilian Constitution 1988, Art. 231
- 6 Ibid, Article 231 §2.
- 7 Ibid. Article 231 §3.
- 8 Ibid. article 176, § 1.
- 9 Valverde's initiative is an alternative to PL No. 1.610.
- 10 <https://www.socioambiental.org/pt-br/noticias-socioambientais/relator-de-mineracao-em-terra-indigena-vai-reapresentar-parecer-e-diz-que-consulta-ja-foi-feita>.

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## PARAGUAY

There are approximately 112,848 indigenous people living in Paraguay, belonging to 19 peoples from five different linguistic families: Guaraní (Aché, Avá Guaraní, Mbya, Pai Tavytera, Guaraní Ñandeva, Guaraní Occidental), Maskoy (Toba Maskoy, Enlhet Norte, Enxet Sur, Sanapaná, Angaité, Guaná), Mataco Mataguayo (Nivaclé, Maká, Manjui), Zamuco (Ayoréo, Yvytoso, Tomáraho) and Guaicurú (Qom).<sup>1</sup> According to preliminary data from the 2012 National Census of Indigenous Population and Housing, published in 2013, the Oriental region is home to the highest proportion of indigenous peoples (52.3%) while the Chaco region has the greatest diversity of peoples. They form, in all, 531 communities and 241 villages.

Although the indigenous peoples of Paraguay represent a great diversity and cultural wealth for the country, they are the victims of systematic and structural discrimination on the part of both state and non-indigenous society. In this regard, they are the poorest, most excluded and most marginalised sector of the country's population.<sup>2</sup>

In this context, all indigenous rights – civil, cultural, economic, social and political – are constantly violated and neglected. This situation is due, primarily, to the invasion, destruction and dispossession of indigenous peoples' traditional and ancestral territories, where they live and which are deeply connected to their worldview, survival and cultural practices.

Paraguay has ratified the main international human rights instruments such as ILO Convention No. 169 (Law 234/93). However, the state is mainstreaming, interpreting and applying these instruments inadequately, if at all, meaning that the fundamental rights of indigenous peoples are constantly being violated.

In political and social terms, the Paraguayan state continues to view indigenous peoples as irrelevant to social progress, ignoring them yet again in its public policies and limiting its obligations to generic welfare and poverty containment plans, with a regressive land restitution policy that has no obvious budget or prior-



ity. To this must be added its delays in complying with international obligations, a lack of due diligence, and delays and grey areas, all of which result in continuing frustrations and violations, painting a picture of indigenous rights in freefall.

Disasters and calamities that had been consigned to the history books are now returning, shrouded in a distinct neoliberal language and marking out a conservative and authoritarian game plan in which the country's current governors do not see the implementation of rights, either intellectually or politically, as an inherent task of the state but rather as a nuisance that prevents the development of its productive forces.

This sombre outlook for indigenous rights is now also marked by a hostility, sometimes sophisticated but usually basic, instinctive and heavy-handed, in which their lands and natural resources are being seriously threatened by capitalist profiteering on the part of both locals and foreigners, all this set against a backdrop of widespread recession.

### **From developmental lag to significant progress— the indigenous health law**

One of the few positive elements to come out of 2015 has to be Law No. 5469/2015 “On the Health of Indigenous Peoples”,<sup>1</sup> which was widely welcomed as a significant step in the right direction, particularly in terms of creating the National Department for Indigenous Peoples’ Health, which overcomes the implementation problems caused by the abolition of the General Department for Indigenous Health. This latter department was created in 2008 but was unjustifiably abolished following the resignation of President Fernando Lugo. Another important aspect to be noted in this law is the creation of an Indigenous Peoples’ Health Council, aimed at ensuring indigenous participation in the public management of health services, which will thus hopefully be in line with the reality of the communities throughout the country.

How the law will be implemented and how much funding it will be allocated remain to be seen but, for the moment, this legal framework marks an auspicious occasion.

### **Legislative debates**

Undoubtedly the most notable aspect in this regard was the draft law that seeks to criminalise the “leasing” of indigenous lands and the preliminary bill creating the National Secretariat for Indigenous Peoples.<sup>2</sup>

The draft law, which is currently with the Senate, is considered largely insufficient to resolve a pernicious problem that requires a whole raft of actions aimed at overcoming the communities’ state of need given that it is overwhelmingly poverty and extreme poverty that forces them to sell their holdings to soya and cattle farmers.

The debate is not yet over in this regard but the failure to fully consult with all the communities affected is jeopardising its continuity, just as the lack of attention to the draft law's technical and conceptual issues is compromising a continuation of the debate in the future.

As regards the preliminary bill, while it is based on the idea of prioritising an institutional framework that will address indigenous issues—something demanded by a number of indigenous organisations—through the creation of a ministerial-level department, in substance it does not suggest or propose much more than this, as it does not envisage further powers or resources with which to implement rights.

It will be possible to give this initiative (produced by the Indigenous Peoples' Commission of the Chamber of Deputies) more in-depth consideration once it becomes a draft law and there is a more concrete document to analyse. Meanwhile, it is worth noting here the need for specific mechanisms that will ensure that all organisations and communities affected by this debate are consulted and able to participate. It is important to ensure that their right to participation is not overlooked in all these initiatives, as it seems it might be.

### **The budget and its lack of implementation, an unwelcome indicator**

The draft bill of law on the General Budget of the Nation for 2016, submitted by the government, establishes cuts of more than 50% in the funding allocated to the budget for land,<sup>3</sup> which has to cover payments for purchases and compensation resulting from the acquisition or expropriation of properties to be returned to the indigenous communities.

To this must be added the information that, during the year, i.e., the 2015 tax year, the Paraguayan Indigenous Institute (INDI) did not spend one dollar from this budget heading,<sup>4</sup> a contradictory situation if we consider the state's growing commitments in this regard. These include the Xákmok Kásek case, which is awaiting the purchase of a 7,701 ha property in the Chaco. In line with the restitution ordered by the Inter-American Court of Human Rights, this land must be titled and handed over to the community unless Paraguay wishes to incur greater financial penalties than the monthly amounts already accumulating by virtue of the court ruling.

The case of the Sanapaná of Xákmok Kásek illustrates the almost deliberate lack of will to resolve this case, despite it having been successfully agreed be-

tween all the parties through the courts. And yet it cannot be concluded for lack of payment of the agreed price, putting the solution desired by the indigenous peoples at risk given that the problem will remain unresolved if INDI does not honour a commitment that it has publicly acknowledged.<sup>5</sup>

### **Cuyabía, not just a court case but an example of resistance and the enforceability of rights**

Having overcome a situation of impunity and brought those primarily responsible for the illegal sale of their lands to justice through the courts of the first and second instance, the Ayoreo of the Atetadiegosode subgroup, grouped together in the community of Cuyabía, are now pushing for the lands in question to be legally measured. This is a necessity given the existing disputes with neighbouring livestock companies that are extending their boundaries onto indigenous land<sup>6</sup> and claiming dubious titles in an area of the country into which cattle farming is seeking to expand at all costs.

It is no secret that the wheels of bureaucracy and justice turn very slowly in relation to people's rights and so, at the same time as demanding the proper implementation of measurement proceedings—a process likely to take so long it will affect the communities' legal security and jeopardise a prompt solution to the territorial dispute—the Ayoreo communities have also decided to put up their own fierce struggle against the grabbing of their lands.

One example of how the community is directly acting to defend its territory, environment and natural resources was the seizure and holding of a bulldozer for several days, caught in the act of tearing up land in an area occupied by the Ayoreo and forming part of their ancestral domain, on property subject to the above stated legal measurement proceedings.

As a result of this legitimate action (given that it was to ensure the protection of the community itself within its traditional living space), criminal charges were pressed against the Cuyabía leader. In light of the events, these should have been dismissed by the Public Prosecutor but, instead of proposing precautionary safeguarding measures, the staff of this office preferred to turn a blind eye to the tearing up of forests, thus exacerbating the damage done to the Ayoreo's heritage.

Furthermore, the generalised harassment<sup>7</sup> noted over the period of this report demonstrates the sensitive nature of this conflict, and growing tensions in this

regard mean this is a central issue that the state needs to respond to by immediately implementing safeguarding measures for the community until the legal and administrative procedures have reached their conclusion.

The inappropriate involvement of state agents, such as that of a soldier and members of the national police who, with neither court order nor judicial warrant, accompanied people from the cattle companies into the indigenous settlement when the bulldozer was seized, bears witness to the institutional weaknesses that exist and the way large business interests in rural areas use these officials for their own purposes.

### **Precautionary measure of the IACHR in the Totobiegosode case**

Meanwhile, the Jaguareté Porá S.A. Company is continuing to log<sup>8</sup> apparently without anyone being able to stop them, leaving the Ayoreo Totobiegosode community defenceless given the lack of protection of their living space. This is also giving rise to the possibility of unwanted contact with members of their people living in isolation. In addition, the Itá Poĩ S.A. Company has also appeared on the scene, grabbing and fencing off a part of the lands already titled to these people,<sup>9</sup> claiming rights over it with a title that has to be false but without, at the time of writing, any legal action being taken to correct this situation and protect the victims from this new attack which will, in itself, dramatically affect the lives of these people who are in a situation of initial contact.

Against this backdrop, there is a small beacon of hope in that the Inter-American Commission on Human Rights already ruled on this critical situation, some months ago, requiring the state to adopt precautionary measures to protect the Ayoreo Totobiegosode from the indiscriminate deforestation of their territory.<sup>10</sup>

### **Second Universal Periodic Review of Paraguay**

Paraguay underwent its second Universal Periodic Review on 20 January 2016. For this, indigenous organisations and allied civil society organisations, grouped together in the Working Group on the Rights of Paraguay's Indigenous Peoples, submitted an alternative report on the main issues of concern regarding indigenous peoples' rights, some of them already mentioned in this report.

Of the recommendations made to the state, a number of institutional issues were noteworthy: the strengthening of INDI, the adoption of mechanisms on free, prior and informed consultation, and on indigenous participation. The appropriate and full implementation of the judgments of the Inter-American Court of Human Rights along with an exhortation to Paraguay to adopt a law against all forms of discrimination formed part of a wider set of recommendations made by the Human Rights Council following the second UPR.<sup>11</sup>

### **Monitoring of non-compliance with judgments**

On 24 June,<sup>12</sup> the Inter-American Court expressed its concern by passing a resolution regarding Paraguay's failure to comply with its three judgments in indigenous cases, thus opening the procedure for actions that could in the future lead to appointment of judges in the country to whom the court will delegate oversight of the three rulings.

One issue of particular concern was that of the Enxet community of Yakye Axa, which continues to be unable to move onto its lands for lack of any road infrastructure. In addition, the lack of completion of the expropriation for Sawhoyamaya is another issue of concern, given the legal confusion that has been stirred up by the two expropriated companies with regard to payment of the compensation.

The Inter-American Court also established that the Paraguayan state had now been in arrears since September 2014, and that it would need to make a back payment of US\$10,000 to the indigenous Xákmok Kásek community for failure to return their lands. This is an unparalleled penalty given that there were no similar fines in the previous Yakye Axa and Sawhoyamaya cases.

### **Abandonment, forced displacement and urban migration**

In Canindejú department there are frequent problems with duplicate property titles. This situation is once more affecting an indigenous community, this time Bajada Guasú. Their lands have been grabbed on the basis of most likely false documents,<sup>13</sup> given that the Avá Guaraní hold a communal title to the property. In this case, there are nearly 3,000 hectares at stake, inhabited by some 84 families. Faced with the state authorities' lack of enthusiasm to do anything, this community's indigenous authority is taking defence of its environment into its own hands,

preventing access to all external people until INDI and the judicial authorities order measures to safeguard and protect the community's lands and members, something which - at the time of writing - has not yet happened. ○

## Notes and references

- 1 *Official Gazette*. Law No. 5469/2015 Available at: <http://www.mspbs.gov.py/v3/wp-content/uploads/2015/11/LEY-5469-TEMA-SALUD-INDIGENA.pdf>
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- 3 *Abc Color* (29/09/2015) Available at: <http://www.abc.com.py/nacionales/gobierno-paraguay-elimina-casi-la-mitad-del-presupuesto-dedicado-a-indigenas-1412450.html>
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- 5 Instituto Paraguayo del Indígena. *Xákmok Kásek, ya todo está hecho, sólo falta pagar por las tierras*. Paraguay (INDI) Available at: <http://www.indi.gov.py/articulo/367-xakmok-kasek-ya-todo-esta-hecho-solo-falta-pagar-por-las-tierras.html>
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- 10 Cf. <http://www.oas.org/es/cidh/decisiones/pdf/2016/MC54-13-Es.pdf>
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- 12 See IACHR Court Resolution of 24 June 2015. Cases of the indigenous communities of Yakye Axa, Sawhoyamaya and Xákmok Kásek vs. Paraguay. Oversight of compliance with judgment. Reparations relating to the identification, handover and titling of traditional lands, available at: [http://www.corteidh.or.cr/docs/supervisiones/yakie\\_24\\_06\\_15.pdf](http://www.corteidh.or.cr/docs/supervisiones/yakie_24_06_15.pdf)
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## ARGENTINA

Argentina is a federal state comprising 23 provinces with a total population of over 40 million. The results of the Additional Survey on Indigenous Populations (2004-5), published by the National Institute for Statistics and Census, gives a total of 600,329 people who recognise themselves as descending from or belonging to an indigenous people,<sup>1</sup> while the latest national census from 2010 include a total of 955,032 persons self-identifying as descending from or belonging to an indigenous people.<sup>2</sup> There are today 35 distinct indigenous peoples officially recognized.

Legally, the indigenous peoples have specific constitutional rights at federal level and also in a number of provincial states. ILO Convention No. 169 and other universal human rights instruments such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are also in force, with constitutional status. Argentina voted in favour of the adoption of the UN Declaration of the Rights of Indigenous Peoples in 2007.

National elections were held in the country during 2015, bringing the businessman Mauricio Macri to the presidency. A week after taking office, the new president met with representatives of the indigenous peoples<sup>3</sup> and announced that indigenous issues would form a priority on the state agenda. This created hope with regard to demands that had remained unfulfilled by the previous government, particularly in relation to the Qom people. Previously, during his campaign, he visited the camp that representatives of the Qom community, La Primavera, had set up in February 2015 in the centre of Buenos Aires to demand enforcement of their rights. He discussed their demands with them and gave them undertakings should he be elected.



### **Expansion of legal protection to native peoples' right to territory**

In November, the Supreme Court of Justice of the Nation (CSJN) called a halt to the eviction of the “Las Haytekas” Mapuche community of Río Negro province, thus revoking a ruling of the provincial court that had ordered the community to move off the land as it was claimed by a private individual. In this judgment, the

highest court applied Law 26160 for the first time,<sup>5</sup> using ILO Convention No. 169's concept of "territory" and thus marking a before and an after in the application of indigenous rights in Argentina.<sup>6</sup>

In its judgment, the CSJN set clear parameters to the scope of Law 26160, protecting the indigenous communities from being evicted from their ancestral territories and ordering a legal/technical/cadastral survey of the communities' territories. In addition, the judgment established that the territorial survey already concluded in some of the country's provinces was proof of indigenous traditional occupation. In the resolution, the court emphasised that Law 26160 was *aimed at preventing further evictions in order to respect and guarantee the constitutional rights of indigenous peoples and at complying with the international human rights commitments taken by the state*. The resolution also took account of the jurisprudence of the Inter-American Court of Human Rights: *until the demarcation and titling of indigenous lands has taken place, states must refrain from acts that could cause agents of the state, or third parties acting with their knowledge or agreement, to affect the existence, value, use or enjoyment of the assets located within the geographic area in which the indigenous community members live and carry out their activities*. In addition, on the basis of ILO Convention No. 169, it stated that the native peoples "*must not be moved from the lands they occupy*". It further indicated that, regardless of whether the community's use of the territory to which it has traditionally had access was prior or subsequent to the law's approval, "*the state is obliged to respect*" that law. This was because the provincial courts had submitted that Law 26160 was not applicable to the case since the occupation was subsequent to its approval.

### **Lack of state response to the demands of the Qom<sup>7</sup>**

The Qom people, living in Formosa province, have been the victim of violations of their constitutional rights for more than a decade. This was why, in 2011, the Inter-American Commission on Human Rights granted precautionary measures in favour of La Primavera community. The international body called on the Argentine state to take the necessary action to guarantee the lives and physical integrity of the members of this community, which is fighting for its lands. And yet, despite the agreements signed, there has still been no change in the conditions these agreements were intended to improve.<sup>8</sup>

In February 2015, members of the Qom community set up camp in the centre of Buenos Aires to demand the return of their ancestral territories. They were calling for enforcement of their human and constitutional rights as native peoples, respect for their cultural identity, access to rights not guaranteed them, such as health and education, and also justice for Roberto López, who was murdered during the repression of November 2010.

A few days later, more than 30 Qom communities from Formosa joined them and unsuccessfully asked to be seen by the president at that time, Cristina Kirchner. They also led two marches to the Supreme Court, the Congress of the Republic and the Presidential Palace and met on a number of occasions with Martín Fresneda, then Human Rights Minister, obtaining promises that he subsequently failed to fulfil.<sup>9</sup>

At the start of November 2015, in the midst of the presidential election campaign, one of the candidates, Mauricio Macri, visited the camp. He signed an agreement in which he undertook to address the indigenous demands if elected, although the Qom leader, Félix Díaz, clarified that they were not supporting any particular candidate.<sup>10</sup>

In a press conference held in the Qom camp, Claudio Avruj, who was to become the new Human Rights Minister, announced that INAI (the National Institute for Indigenous Affairs) would be moved from the Ministry for Social Development to the Ministry for Human Rights, and maintained that “the indigenous peoples must not be the object of welfare hand-outs or co-optation of any kind”.<sup>11</sup> This is no guarantee that the demands and rights of Argentina’s indigenous peoples will be fulfilled, however, particularly given that only a few days after the new government took office, a policy was established that was completely opposed to the interests of workers and the most vulnerable sectors of society, and benefited only the large multinationals and land-owning oligarchy, sectors that have historically undermined the interests of the indigenous peoples.

On 6 December 2015, given the promises made by the president elect, the indigenous leaders held a press conference to announce the dismantling of the camp, which had lasted ten months and had not resolved any of their problems. However, their leader Félix Díaz stated that “if they don’t comply, we will return”.<sup>12</sup>

Although the government has shown an interest in meeting the indigenous peoples’ demands, there has thus far been no concrete response or action in this regard. And, although there were initially rumours that a leader from the Qom

community of La Primavera, Félix Díaz, would be made president of INAI, this did not happen and Raúl Ruiz Díaz was appointed to head up this state body.<sup>13</sup>

### **A chink in the criminalisation of the indigenous struggle: peoples' participation in the justice system<sup>14</sup>**

The Winkul Newen community has been resisting the advance of oil companies onto their ancestral territory for more than a decade. Because of the different actions of resistance they have undertaken, the community has suffered numerous evictions, illegal night-time inspections, and the constant militarisation of their cultural and pastoral spaces. The courts have been just one more way of teaching, threatening and intimidating members and leaders of the indigenous communities. There are currently 11 cases outstanding against the community, demonstrating the persecution and criminalisation suffered by its inhabitants.

The trial of Relmu Ñamku, indigenous leader of the Mapuche community of Winkul Newen, took place in October and November 2015. It was the first case in Latin America to use an intercultural jury (six of its 12 members were Mapuche). The Neuquén traditional system establishes that, for sentences of 15 years or more, trial by jury is a necessity. The members were selected by both parties and the judge, Raúl Aufranc. The trial was also conducted with simultaneous interpretation into *mapuzungun* (the Mapuche language). Despite this progress, the Central Zonal Council (of the Neuquén Mapuche Confederation) still submitted an appeal for unconstitutionality because the right to prior consultation was not fulfilled in the selection of jury members. This appeal was not resolved prior to commencement of the trial, however.

Relmu Ñamku was prosecuted in Zapala along with her partner, Martín Velázquez Maliqueo, and brother Mauricio Rain, for resisting an attempted eviction in December 2012 as requested by the Apache Corporation oil company (now part of the national YPF company). The company had reached an agreement with the community, via acts signed before a public notary, to obtain free access to the territory provided they drew up an environmental clean-up plan. The company never produced any such plan, however, and the community therefore refused to allow them entry onto their territory. On 28 December 2012, an officer of the court, Verónica Pelayes, visited the Winkul Newen community with police officers, employees of the oil company and an excavator. It was the last working day before

the judicial recess and the judge, Ivonne San Martín, had ordered the community to allow the oil company to enter. The day ended with Pelayes injured (broken nose) and a complaint made against Ñamku, Martín Velázquez Maliqueo and Mauricio Rain.

Three years later, the three leaders were tried in front of an intercultural jury. Relmu was accused of “attempted homicide” of the court official, a charge which carries a possible 15-year prison sentence (the harshest sentence ever demanded for an indigenous person in the context of a land conflict).<sup>15</sup>

Relmu Ñanku testified before a full courthouse (a huge 15-metre-wide white marquee), including a large group of indigenous leaders and activists from different social organisations. During her account, she told of the conflict with the companies: Winkul Newen has oil reserves in its subsoil and this is being extracted by multinational companies while the local people do not even have access to gas, electricity or water. If the community complained, the oil company (Apache) would cut off the water it provided them. According to Relmu’s statement, “...the oil companies always do what they want and the state lets them get away with it. It is a very unequal relationship but the Mapuche are fighting because we want to go on living”. She said that it was the managers of the oil company, the governor and his ministers, as well as the court officials, who should be in the dock. She claimed that they were targeting her because she was a poor, Mapuche woman.

The indigenous legal specialist, Silvina Ramírez, stated that the territorial rights of the Mapuche were being violated in this case, along with the communities’ right of consultation, and specified that the national and provincial authorities were responsible because they had consistently failed to implement the law. During the trial, it emerged that they had been legitimately defending the Mapuche territory from a systematic action taken against them by the company and state.

The jury finally reached a verdict of “not guilty” for the charge of “attempted homicide” but found Ñamku guilty of “bodily harm”, which carries a lesser sentence (the community’s lawyers have appealed).

At the end of the trial, Relmu Ñanku stated that justice had been done: “... from the very beginning, we said that it was an unjust case, and we denounced the complicity of some sectors of the judicial system and the oil companies”. With tears in her eyes, she called for the native peoples to continue to work together. “It is a triumph for the poor people, who are struggling; the Mapuche people and social organisations have emerged stronger. We will defend each metre of territory more than ever. We will take not one step backwards”.<sup>16</sup>

## **Failure to comply with the right to free, prior and informed consultation**

The indigenous communities of the Guayatayoc and Salinas Grandes basin, in Jujuy province, have been demanding respect for their territorial rights and the right to free prior and informed consultation with regard to the Dakar Rally.

This competition has been held in Argentina for the past five years now, running through indigenous territories. With a further event in 2015, the provincial government again found a way of avoiding prior consultation. The event was made known by representatives of the Ministry of Sport, Tourism and Rights only days before it was due to be held in Casabindo, and even then with the sole aim of informing people that it would pass over ancestral territories, i.e., without implementing any of the requirements for prior consultation.<sup>17</sup>

In the responses to its requests for reports during 2015, the National Ombudsman observed that none of these referred to the possible impact of the race on the life and/or rights of the indigenous communities living along its path, and nor did they mention anything about indigenous prior consultation.<sup>18</sup> Because of this lack of specific answers, and given its involvement in organising the event, the Federal Environmental Council (COFEMA) was subsequently urged to include compliance with the right to free, prior and informed consultation as an essential requirement when establishing the route for the 2016 and any subsequent races.

## **Natural resources at risk from mineral exploration on community territory**

The Minera Aguilar company from Jujuy province has submitted exploration applications for the territory of the indigenous communities of the Guayatayoc and Salinas Grandes basin, on the western side of the El Aguilar mountains. This mining company has been extracting lead, silver, zinc and cadmium in Jujuy for more than 80 years. It was in this context that the indigenous organisation requested a precautionary measure from the provincial justice system at the end of 2014, given the depletion and drying up of the Grande, Abra-laite, Santa Ana and Agua de Castilla rivers, which rise in the mountain peaks. This territory was previously a fertile valley but it is now beleaguered by drought. The application for

precautionary measures refers to the river sources and to the water reserves contained in the glaciers and periglacial zone, all of which are vital for maintaining the ecosystem of the Salinas Grandes basin and Guayatayoc Lake, and also to the water sources in the province's valleys. Félix Vedia, a community member from Abralaite, explained the reason for requesting the precautionary measure: "We know we have water reserves in the high mountains and we want to care for and protect them. We have requested this precautionary measure so that the government and company listen to us, and to ensure that, in some way, they take our rights as native peoples into consideration."

The precautionary measure calls for respect for and implementation of National Law 26639<sup>19</sup> and the system of minimum budgets for the preservation of the glaciers and pre-glacial environment. In addition, it demands enforcement of the provincial law on glacier protection and the national law on environmental protection from mining activity. Initially, the government and the company denied the existence of glaciers in the area of the mining requests. However, while the hearing for the requested precautionary measure was taking place, the state changed its stance and recognised their existence, while the company sought to justify its action arguing that it had presented timely and appropriate environmental reports.<sup>20</sup>

With this recognition by the provincial authorities, the communities are hopeful of a court ruling that will require implementation of the environmental laws for protecting water reserves and, with this, a halt to all mining activity within the community's territory.

## **The struggle for territory and criminalisation of the indigenous protest in Tucumán**

The Union of Diaguita Peoples of Tucumán (*Unión de los Pueblos Diaguitas de Tucumán* / UPNDT) has continued to demand the titling of its ancestral territories. There has thus far been no political will at the provincial level to progress towards granting and recognising the community's ownership of property, not even of state lands (which represent some 5% of the total surveyed). Now, with the change in government, the provincial Department of Human Rights has initiated a process of returning state lands by means of a formal working committee organised jointly with the UPNDT.

Meanwhile, the gap between current legislation on indigenous rights and its enforcement persists. The judiciary continue to give damaging responses, despite the various training and awareness raising campaigns<sup>21</sup> that were held during 2015 on the situation of the province's native peoples and their rights.

This can be seen in the fact that, of the 20 legal cases brought by the human rights organisation Andhes in three communities of the Diaguita people, a favourable ruling was obtained in only one of them, in 2012 (in application of Law 26160) and even this was overruled in 2014 on appeal. In other words, there has to date been no effective response from the provincial judges. Most of the cases brought by Andhes are in response to complaints from the chief of the Solco Yampa indigenous community with regard to third parties who are logging on the community's territory,<sup>22</sup> often without the corresponding provincial authorisation and even having been fined on more than one occasion. Despite this, no effective response has been forthcoming.

There is, moreover, a pattern of court responses that is harmful to the communities when they are the victims of human rights violations (as was the case in 15 of the 20 cases noted). These cases remain at the stage of instruction or face eternal and inexplicable delays within the justice system,<sup>23</sup> despite demands from the communities and their lawyers to implement measures in accordance with standards on the protection of indigenous rights. Paradoxically, when the complaints are against the communities (particularly their leaders), the cases are processed far more rapidly. Such was the case of the arrest of the head of India Quilmes community in June 2015 as a consequence of the conflicts surrounding management of their sacred site known as the "Quilnes Ruin"—currently appropriated for its economic exploitation—when this leader attempted to recover it. It became clear yet again that the provincial state was incapable of understanding indigenous communities' conflicts, because this leader's arrest exposed the community to a lack of protection during his almost four-month absence, in addition to which his arrest seriously affected his health and endangered his life. The conflict that triggered his arrest occurred in the context of the struggle for their rights to the community territory of La Ciudad Sagrada de Quilmes. Recovered in 2007, it had since then been run by the community following vigorous complaints made to the state, which had awarded the concession to a businessman. Between 2013 and 2014 it was forcibly taken over on two occasions by a group from outside the community. The community is currently unable to use or manage its sacred site,

having been victim to more than a decade of violations of their right to communal territory.<sup>24</sup>

Another conflict linked to the territorial rights of the Diaguita people occurred in the Valle de Tafí community. In July 2015, the Malvinas community suffered a violent attempt to evict them by the businessmen Bruno and Roberto Petech (managing partners of the “Lules” cement company). This was the most violent of what had been a series of attacks. The businessmen turned up at the community’s territory with armed men, with the aim of forcibly evicting the families living there. They opened fire on community members despite the presence of police officers, resulting in three indigenous people being injured, two of them with gun wounds and one with a fractured arm.

The Petech brothers were caught after seven days on the run but, despite all the evidence,<sup>25</sup> released immediately. This case is, furthermore, currently at a standstill within the Tucumán justice system, resulting in an atmosphere of impunity for landowners and businessmen who have therefore decided to encroach onto the territory of the province’s indigenous communities bearing arms and with total impunity.

Behind this territorial conflict lies a great interest in expanding the real estate business onto the territory of the indigenous community of Valle de Tafí, a situation that is exacerbating the number and severity of recent clashes. “Some businessmen are hiring these people as an armed wing to do their dirty work, remove the communities from their territories and then sell them,” stated Alejandro Álvarez, grassroots delegate from the Malvinas community.<sup>26</sup>

In addition, the indigenous community of Nogalito, inhabited by the Lule people, is continuing its efforts to negotiate improvements in the serious human rights situation for which the Inter-American Commission granted precautionary measures in its favour in December 2012. The mandate urged the state to take effective action to protect the life and integrity of the community and its members. No progress was made in this regard throughout 2015. Despite the Argentine state’s commitment, made in March 2014, to formalise a working group to work with the community to improve the conditions that gave rise to the precautionary measure, nothing has thus far happened, highlighting the state’s failure to effectively protect the rights of this community’s members. With the handover to new authorities in February 2016, the new Minister for Human Rights, Claudio Avruj, visited the province and held a meeting with the community’s representative. During this

visit he renewed the state's commitment<sup>27</sup> to resolve the human rights violations being suffered by the community. ○

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- 1 Instituto Nacional de Estadística y Censos (INDEC), 2004: *Resultados de la Encuesta Complementaria de Pueblos Indígenas—ECPI—* surveyed in 2004. [http://www.indec.mecon.ar/web-censo/ECPI/index\\_ecpi.asp](http://www.indec.mecon.ar/web-censo/ECPI/index_ecpi.asp)
- 2 See the results of the 2010 National population survey (in Spanish), INDEC: *Censo Nacional de población, hogares y viviendas 2010*. Available from: [http://www.indec.mecon.ar/nivel4\\_default.asp?id\\_tema\\_1=2&id\\_tema\\_2=21&id\\_tema\\_3=99](http://www.indec.mecon.ar/nivel4_default.asp?id_tema_1=2&id_tema_2=21&id_tema_3=99)
- 3 A delegation composed of representatives of 30 peoples from different provinces headed by the Qom leader, Félix Díaz.
- 4 Law that declares an emergency in terms of possession and ownership of lands traditionally occupied by the country's native indigenous communities, now extended until November 2017 by means of Law 26894.
- 5 Law that declares an emergency in terms of possession and ownership of lands traditionally occupied by the country's native indigenous communities, now extended until November 2017 by means of Law 26894.
- 6 Aranda, D. "Un antes y un después en la aplicación de los derechos de los pueblos indígenas", TERRITORIOS: <http://www.darioaranda.com.ar/2015/12/un-antes-y-un-despues-en-la-aplicacion-del-derecho-de-los-pueblos-indigenas/>
- 7 Aranda, D. <http://www.pagina12.com.ar/diario/sociedad/3-276855-2015-07-11.html>
- 8 The request for precautionary measures claims that members of the security forces perpetrated a series of violent acts against community members, for which reason the leader Félix Díaz and his family had to move to another area.
- 9 Aranda, D. <http://www.pagina12.com.ar/diario/sociedad/3-276855-2015-07-11.html>
- 10 Díaz highlighted as he has done before on numerous occasions "Our struggle has nothing to do with political parties. We want enforcement of our rights". He remarked that human rights were not something that should have to be begged for; they should be enforced, and he clarified that they would not be grateful for "a little farm, a well, some works, because that was what the authorities were supposed to do". He also stated that the outgoing government "has done good things but has a debt to indigenous peoples, it creates rights but they don't reach the territories." He called on all parties to respect the culture and decisions of the indigenous peoples, called for indigenous policies to be handled by the communities themselves and claimed "enough death from hunger, illness and land evictions". (05.12.2016) at
- 11 A commitment was made to resolve the communities' demands. He talked of "dialogue, coexistence and respect". He mentioned the "20-30 agenda", which would involve "ending hunger, strengthening the right to identity, access to justice and health". He specified, among other things, that coordination would be encouraged with other ministries, provincial and municipal governments. See Aranda, D., "Si no cumplen, volveremos a acampar", (op.cit.)
- 12 Ibid. e.
- 13 <http://agencia.farco.org.ar/noticias/felix-diaz-dijo-que-macri-no-cumplio-lo-prometido-y-por-esomovilizaran-para-reclamarle/>

- 14 Source: Amnesty International Argentine Section: Diario del Juicio Relmu Ñamku, by Darío Aranda. <http://www.amnistia.org.ar/reلمu>
- 15 The trial began on 26 October, lasted eight days and involved more than 15 witnesses, including Verónica Pelayes, whose statement recognised that she was pressured by her superior in the judicial authority and also by the oil company to go on the last working day of the year and before the court holiday to the Winkul Newen community. She also stated that the Apache oil company's lawyer, Mariano Brillo, was pushing throughout the whole operation for the company's vehicles to be able to enter the Mapuche territory.
- 16 Source: Amnesty International Argentine Section: Diario del Juicio Relmu Ñamku, by Darío Aranda. <http://www.amnistia.org.ar/reلمu>
- 17 See press release of the working group of 33 native communities and peoples of the Guayatatayoc and Salinas Grandes basin, Jujuy: <https://prensajujuy.com/2014/12/30/dakar-2015-33-comunidades-aborigenes-de-jujuy-exigen-consulta-previa-y-se-declaran-en-alerta-y-movilizacion/>
- 18 The National Ombudsman issued notes to the national Ministry of Tourism and provincial Department of Human Rights of Jujuy province to get them to guarantee the rights of the indigenous peoples affected by the Dakar Rally. No response was ever received, however, and the competition went ahead without any consultation in line with current standards. The National Ombudsman participated in responses to the different complaints received during 2015, writing requests for reports to INAI, the national Ministry of Tourism - as apparent organiser and sponsor of the competition nationally - and the national Ministry for the Environment, whose Department of Native Peoples and Natural Resources is, among other things, responsible for establishing channels of communication with the native peoples in order to address environmental problems related to the territory in which they live. From these reports it can be seen that of the 19 requirements to be fulfilled for the submission of the project evaluation, none referred to the rights of native peoples.
- 19 The aim of this law is to protect the glacial environment, as a reserve of water resources; mining activity is therefore prohibited in these environments.
- 20 It should be noted that the Supreme Court of Justice of the Nation rejected a case aimed at suspending the effectiveness of the glacier law in Jujuy, a case submitted by the Mining Chamber of that province and which repealed a precautionary measure pronounced by the Federal Court No. 2 of Jujuy. (CSJ 21/2014, Case C.21.L "Jujuy Mining Chamber and others (Jujuy province) vs the National State re. a declaratory action challenging constitutionality").
- 21 See: <https://www.youtube.com/watch?v=HRGuEmQMwFE>,  
<https://www.youtube.com/watch?v=Lr9EAQM0Ugc>
- 22 <http://www.lagaceta.com.ar/nota/655610/medio-ambiente/protesta-sur-tala-indiscriminada.html>
- 23 Javier Chocobar, a member of the indigenous community of Chuschagasta, was murdered on 12 October 2009 while peacefully defending his community's territory. The case still has no start date for the trial, given the delays in the defence and in the justice courts generally. The defendants, who were at the place of the crime fully armed and claiming ownership, killed Chocobar in cold blood and wounded other community members, including the current chief, Andrés Mamaní, who is still suffering the consequences of this action. A video produced by one of the aggressors (Darío Amín) and recovered by the community members after the events, can be seen on the web: <https://www.youtube.com/watch?v=W-rW-xzK6h3U>
- 24 14 members of the Quilmes community are awaiting a date for the trial, as a result of a series of complaints of appropriate by a group of landowners since 2008. The courts turned a deaf ear to the insistent requests of the defence lawyers framing the case within the parameters of indigenous legislation.

- 25 <http://www.lagaceta.com.ar/nota/645756/policiales/tension-tafi-valle-se-enfrentaron-tiros-disputa-terreno.html>
- 26 <http://apaprensa.com.ar/ciertos-empresarios-contratan-gente-como-bruno-petech-como-brazo-armado-para-sacar-a-las-comunidades-de-sus-territorios-y-venderlos/>
- 27 <http://comunicaciontucuman.gob.ar/2016/02/claudio-avruj-estara-en-tucuman-para-cumplir-una-extensa-agenda/>

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## CHILE

According to the Ministry of Social Development's 2013 Survey, the population that self-identifies as belonging to Chile's indigenous population, via parentage or surname, numbers 1,565,915 people. The Mapuche population accounts for 84% of the indigenous population, followed by the Aymara, Diaguita, Atacameña and Quechua who, together, make up another 15%. Other peoples represent just 1% of the total. According to these figures, the population that self-identifies as indigenous has therefore increased by 50% in the last 10 years. In fact, the 2006 national survey gave a total indigenous population of 1,060,786 but, as of 2013, that number had increased by 505,129.<sup>1</sup>

The same statistics reveal that, of the country's total indigenous population, some 74% live in urban and 26% in rural areas. This gives a total of 1,158,451 urban indigenous persons. Only the Mapuche continue to remain in rural areas in high numbers (23.8%) as other groups have largely deserted the countryside. Indigenous peoples suffer from some of the highest rates of poverty in the country. The 2013 survey shows that, while there has been a reduction in the percentage of indigenous peoples living in multidimensional poverty (income, housing, education and health) in relation to previous years, the gap between these people and the non-indigenous population remains the same. Some 31.2% of the indigenous population but only 19.3% of the non-indigenous population live in multidimensional poverty.<sup>2</sup>

**T**he human rights situation of Chile's different indigenous peoples remained critical throughout 2015, primarily as a result of conflicts over their right to their territories and natural resources. The lack of adequate implementation of ILO Convention No. 169 was a particularly contentious issue, especially the rules governing free, prior and informed consultation. Although theoretical progress has been made over the last few years in recognising indigenous peoples' right to prior consultation on administrative and legislative measures likely to affect them,

this right continues to be violated in practice. This is because state agents (ministries, the Environmental Assessment Service/SEA and so on) see consultation processes as a “mere tick-box formality” which, even if no agreement is reached, will enable the proposed action to be taken forward.

In addition, there has been a deterioration in court decisions regarding indigenous rights over the last year. Although the courts initially supported the right of consultation when investment projects were to be established on indigenous territories and cited Convention No. 169 when setting out the specific standards to be followed in this regard, this power is now held by the environmental courts, who act primarily from a technical logic (environmental regulations) rather than a fundamental rights-based approach.

In addition, the points on indigenous rights in the proposed Water Code reform (Bulletin 7543- 2012) are still pending, awaiting the Code’s submission to indigenous consultation. The proposed text is not yet public knowledge. The government feels that only those articles referring specifically to indigenous peoples need to be put out for consultation, rather than the Water Code reform as a whole. This will thus avoid the fact that the proposed water regime is likely to directly affect indigenous interests when it compromises waters located on or irrigating indigenous territories.

Another legislative initiative applicable to indigenous peoples is the draft bill of law creating the Biodiversity and Protected Areas Service (Bulletin 9,404-12). The bill in question focuses exclusively on public and private conservation, ignoring the contribution that indigenous peoples make to conservation and biodiversity in the country, as stated in the Biodiversity Convention signed by Chile, thus denying legal recognition of and support for the lands and territories these peoples conserve. It also fails to recognise the indigenous right to participate in managing the state’s protected areas, and the duty to return lands on which protected areas have been established when those lands are traditionally occupied and the areas have been created without the consent of the affected communities. Given all these issues, the indigenous peoples made a series of suggestions regarding the draft bill of law during its consideration by the Senate, and these have largely been accepted.<sup>3</sup>

## **The rights of the Mapuche people**

The situation of the Mapuche people’s human rights remained critical throughout 2015. In fact, it has become even more complex as a result of misleading signals



from the government such as the removal of the (now former) Governor<sup>4</sup> of Araucanía, the region with the largest indigenous population in the country. Francisco Huenchumilla, a Mapuche lawyer, had shown his open support for the rights of his people and had advocated the need for deep political and legal reforms in order to enforce them. Huenchumilla was replaced by Andrés Jouannet, under whose

leadership the government has prioritised a law enforcement approach to conflicts on Mapuche territory, scaling up the number of police officers and armoured cars in the region<sup>5</sup> and failing to give any political response to the Mapuche demands, which are based on rights recognised in Convention No. 169.

It is clear that President Bachelet's government has been incapable of promoting any public policies or dialogue that would enable the conflicts suffered by the Mapuche in Araucanía and neighbouring regions to be addressed, in particular in relation to logging, hydroelectric and salmon fishing companies, and has instead opted to suppress those demands.

One emblematic case is that of the Añihuerraqui Hydroelectric Power Project, located in Trancura Sector, Cautín Province, Araucanía Region. This is located in the Añihuerraqui estuary, in between the Camilo Coñoequir Lloftonekul and Camilo Coñoequir Mapuche communities who use this estuary for ceremonial and productive uses. It thus affects the rights of the territory's communities. As a result of the impact this project will have on the Mapuche communities, a process of indigenous consultation was initiated which highlighted consequences that had not been considered during the environmental procedures. The organisations involved in this consultation thus established that the hydroelectric project would significantly alter all cultural, religious and socio-economic dimensions of their lifestyle and customs. The construction and commissioning of the project would significantly modify the local production system, which is based on tourism. The final outcome of the consultation was it was not possible to mitigate, repair or compensate for the effects the project would have on the cultural and religious heritage of the Trancura territory and that no measures would therefore satisfy them. This assessment was backed up by the relevant technical bodies such as CONADI and Curarrehue municipality. Despite all this, the project was approved and thus represents a serious violation of the cultural and religious rights of the Mapuche communities.

## **The rights of Chile's Andean peoples**

The indigenous peoples living in the north of the country have, largely unsuccessfully, been demanding the demarcation and titling of their ancestral territories for decades now. During 2015, however, significant progress was made in the land claims of the Lickanantay indigenous communities of Alto Loa. In fact, in response

to the requests of the Toconce, Chiu Chiu and Lasana communities in El Loa Province, Antofagasta Region, the Ministry of Public Lands instigated five free transfers of land totalling some 45,318 ha. These will benefit 878 individuals living in three communities. The Pampa La Teca sector, comprising 35,608 ha, was returned to the Chiu Chiu community. This community also received the eastern sector of the Inca Coya Lagoon (291 ha). Lasana was also a beneficiary community, receiving lands in the Pampa Carbonatera (1,991 ha) and Los Arenales (27 ha) sectors. For their part, the Toconce community received a free transfer in the sector known as Campos de Pastoreo, comprising an area of 7,399 ha surrounded by transversal streams rising in the Andes and coming from the tributaries of the Toconce, Hojalar and Salado rivers.

In other indigenous territories in the north of the country, however, there was no progress in the demarcation and return of lands. Furthermore, studies to identify the lands ancestrally occupied by Andean communities have not been updated. There thus remains a total lack of certainty regarding indigenous territorial demands in this area.

In terms of water, three programmes have been promoted in the regions of Tarapacá and El Tamaruagal.<sup>6</sup> These programmes are based on the private logic of the Water Code, which advocates a system of individual ownership of water rights, thus supplanting the communal forms of management that have traditionally operated in the Andean communities.

There were fewer high-impact extractive projects in the Andean peoples' territories during 2015 but a number of projects have been given the green light without any consultation of the indigenous communities affected.

On 18 May 2015, the Committee of Environment Ministers decided to cancel the Environmental Certification Resolution (RCA) for the Los Pumas manganese extraction project in the Arica y Parinacota Region.<sup>7</sup> This committee found the complaints made by the community partially admissible, considering the baseline information insufficient in anthropological terms and with regard to seismic and hydrogeological risks. It stated that there was insufficient prior baseline information to rule out any possible effects on the project area's aquifers. Reports from the National Geology and Mining Service warned of the imminent danger of contaminating the aquifers and the subsequent risk to the sector's agriculture.

A different situation arose in the Paguanta prospecting project, which is a mineral prospecting programme that will open up 63 holes involving 14,000 m of drilling, the erection of 13 drilling platforms, access roads and the construction of

53 watertight pools for the decanting of drilling sludge. The project is based in the headwaters of the Quebrada de Tarapacá basin, in the region of the same name, and is affecting all communities located downstream of the prospecting sites. This project has been approved by the environmental authority without consultation of the indigenous communities affected. The only exception was Cultane community, which signed a document with the company agreeing to the project. It is important to note that the authority has refused the communities their right to consultation, in violation of a court ruling that recognised this right and called for an Environmental Impact Assessment.<sup>8</sup>

The legal actions taken by the Diaguita de los Huascoaltinos Agricultural Community (CADHA) and, in parallel, other indigenous organisations,<sup>9</sup> have managed to bring the El Morro gold and copper mining project to a halt. This is a project of Canadian Goldcorp Inc., located in the legal and ancestral territory of CADHA in Atacama Region.

The Pascua Lama project, a gold, silver and copper concentrate mining project on the border between Chile and Argentina and owned by the Canadian company, Barrick Gold Corporation, has also come to a halt, it would seem indefinitely. The project, involving an investment of USD 8,500 million, has been suspended by the company until market conditions improve. Internationally, CADHA has lodged a complaint with the Inter-American Commission on Human Rights (IACHR),<sup>10</sup> and this has been declared admissible<sup>11</sup> and is awaiting publication of the IACHR's Merits Report. It is alleged that, by giving environmental approval to the project, the Chilean state was in violation of CADHA's territorial rights and their right to free, prior and informed consultation and consent.

Lastly, it should be noted that the state has been summoned before the IACHR for discriminatory actions. The first case relates to the Chusmiza-Usmagama Aymana community,<sup>12</sup> which has suffered the confiscation of its waters without its consent and despite a court case over the very same waters being pending between the same parties. The second is the case of G.B.B.,<sup>13</sup> a woman of Aymara origin who lost her son, D.B.B., while he was shepherding in the Chilean *altiplano* and who was sentenced to 12 years in prison for abandonment of a child resulting in his death in a remote place, despite the defence team and communities contesting the ethnocentric and discriminatory judicial reasoning behind this decision. During G.B.B.'s trial, the authority's put up her daughter, C.B.B., for adoption without her consent and have, to date, refused to give her any information on her daughter's whereabouts or well-being. The possibility of signing a

friendly agreement with the state is being explored in both cases. In the case of G.B.B., negotiations are progressing well and it is hoped such an agreement may soon be signed.

## **The rights of the Rapa Nui (Easter Island)**

The Rapa Nui people are continuing to demand recognition of their territorial and political rights.<sup>14</sup>

These demands have remained unmet to date. As indicated in previous reports, 71.48% of the island's territory (which has a total area of 16,600 ha) is owned by the state and shared between the Vaitea Fund (4,597 ha) and the Rapa Nui National Park (6,913 ha). This latter is administered by the National Forestry Corporation (CONAF),<sup>15</sup> a private company aimed at conserving, increasing, managing and using the country's forest resources and protected areas. As for the Vaitea Fund, the body that was previously administering these lands, the Easter Island Agricultural and Services Company Limited (SASIPA), has dropped out leaving them without any administration since 2013.

With regard to the Rapa Nui National Park (PNRN), the National Forestry Corporation (CONAF) this year proposed a co-administration model and submitted the proposal for indigenous consultation. Both the administrative measure (the co-administration of the Park) and the consultation process were agreed with the Easter Island Development Commission (CODEIPA) but not with the Rapa Nui's representative organisations. CODEIPA is a state body created by Indigenous Law 19,253, and comprising eight state representatives and seven elected Rapa Nui representatives. It is therefore not one of the Rapa Nui's own organisations. The Rapa Nui declared that CONAF's proposal was unsatisfactory as it did not guarantee their territorial rights and, following this, some organisations led by the Rapa Nui Parliament took over the administrative offices of the PNRN. The authority pursued the occupants for criminal liability and, through CONAF, submitted criminal complaints against seven leaders of the Maori Rapa Nui Organisation and the Rapa Nui Parliament. These organisations, criminalised by the state through CONAF, were thus excluded from the consultation.<sup>16</sup> Only 319 people out of an electoral register of 2,800 voted in the consultation, with 264 in favour of co-administration. Given the clear illegitimacy of the process, CODEIPA's elected

representatives refused to be involved and declared the consultation null and void.

In terms of political rights, a migration policy was established during 2015 aimed at limiting the island's burgeoning population, safeguarding the ecosystem, and ensuring the social, cultural and economic sustainability of the Rapa Nui. Government action was focused on drafting the migration policy and its content was established with the agreement of the Easter Island Development Commission. The bill of law was submitted for indigenous consultation in January 2016, and around 1,400 people voted in the process, approving the bill presented by government. This will now continue its passage through the legislature.

### **The Trans-Pacific Partnership and indigenous rights**

Last October, along with 11 other states, Chile concluded the negotiations for the Trans-Pacific Partnership (TPP). This is a commercial agreement that has been negotiated in secret, without providing any information either to the general public or the indigenous peoples. Comprising more than 6,000 pages, its contents affect indigenous peoples' rights in many ways. Some of the most critical content for indigenous rights is to be found in the chapter on intellectual property, which fails to protect the traditional knowledge associated with genetic resources. Also of concern is the chapter on investment, which establishes an obligation on states to grant investors "fair and equitable treatment, and full protection and security", as well as a commitment not to indiscriminately expropriate or nationalise their investments, either directly or indirectly unless for a public purpose, and then only on payment of effective compensation. When determining whether a state action is indirect expropriation or not, the TPP will consider its nature, its economic impact, and its interference with "unequivocal and reasonable investment expectations", thus leaving the door open to investors to dispute laws or public policies favouring human or indigenous rights through the arbitral courts recognised in the TPP. The numerous FTAs that Chile has signed with more than 60 states over the last few decades have had the direct result of an increase in extractive and productive investments—mining in the north, logging and salmon farming in the south, energy and infrastructure projects throughout the country—on indigenous lands and territories. This has been achieved both by attracting investment from companies domiciled in countries with which Chile has signed

trade agreements and through an opening up of markets for national companies. This trade agreement should therefore be put out to consultation with the indigenous peoples, something that the government has not yet announced. ○

## Notes and references

- 1 Ministry of Social Development, CASEN 2013 Pueblos Indígenas, Síntesis de Resultados, March 2015. Available at: [http://observatorio.ministeriodesarrollosocial.gob.cl/documentos/Casen2013\\_Pueblos\\_Indigenas\\_13mar15\\_publicacion.pdf](http://observatorio.ministeriodesarrollosocial.gob.cl/documentos/Casen2013_Pueblos_Indigenas_13mar15_publicacion.pdf)
- 2 Ibid.
- 3 See actual text of the bill, with indigenous peoples' and environmental organisations' suggestions at: [https://www.camara.cl/pley/pley\\_detalle.aspx?prmID=9819&prmBL=9404-12](https://www.camara.cl/pley/pley_detalle.aspx?prmID=9819&prmBL=9404-12).
- 4 The Governor is the President of the Republic's representative in the region.
- 5 <http://www.elmostrador.cl/noticias/pais/2014/10/06/carabineros-se-refuerza-con-tanquetas-y-personal-del-gope-en-la-araucania/>
- 6 Information provided by CONADI. Available online at: <http://www.conadi.gob.cl/index.php/noticias-conadi/1268-conadi-mas-de-1500-millones-en-fondos-concursables-para-proyectos-de-comunidades-indigenas-de-todo-chile>. (viewed on 30 January 2016).
- 7 See National Human Rights Institute, *op.cit.* 2013, pp. 249.
- 8 Supreme Court, Roll No. 11,040-2011, judgment of 30 March 2012.
- 9 Supreme Court, Roll No. 11,299, 7 October 2014.
- 10 Case 12,741.
- 11 Inter-American Commission on Human Rights. Admissibility Report No. 1411/09, 30 September 2009.
- 12 Inter-American Commission on Human Rights. Admissibility Report No. 29/13, 10 March 2013. Case 12,904.
- 13 Petition 687/2011.
- 14 See information gathered in the fieldwork conducted by the Indigenous Peoples Rights Observatory in Rapa Nui (7 – 12 August 2014), in the context of consultancy work commissioned by the Ministry of Public Lands, resulting in the production of a study and analysis of the different legal systems of land ownership and tenure coexisting in Rapa Nui.
- 15 According to Decrees 72/1995 and 9/2000, the PNRP covers an area of 6,907.45 hectares. However, a recent study conducted by the National Forestry Corporation (CONAF) revealed that the area actually subject to the body's administration was 7,263.936 hectares (CONAF, 2014: 1).
- 16 These organisations submitted an appeal for protection, Roll No. 89,686-2015, which was rejected by means of a judgement on 8 January 2016. This judgment was appealed before the Supreme Court, Roll No. 4238-2016, and is currently being considered.

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THE PACIFIC

## AUSTRALIA

Indigenous peoples hold a long and complex connection with the Australian landscape, including marine and coastal areas. Some estimates maintain that this relationship has endured for at least 40,000 years.<sup>1</sup> At colonisation in 1788, there may have been up to 1.5 million people in Australia.<sup>2</sup> In June 2011, Indigenous peoples were estimated to make up 3.0% of the Australian population, or 670,000 individuals.<sup>3</sup> Throughout their history, Aboriginal people have lived in all parts of Australia. Today the majority live in regional centres (43%) or cities (32%), although some still live on traditional lands.

Despite recent minor improvements, the health status of Indigenous Australians remains significantly below that of other Australians. Rates of infant mortality among Indigenous Australians remain unacceptably high at 10-15%, and life expectancy for Indigenous Australians (59 for males and 65 for females) is 17 years less than that of others. Recent suicide figures report 105 deaths per 100,000, for Indigenous males between the ages of 25 to 34 years, as compared to 22 deaths per 100,000 for their non-Aboriginal counterparts.<sup>4</sup> According to the Australian Bureau of Statistics (ABS), there were 996 suicides reported across Australia between 2001 and 2010 among Indigenous peoples.<sup>5</sup> 1.6% of all Australians die by suicide but, for Aboriginal peoples, this rate is more than 4.2%, or one in every 24 Aboriginals or Torres Strait Islanders.<sup>6</sup> The ABS Corrective Services report recently noted that the number of Aboriginal men in prison had risen by 8% and women by 12% in the past year, compared to a national prison population increase of 6%.<sup>7</sup> Aboriginal and Torres Strait Islander peoples now comprise 30% of the prison population.<sup>8</sup>

The 1975 Racial Discrimination Act has proved a key law for Aboriginals but was overridden without demur by the Howard government in 2007 when introducing the Northern Territory Emergency Intervention (see *The Indigenous World, 2008*). States and Territories also have legislative power on rights issues, including Indigenous rights, where they choose to use them and where these do not conflict with national laws.



Australia has not ratified ILO Convention No. 169 but, although it voted against the UN Declaration on the Rights of Indigenous Peoples (UN-DRIP) in 2007, it went on to endorse it in 2009.

**A**ustralia's new Prime Minister Malcolm Turnbull has told the first meeting of a national referendum council that he expects them to give Parliament detailed plans for Constitutional change and Indigenous recognition by June 2016. This is supported by both former Prime Minister Tony Abbott who was replaced in September 2015, and by the Labor party opposition in Parliament. Indeed, Abbott has been proposed by many as a man who could head a national push for Aboriginal and Torres Strait Islander social, economic, and political betterment, thanks to his

personal initiatives and commitment to Indigenous communities. Each year he would spend a week or more in one or more remote Indigenous communities, drawing other ministers and high officials to join him in community work.

The new council is headed by Aboriginal statesman Patrick Dodson and includes Professor Megan Davis (chair of the United Nations Permanent Forum on Indigenous Issues), Arnhem Land patriarch Galarrwuy Yunupingu, and Cape York leader Noel Pearson among other notables Indigenous and non-Indigenous. It is expected that the Council will hold conventions around the country to devise a model to put to national referendum, perhaps as early as 2017.<sup>9</sup> At present there is general public support for change but Australia has a small loud contingent of reliable wreckers who will whip up anxieties.

## Social Justice

Every year one or more social justice fiascos trouble the media, and the political and social conscience of Australian élites, attracting outpourings of guilt and pain following a death, and futile assertions that “this must never happen again!” In the past year and more one such case has been Miss Dhu, the cover name for a young West Australian Indigenous woman whose care by a number of indifferent prison, law enforcement, and medical personnel, mostly acting independently, effectively doomed her.

Witnesses say she was begging for help, but was dismissed as a “mental case” by officers. They laughed at her—and according to reports in *The Australian*, when our baby girl “got quiet” she was dragged across the floor by two police officers. They mocked her, stood around laughing.

The common feature of these regular incidents is that to sections of mainstream Australia black lives matter very little.

## Personal Violence

In recent years a number of dramatic non-Indigenous episodes of wife and/or child killing have made Australia adopt publicity and policy measures against domestic violence, including National- and State-level ministries devoted to the problem.<sup>10</sup> Indigenous Australia has many such problems as the Howard con-

servative government c. 2000 took pain to publicise in order to discredit Indigenous political, legal, and social demands. Public leaders are now being chosen and expected to campaign against family abuse, e.g., Australians of the Year.

There have already been links made between Australians and the Canadian campaign to break the pattern of numerous Indigenous women being killed or disappearing along the roads of the country.<sup>11</sup> The two countries have very good but differing styles of social and political campaigning and can undoubtedly work well together now and in future. The new Canadian royal commission should visit Australia and consult with Indigenous groups and experts there.<sup>12</sup>

## Northern Australia

Visions of vast hinterland development have been common in the modern world. Spain in the Americas and Russia east of the Urals from 1500, France and Britain in North America from 1600, not to mention Portugal, the Netherlands, Germany, et al., but again since World War II countries like Australia, USA (in Alaska), Canada, China and South American countries have used modern heavy equipment and national fantasies to expand into their hinterlands. Only recently have the peoples of these regions begun to push back, capturing the majority's national ideologies to assert their own aspirations.<sup>13</sup>

Australia has begun a new phase of Northern Development fervour in the past two or three years. Already embarked on its Remote Focus project centred in Alice Springs, the centre of the continent, the newest push appears to run around the continental rim and to highlight civil engineering and large industrial and transport projects. It is too early to guess whether these feints will amount to anything substantial, although the Prime Minister has sensibly limited himself to advocating a few dam and road projects which would make good sense at any season or in any decade. Australia's short terms between both national and state elections make political commitment and substantial achievements difficult.

The Remote Focus (see *The Indigenous World* for recent years) emphasis on "failed state" policies and governance across most of Australia's hinterland is "cruel, but fair" as Monty Python would put it. Nor are things improving. While governments and ministers put out encouraging press releases, the sharpest observers are not deluded.

*The prevailing analysis today in the public service is quite different: the chief goal is the management of dysfunction and decline. Few senior bureaucrats, faced with the dispiriting statistics they receive from the indigenous communities of the centre and the north, believe that remote Aboriginal Australia has much of a future. They anticipate a slow process of assimilation and a drift of the younger bush generations into regional towns, and a consequent diminution of traditional lifeways and culture.*

Despite their lip-service to the ideals of sustainable development, they have little hope that sustainable economies can be created in the deep bush. Their true task is to maintain a tight grip on the Aboriginal realm through controls such as income management, and to act as bystanders, witnesses to a gradually unfolding tragedy they have been unable to prevent.<sup>14</sup>

## **Northern Paradoxes**

Although northern development may be forgotten in a haze of other national issues or foreign wars, it may not. The problem for Indigenous peoples is that overseas, e.g., in the Northern Hemisphere, the push by national governments and big industry into the hinterland has fired up Indigenous resistance. The international Indigenous rights movement was created in no small part by the greed, environmental carelessness, and impatience of “frontier energy” appetites, especially Big Oil.

## **Conclusions**

Although Australia “blows hot and cold” on international issues and multilateralism, the present foreign minister and prime minister are plugged into the world and take their international links and obligations seriously. The former Prime Minister Abbott did not, unless it was a military issue. Both prime ministers Abbott and Turnbull represent the same political party, so one can see that Australian foreign policy can be fickle. Most Australians prefer not to regard the international scene as relevant to themselves, for which reason a vigorous and too silent minority throw themselves the more determinedly into international good works.

Nationally in the arts and public culture, in politics and social awareness, Indigenous peoples have gained much attention in recent years. This may increase with a constitutional recognition campaign. Nevertheless, one is often surprised by the lack of understanding of ethno-cultural difference and basic awareness among public and public spokespersons. ○

## Notes and references

- 1 Many Aboriginal people maintain that they were created when distinct Creator Beings formed the land at the beginning of time (often termed “the Dreaming”). It is now widely accepted among archaeologists that the earliest undisputed age for the occupation of Australia by human beings is 40,000 to 50,000 years ago. O’Connell J.F. and Allen F.J., 1998: When did humans first arrive in greater Australia and why is it important to know? *Evolutionary Anthropology*, 6:132–146.
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- 11 <https://newmatilda.com/2015/12/15/in-canada-and-australia-aboriginal-women-reporting-disappearances-meet-entrenched-police-racism/>
- 12 <http://www.aadnc-aandc.gc.ca/eng/1448633299414/1448633350146>
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## AOTEAROA (NEW ZEALAND)

Māori, the indigenous people of Aotearoa, represent 15% of the 4.5 million population. The gap between Māori and non-Māori is pervasive: Māori life expectancy is 7.3 years less than non-Māori; household income is 78% of the national average; 45% of Māori leave upper secondary school with no qualifications and over 50% of the prison population is Māori.<sup>1</sup>

The Treaty of Waitangi (the Treaty) was signed between the British and Māori in 1840. There are two versions of the Treaty, an English-language version and a Māori-language version. The Māori version granted a right of governance to the British, promised that Māori would retain sovereignty over their lands, resources and other treasures and conferred the rights of British citizens on Māori. The Treaty has, however, limited legal status; accordingly, protection of Māori rights is largely dependent upon political will and ad hoc recognition of the Treaty.

New Zealand endorsed the UN Declaration on the Rights of Indigenous Peoples in 2010. New Zealand has not ratified ILO Convention No. 169.

### Trade agreement threatens Treaty rights

**T**he Trans-Pacific Partnership Agreement (TPPA), agreed in October 2015 after years of negotiations,<sup>2</sup> threatens Māori Treaty rights (see *The Indigenous World 2013*). In July 2015, the Waitangi Tribunal considered a request that it hold an urgent hearing regarding alleged breaches of the Treaty by the Crown in the negotiation of the TPPA.<sup>3</sup> The claimants argued that the Crown had breached its Treaty obligation to consult with Māori in negotiations over the text. The claimants also argued that the TPPA would negatively impact the Crown's ability to meet its obligations under the Treaty, including in relation to Māori intellectual property rights, access to affordable medicines and environmental rights. The Waitangi Tribunal initially declined to hold an urgent hearing as the secrecy of the TPPA



negotiations made an assessment of its impact impossible;<sup>4</sup> the complex terms of the TPPA were only made public in November, subsequent to its agreement. Following the TPPA's agreement, the Waitangi Tribunal scheduled an urgent hearing to consider its effect, which is set for March 2016. The TPPA includes an exception clause on the Treaty of Waitangi, which the government argues will protect Māori rights under the Treaty. The Tribunal will consider whether the exception clause

provides effective protection for Māori interests under the Treaty and what engagement with Māori is necessary before the TPPA is ratified by New Zealand.<sup>5</sup> Cabinet is expected to decide whether to sign the TPPA in February 2016. If signed, a National Interest Analysis of its terms will be considered by a parliamentary select committee and legislation to give effect to the agreement will be voted on in Parliament.

### Māori land law under review

For several years, Te Ture Whenua Māori Act 1993 (the Māori Land Act), which is the primary legislation governing the administration of Māori land, has been under review (see *The Indigenous World 2014*). In May 2015, a draft bill replacing

that Act was made public prior to its introduction in Parliament.<sup>6</sup> The bill proposes a major overhaul of the law relating to Māori land. For example, it “significantly reduces the role of the Māori Land Court”, “weakens the emphasis on retention of Māori land in the hands of its owners” and “introduces a raft of new terms and definitions” that will require testing in the courts.<sup>7</sup> A round of consultations were held with Māori on the draft bill and nearly 400 submissions were received on it. Concerns raised in the submissions included the increased potential for the ownership of Māori land to fall out of Māori hands.<sup>8</sup> Cabinet approved some changes to the draft bill in November, although its weakened emphasis on the retention of Māori land (in contrast to the existing Act) remains.<sup>9</sup> The bill is anticipated to be introduced into Parliament in March 2016.

### **Māori language bill before Parliament**

In October 2015, Cabinet approved amendments to the Māori Language (Te Reo Māori) Bill. The bill seeks to establish an independent statutory entity called Te Mātāwai to provide leadership on the health of the Māori language and to oversee Te Taura Whiri (the Māori Language Commission) and Te Māngai Pāho (the Māori Broadcast Funding Agency). The amendments include making the support of *whanau* (family), *hapū* (kinship group) and *iwi* (nations) the primary responsibility of Te Mātāwai and legislative status being given to two Māori Language Strategies, one that is the responsibility of the Crown and the other of Māori.<sup>10</sup> Concerns raised regarding the bill have centred on “the lack of clarity in the Māori Language Strategy, the potential abrogation of the Crown’s role to support the language, the implementation of Te Mātāwai, management of the spectrum (radio and television), [and] institutional reforms”.<sup>11</sup> The amendments approved by Cabinet will form part of a departmental report put before the Māori Affairs Select Committee, which is currently considering the bill. The committee is expected to report back in February 2016.

### **Waitangi Tribunal finds Treaty breaches**

The Waitangi Tribunal released two district inquiry reports finding extensive breaches of the Crown’s Treaty obligations in 2015: the sixth and final part of its

Te Urewera district report and its report on the Whanganui district.<sup>12</sup> The Tribunal also released its report on the Ngāšpuhi mandate inquiry. It found that while there were flaws with the authority mandated to progress historical Treaty settlement negotiations on behalf of Ngāšpuhi, and that the Crown had breached the Treaty in recognising that mandate, it was not necessary for the Crown to withdraw its recognition of the authority's mandate.<sup>13</sup>

### **International concern over Māori rights**

In 2015, the United Nations (UN) Committee against Torture (CAT) and the UN Working Group on arbitrary detention (WGAD) voiced concern regarding the human rights situation of Māori. In its concluding observations on New Zealand's sixth periodic report under the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, the CAT expressed concern at the disproportionate occurrence of violence against Māori women and the overrepresentation of Māori in prisons.<sup>14</sup> Its recommendations included that New Zealand increase its efforts to "combat violence against indigenous women" and "address the overrepresentation of indigenous people in prisons and to reduce recidivism, in particular its underlying causes".<sup>15</sup> The New Zealand government made no statement on the report.

In July 2015, the WGAD released its report on its 2014 country mission to New Zealand. The WGAD recognised "that, in general terms, New Zealand has an outstanding human rights record, which nevertheless presents some areas of concern", including regarding "societal problems for Māori".<sup>16</sup> It voiced concern "at the overrepresentation of Māori and Pacific Islanders in the criminal justice system" and "found indications of bias at all levels of the criminal justice process".<sup>17</sup> Its recommendations included that the government "intensify its efforts to tackle the root causes of discrimination against Māori and Pacific Islanders in the criminal justice system, and particularly to reduce the high rates of incarceration among Māori, especially Māori women"; that policies "be implemented to encourage and support Māori to enter the legal profession and for the appointment of further Māori judges"; that "a review be undertaken of the degree of inconsistencies and systemic bias against Māori at all the different levels of the criminal justice system"; and that the search "continue for creative and integrated solutions to the root causes that lead to disproportionate incarceration rates of the Māori

population”.<sup>18</sup> When the report was presented to the UN Human Rights Council, New Zealand stated that the overrepresentation of Māori in the criminal justice system was an issue of concern that it was working to address.<sup>19</sup>

The government also formally responded in 2015 to the UN Committee on the Rights of Persons with Disabilities’ concluding observations on New Zealand’s initial report on implementation of the Convention on the Rights of Persons with Disabilities. The response noted steps the government is purportedly taking to improve access to services and better health outcomes for Māori with disabilities,<sup>20</sup> but lacked sufficient detail to properly assess the moves.

## Flag referendums sideline Māori

The first of two referendums on the New Zealand flag were held in 2015 following enactment of the New Zealand Flag Referendums Act 2015. Both the process for considering a new flag and the design options have been criticised for failing to appropriately take account of Māori interests.<sup>21</sup>

## Treaty settlements progressing

Progress continued in 2015 in the settlement of Māori claims regarding historical Treaty breaches. Three groups had their mandates recognised, three signed terms of negotiation with the Crown, one signed an agreement in principle, six agreed that their deeds of settlement were ready for presentation to their members for ratification, five signed deeds of settlement with the Crown, three had legislation giving effect to their settlements introduced, and five had the legislation giving effect to their settlements enacted.<sup>22</sup> ○

## Notes and references

- 1 Statistics New Zealand <http://www.stats.govt.nz>.
- 2 John Key “PM welcomes TPP as NZ’s biggest trade deal” 6 October 2015 <http://www.beehive.govt.nz/release/pm-welcomes-tpp-nz%E2%80%99s-biggest-trade-deal> (last accessed 5 January 2016).
- 3 Waitangi Tribunal *Wai 2522: Decision of the Tribunal* 31 July 2015.

- 4 Ibid; Carwyn Jones *Trans-Pacific Partnership Agreement Claims before the Waitangi Tribunal* 3 August 2015 <https://ahikaroa.wordpress.com/2015/08/03/trans-pacific-partnership-agreement-claims-before-the-waitangi-tribunal/> (last accessed 5 January 2016).
- 5 Waitangi Tribunal *Wai 2522: Memorandum-Directions of Judge M J Doogan*. 11 December 2015.
- 6 *Te Ture Whenua Māori Bill* (draft for consultation) <http://www.tpk.govt.nz/docs/Exposure-Draft-of-Te-Ture-Whenua-Māori-Bill.pdf> (last accessed 5 January 2016).
- 7 Carwyn Jones *Te Ture Whenua Māori Reform* 3 August 2015 <https://ahikaroa.wordpress.com/2015/08/03/te-ture-whenua-maori-reform/> (last accessed 5 January 2016).
- 8 Te Puni Kokiri *Te Ture Whenua Māori Reform: Summary of Submissions* 2015 at 3.
- 9 Te Ururoa Flavell 'Significant changes made to draft Te Ture Whenua Māori Bill' 9 November 2015 <http://www.beehive.govt.nz/release/significant-changes-made-draft-te-ture-whenua-m%C4%81ori-bill-0> (last accessed 5 January 2016).
- 10 Te Ururoa Flavell "Cabinet approves Māori Language Bill amendments" 22 October 2015 <http://www.beehive.govt.nz/release/cabinet-approves-m%C4%81ori-language-bill-amendments> (last accessed 5 January 2016).
- 11 Te Rōpū Tohutohu Reo Māori *Te Whare o te Reo Mauriora* (2015) [Māori Language Advisory Group Final Report] at 7.
- 12 Waitangi Tribunal *Te Urewera: Pre-publication, Part VI* (2015); Waitangi Tribunal *He Whiritau-noka: The Whanganui Land Report* (2015).
- 13 Waitangi Tribunal *The Ngāpuhi Mandate Inquiry Report* (2015).
- 14 UN Committee against Torture *Concluding observations on the sixth periodic report of New Zealand*. 2 June 2015 UN Doc CAT/C/NZL/CO/6 at [11] and [14].
- 15 Ibid at [11](d) and [14].
- 16 UN Human Rights Council *Report of the Working Group on Arbitrary Detention: Mission to New Zealand*. 6 July 2015 UN Doc A/HRC/30/36/Add.2 at [92].
- 17 Ibid at [93].
- 18 Ibid at [105](e), (j), (n), (o).
- 19 UN Office of the High Commissioner for Human Rights *Human Rights Council holds interactive dialogue on arbitrary detention and contemporary forms of slavery*. 14 September 2015 <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=16422&LangID=E#sthash.G614OPIY.dpuf> (last accessed 6 January 2016).
- 20 New Zealand Government *Government response to the United Nations Committee on the Rights of persons with Disabilities Concluding Observations on New Zealand* (2015) at 6, 9, 24.
- 21 Peace Movement Aotearoa "Constitutional questions + the NZ Flag Referendums Bill" 4 April 2015; Chris Trotter "Why the tino rangatiratanga flag should be our national choice" 3 September 2015 <http://www.stuff.co.nz/national/71655482/Why-the-tino-rangatiratanga-flag-should-be-our-national-choice> (last accessed 5 January 2016).
- 22 Office of Treaty Settlements <https://www.govt.nz/organisations/office-of-treaty-settlements/> (last accessed 5 January 2016).

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## JAPAN

The two indigenous peoples of Japan, the Ainu and the Okinawans, live on the northernmost and southernmost islands of the country's archipelago. The 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 centers for work and to escape the more prevalent discrimination on Hokkaido. Since June 2008, the Ainu have been officially recognized as an indigenous people of Japan. Most recent government surveys put the Ainu population in Hokkaido at 16,786 (2013) and in the rest of Japan at 210 (2011).<sup>1</sup>

Okinawans, or Ryūkyūans, live in the Ryūkyū Islands, which make up Japan's present-day Okinawa prefecture. They comprise several indigenous language groups with distinct cultural traits. Although there has been some migration of ethnic Japanese to the islands, the population is largely indigenous Ryūkyūans. Japan colonized the Ryūkyūs 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 and Okinawans became Japanese citizens although the US military base remained. Today, 50,000 US military personnel, their dependents and civilian contractors occupy 34 military installations on Okinawa Island. The island is home to 1.1 million of the 1.4 million Okinawans living throughout the Ryūkyūs.

The Japanese government has adopted the UNDRIP (although it does not recognize the unconditional right to self-determination). It has not ratified ILO Convention No. 169.



## The Ainu and Japan's hate speech problem

Although hate speech continues to be an issue of concern for the Ainu, 2015 saw some positive developments. In response to the Twitter post in September 2014 by a member of the Sapporo City Assembly in Hokkaido claiming that

“Ainu no longer exist”,<sup>2</sup> scholars and activists published an anthology in February 2015 challenging the growth of *Ainu minzoku hitei-ron* (the “discourse of Ainu people’s non-existence”). With the mobilization of greater awareness and opposition to hate speech, the Sapporo City Assembly member in question was unable to win re-election to his seat in the April 2015 municipal elections. Meanwhile, a member of the Hokkaido Prefectural Assembly who had also made controversial statements regarding the Ainu<sup>3</sup> declined to run for re-election. The fact that these two politicians who had attacked the Ainu were no longer in political office was seen as a major victory by many activists. Internet hate speech continues to be a problem for Ainu and other minorities, however, and many perpetrators have been emboldened by the comments made by such politicians.

The issue of hate speech has also been a major topic of discussion at the national government level. Despite growing awareness of the problem and calls for robust action, the government failed to pass anti-hate speech legislation and opted to shelve the issue instead. There are concerns that, without such legislation, hate speech will spiral further out of control and the negative repercussions on Ainu and other minorities will increase.

## Historical revisionism

Not only did the government fail to take a step forward on the hate speech issue, it took a step backward in terms of recognizing historical wrongs committed against the Ainu. In April 2015, the Ministry of Education, Culture, Sports, Science and Technology announced the results of its screening process of middle school textbooks approved for use in 2016. One of these history textbooks revised a passage on the Hokkaido Former Aborigines Protection Act, a discriminatory law enacted in 1899 to force the Ainu to assimilate.<sup>4</sup> Responding to government comments during the screening process, the publisher revised the passage from “the government... confiscated land from the Ainu” to “the government... gave land to the Ainu.” This revision was criticized by Ainu activists, as well as by academics and the media, as a distortion and whitewashing of history. The Hokkaido Ainu Association has requested that the publisher and the ministry ensure that proper Ainu history is taught, and has contacted the local educational boards to urge them to select a textbook publisher that has “fair and just” passages on the Ainu

and human rights. Thus far, the government's position is that, with the revision, "defects in the passage have been resolved".<sup>5</sup>

### **"Symbolic Space for Ethnic Harmony" and Ainu ancestral remains**

The Japanese government continued to press on with its plans for the "Symbolic Space for Ethnic Harmony", to be opened in time for the Tokyo Olympics in 2020.<sup>6</sup> In August, the government announced detailed plans for the national museum on the Ainu, focusing on the themes of "our lives" and "our history" from the perspective of the Ainu. The government also announced in October 2015 that construction of the facilities would begin in 2017. While "proactive participation by Ainu" is included as part of the basic policy of the project, it is not yet clear to what degree Ainu will have real control and decision-making power in the operation and management of the facilities.

Meanwhile, the issue of the return of ancestral remains continues to be a point of contention. The "Symbolic Space for Ethnic Harmony" will consolidate and memorialize Ainu ancestral remains, and the idea has both supporters and detractors among members of the Ainu community. Opponents demand that remains be returned directly to the Ainu community.<sup>7</sup> In January 2015, a group of such opponents submitted a request to the Japan Federation of Bar Associations under the human rights remedy program, claiming that consolidation of ancestral remains was a violation of human rights. The government has not addressed these complaints directly, and intends to press on with the consolidation and memorialization of Ainu ancestral remains as quickly as possible ahead of the 2017 construction date. Without fully resolving these claims, however, the issue of ancestral remains will likely continue to be a source of friction.

### **The Okinawans**

Dominating Okinawan society in 2015 were the twenty-year old campaigns to close the US military's Futenma Air Station and halt construction of a new US military complex at Nago City's rural Cape Henoko (for more background see *The Indigenous World 2011-2014*). In April, the Obama and Abe administrations formally reaffirmed their commitment to relocating and expanding Futenma's military functions

at Henoko but the year was marked by a series of standoffs. Faced with increasingly organized opposition as the early effects of construction came to light, the Japanese government stepped up its political pressure and repression of protesters.

The year began with the government resuming preliminary construction at Henoko and over 100 elected representatives from across Okinawa joining the ongoing sit-in protest in front of the US Marine Corps' Camp Schwab, which protects the Japanese government's access to the construction zone. This confrontation reflected an altered political landscape within Okinawa. By the end of 2014, Okinawans had elected anti-base construction candidates to all four of the prefecture's lower house seats in Japan's National Diet and in Nago City's mayoral race. They had also ousted former governor Nakaima Hirokazu, whose unpopular decision to approve a massive landfill at Henoko removed the final legal obstacle and paved the way for construction to begin in July 2014. In January, newly-elected governor Onaga Takeshi petitioned the central government to move Futenma's military functions outside the prefecture and to stop all surveys and construction related to the Henoko project. Onaga also established a panel to investigate the legality of Nakaima's approval of land reclamation. As a stop-gap measure, the Okinawa Prefectural Assembly passed a landfill ordinance in March regulating the use of soil and stone from outside the prefecture in order to prevent the introduction of foreign species into Okinawa's fragile ecosystem, known for its indigenous flora and fauna.

Concern over the ecological impact of both the construction and operation of the new base has been central to the anti-base campaign, fueled by a deep mistrust of the central government's efforts and desire to protect Okinawa's ecosystem. Although the Japanese government established an Environmental Oversight Panel in January to mitigate impact, critics question the panel's efficacy given that it is charged with both evaluating and approving plans for environmental protection. In March, the panel's Okinawan vice-president resigned, citing this conflict of interest and, in October, two members admitted accepting money from companies involved in the construction. Concerns were heightened this year with sightings of several endangered indigenous species in and around Henoko Bay, including evidence of feeding by Okinawa dugong (a sea manatee protected under US and Japanese law), terns and hermit crabs. Rare butterflies and other species are threatened at nearby Takae, where eight new helipads will host the Marine Corps' crash-prone Osprey aircraft. The first Osprey was deployed to Takae in February. In July, the United Nations Regional Office for Asia Pacific emphasized the importance of habi-

tat protection for endangered species such as the dugong. The Japanese government denied Governor Onaga's repeated demands for access in order to survey the environmental impact of initial construction activities. Once inside, divers documented damage to coral beds caused by 20-ton concrete blocks dropped onto the seabed at dozens of locations to secure construction buoys, and by the anchors of Coast Guard boats used to monitor citizens opposing the construction.

2015 polls showed that Okinawans were overwhelmingly opposed to the new base and rallies drew tens of thousands throughout the year, including 35,000 in May and a 7000-person "human chain" around the parliament in Tokyo. Organized opposition also grew, as municipal leaders, neighborhood associations and other civic groups across Okinawa formed new organizations aimed explicitly at stopping the Henoko project and closing Futenma. Sit-ins at Camp Schwab and Takae continued, while April marked 4,000 days since the sit-in began at Henoko Bay.

The everyday effects of US military presence across the island help explain this sustained opposition. In June, a Naha District Court recognized the effects of aircraft noise by ordering the Japanese government to pay 754 million yen (US\$6.3 million) to citizens living near Futenma. This past year also saw multiple instances of parts falling from military aircraft during routine flight operations. In August, a missile launcher weighing 210kg fell on a busy fishing and boating route near Irisuna Island, and the Prefectural Fisheries Cooperative protested when a helicopter crashed in an area frequented by fishing vessels. In October, unexploded ordnance discovered in Naha City forced the evacuation of 1,700 people. Drunk-driving arrests of US service members rose by 45%. Other criminal behavior included sexual assault, trespassing and burglary.

The central government responded to increased opposition with more arrests, violence and political pressure. Japan's Coast Guard injured citizens engaged in non-violent civil disobedience in the course of confiscating protesters' cameras, or ramming and capsizing their boats. Backed by polls showing widespread support for stronger action, Governor Onaga formally revoked prefectural permission for the landfill in September. The Abe Administration responded by filing a lawsuit to override Onaga's authority over Okinawan coastal waters. The year ended with the central government transferring 100 riot police from the Tokyo Metropolitan Police to the Camp Schwab gate.

As the government continues to usurp Okinawans' territorial autonomy—even that granted through national institutions—2015 saw more forums focusing on Okinawan self-determination and the islands' future. UN Special Rapporteur on

the rights of indigenous peoples Victoria Tauli-Corpuz visited Okinawa in August. At a September symposium on militarization and human rights, Tauli-Corpuz emphasized the right to self-determination; free, prior and informed consent; the right to environment; and the prohibition of military activities in indigenous territories as closely related to the US military presence in Okinawa. ○

## Notes and references

- 1 Population figure for Hokkaido taken from the 2013 Survey of Ainu Livelihoods conducted by the Hokkaido prefectural government in cooperation with the Ainu Association (Hokkaido Government, Environment and Lifestyle Section. 2013. *Hokkaido Ainu Survey on Livelihood Report*, Accessed 6 January 2015, [http://www.pref.hokkaido.lg.jp/ks/ass/ainu\\_living\\_conditions\\_survey.pdf](http://www.pref.hokkaido.lg.jp/ks/ass/ainu_living_conditions_survey.pdf)). Population figure for the rest of Japan taken from the 2011 Survey of Non-Hokkaido Ainu Livelihoods conducted by the Council for Ainu Policy Promotion. 2011. *Non-Hokkaido Ainu Survey on Livelihood Report*, Accessed 6 January 2015, [http://www.kantei.go.jp/jp/singi/ainusuishin/dai3/siryous3\\_3.pdf](http://www.kantei.go.jp/jp/singi/ainusuishin/dai3/siryous3_3.pdf)). Many with Ainu ancestry do not publicly identify as Ainu due to discrimination and stigma in Japanese society. Ainu observers estimate the actual population of those with Ainu ancestry to be between 100,000 and 300,000, with 5,000 in the greater Kanto region alone.
- 2 See *The Indigenous World 2015*.
- 3 See *The Indigenous World 2015*.
- 4 The Hokkaido Former Aborigines Protection Act was not fully repealed until 1997.
- 5 20 May 2015 response by the government to a question by Diet (parliament) member Takako Suzuki.
- 6 See *The Indigenous World 2014* and *2015* for details.
- 7 See *The Indigenous World 2015* for details.

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# CHINA

Officially, China proclaims itself as a unified country with a multiple ethnic make-up, and all ethnic groups are considered equal before the law. Besides the Han Chinese majority people, the government recognizes 55 ethnic minority peoples within its borders. According to China's sixth national census of 2010, ethnic minorities total 113,792,211 persons, or 8.49 % of the country's total population.

The national "Ethnic Minority Identification Project", undertaken from 1953 to 1979, settled on officially recognizing 55 ethnic minority groups. However, there are still "unrecognized ethnic groups" in China, numbering a total of 734,438 persons (2000 census figure). Most of them live in China's south-west regions of Guizhou, Sichuan, Yunnan and Tibet. The officially-recognized ethnic minority groups have rights protected by the Constitution. This includes establishing ethnic autonomous regions, setting up their own local administrative governance and the right to practice their own language and culture. "Ethnic autonomous regions" constitute around 60% of China's land area.

The Chinese (PRC) government does not recognize the term "indigenous peoples", and representatives of China's ethnic minorities have not readily identified themselves as indigenous peoples, and have rarely participated in international meetings related to indigenous peoples' issues. It has therefore not been clearly established which of China's ethnic minority groups are to be considered indigenous peoples. The Chinese government voted in favour of the UNDRIP but, prior to its adoption, had already officially stated that there were no indigenous peoples in China, which means that, in their eyes, the UNDRIP does not apply to China.

## Hard-line repression and control of the media

**T**hroughout 2015, the Chinese government continued to apply rigid security measures, backed up by military and police force, to impose its rule over re-

gions of ethnic minority peoples. The oppression of ethnic minorities in China is part of the government's policy, expressed in the political slogan of "National Unity with all Ethnic Peoples", which Chinese president and chief of the Chinese Communist Party, Xi Jinping keeps emphasizing. It is a call for the government and the nation's citizens to strive for stability and economic prosperity under Xi's vision of achieving the "Chinese Dream", not just for the majority Han Chinese but also for the ethnic minority peoples.

In 2015, observers noted that the Chinese leadership had taken a more authoritarian, hard-line approach to dealing with Tibet, the Xinjiang Uyghur Autonomous Region and other regions with ethnic strife and dissent against the central authorities.

To deal with ethnic dissidents and protest actions, the central government has implemented more stringent control over the local population. Already having to deal with internal power struggles in the party and a series of natural and man-made disasters, the Chinese government imposed more restrictions on the media in 2015, introducing more press censorship and limitations on news reporting.

Observers said the main reason was so that the outside world would receive less reports of demonstrations and riots by Uyghur people, and self-immolation and other forms of protest by Tibetans. It resulted in less news coming out of China on what was really happening in these restive regions. This means that ethnic issues and political dissent were being covered up, giving the appearance of an improved situation with reduced intensity of conflicts that was not really the case.

### **Major violence and control of religious practices in Xinjiang Uyghur Region**

The Chinese state media reported on two major incidents in Xinjiang Uyghur Autonomous Region in 2015: a bomb blast in Kashgar on June 22, and an attack on a coal mine in Aksu on September 18. In the June bomb blast, the Chinese and foreign media reported that a group of Uyghurs had killed 18 people at a police checkpoint on the outskirts of Kashgar. It was alleged that the Uyghur attackers sped past a police checkpoint before conflict ensued in which bombs and knives were used. During the skirmish, 18 people were killed, most of them (according to the Chinese authorities) police officers.



In the Aksu incident, the state authorities blamed Uygur militants for carrying out the attack on a coal mining facility and the workers' dormitory. According to Chinese media reports, it was a night-time raid, involving explosives and hand-held weapons. Some 40 people were allegedly killed, most of them Han Chinese coal mining workers.

Scores of people were also injured in both incidents, and the authorities took statements from them in the ensuing investigation.

Many ethnic conflicts and deadly clashes have occurred in Xinjiang. Given that 2014 was alleged to have had the highest incidence of violence in modern times, the Chinese government imposed more severe rules and stringent controls on the religious practice of Uygur Muslims in Xinjiang in 2015. This included impositions on the weekly Jumah (Friday gathering at the mosque), which was strictly regulated and could only be conducted between 2 and 3 p.m. on a Friday afternoon.

Another regulation imposed on all government officials, civil servants and students of the Muslim faith was the prohibition on taking part or engaging in Ramadan activities. Some local government authorities even issued edicts that eateries

and restaurants managed by Muslims should maintain normal business hours during Ramadan. Students on summer school break were required to return to their schools once a week to attend educational classes, where free lunch was provided as an incentive.

All these restrictions and rules plainly manifest the Chinese government's disrespect and contempt for Muslim religious practice, as a result of which issues of ethnic conflict and people's discontent remain prevalent in the Xinjiang Autonomous Region. A cursory view would seem to suggest there have been fewer violent incidents under the more intensified authoritarian rule. However, apprehension and mistrust continue in the tense relationship between the Chinese authorities and the Muslim Uyghur.

According to a report published by the Uyghur Human Rights Project (UHRP) of the US-based Uyghur American Association in March 2015,<sup>1</sup> between 656 and 715 persons died during clashes and violent incidents between Uyghurs and other ethnic groups in the region over the 2013 – 2014 period. Fatalities in 2014 were nearly twice those in 2013. Since these figures are estimates based on information compiled from Chinese and foreign media reports, the real number of deaths may actually be much higher, due to under-reporting of news as a result of the media restrictions in China.

## **Land grabbing in the Inner Mongolia Region**

For the Inner Mongolia Region, land grabbing by businesses and government agencies was a big issue in 2015, along with violent incidents involving ethnic minority groups.

The Han Shan mountain forests, under the jurisdiction of Ar Horqin Banner of Inner Mongolia, have been designated as a state protected area since 1997. Since then, the local Mongolian nomadic pastoralists have been prohibited from entering the area. When pastoralists transgress its boundary they are expelled and have to pay fines. The result has been the inability of the local Mongolian pastoralists to practise their traditional livelihood and, in 2015, a large protest broke out.

The Inner Mongolia Region has an abundance of natural resources and the Chinese government has continued to forcibly relocate people in order to access these resources, granting licences for coal extraction and other mining projects. This has led to numerous protests and legal challenges by the Mongolian people in recent years.

The protests and conflict situations have centred on the issue of ownership since the law provides that the property rights to pastures and forests belong to the state. Under such a legal framework, the government officials often take bribes from private companies in exchange for granting permits for land development, mining, logging, and other forms of private enterprise projects. The Chinese authorities have been slow in cracking down on corruption, and have failed to deal with the issue of property rights over forest and pasture lands. As a result, violations of the rights of the Mongolian people to practise their traditional livelihoods are continuing.

### **Violent conflicts in ethnic minority areas in Southwest China**

Similar problems of land grabbing and illegal expropriation for “economic development” projects, with the complicity of corrupt government officials, occurred throughout 2015 in other ethnic minority areas as well. In Mongolia, this led to protests by the affected communities.

One incident occurred on 2 April 2015 when several hundred villagers organized a large demonstration against the local government in Guizhou Province. Most protesters were ethnic minority peoples, as the villages are located in the province’s southwest, Quianxinan Buyi and Miao Autonomous Prefecture. The Buyi and Miao ethnic minority peoples were protesting at corrupt government officials who had pocketed large amounts of money intended as financial compensation for the local village populations for land expropriated to build a hydroelectric dam in the area.

In neighbouring Sichuan province, in Mabian Prefecture of Leshan region, several hundred local villagers belonging to the Yi people petitioned the high officials of the province on June 9. The Yi villagers were demanding that the Sichuan province government investigate land grabbing by local officials who had forcibly expropriated several hundred hectares of land and mountain slopes belonging to the villages on the pretext of road construction. Villagers also said the corrupt officials had not disbursed compensation money of around 700,000 Yuan (at that time around US\$114,000) to the local land owners. Instead the money went into the personal accounts of the local officials.

Also in the southwest of China, Yao ethnic minority people confronted the local authorities and the police, resulting in violent clashes on June 19. The incident occurred at a Yao village of Fuyang Township, in Guangxi Province, where the

local people set up barricades at the gates of a new factory project that was planning to tap the village's creek to produce bottled mineral water. The protesters said unscrupulous village officials had illegally sold land for the factory project, and they temporarily shut down the factory's construction. However, the authorities sent in police units to remove the barricades, which led to violent confrontations in which scores of villagers were injured and arrested.

### **Protests and clashes against land grabbing in other regions**

In northern China, there were also violent incidents in Ningxia Hui Autonomous Region's Yueyahu Township on 19 June 2015. The Hui people, a Muslim ethnic minority group, clashed with the police and local officials who were undertaking the forcible relocation of the burial sites at the village's cemetery. A total of 5,500 graves were to be dug up and relocated to another site. The local officials had granted approval to businesses for purported "eco-tourism" projects in an area that encompassed the village cemetery and its surrounding land.

In China's southern Hainan Island, the local Li people of the Changjiang Li Autonomous County clashed with the authorities in December last year. Hundreds of Li minority villagers tried to prevent incursions by public security officers and police, who were called in by the county officials. The local government had undertaken a program to "rent" the area's farmlands without consulting or obtaining consent from the villagers. In the ensuing skirmish, many people were injured and taken away for questioning, as the villagers continued their protest against what they called illegal land grabbing by government officials.

### **Economic development, social problems and ethnic minority aspirations for freedom**

Over the past years, such forcible expropriation and land grabbing, leading to protests and violent clashes, has taken place in many villages and townships throughout the ethnic minority areas of the country. In diversionary tactics, the Chinese state government has mostly called these "society's economic and development issues" and the unrest and protest actions by ethnic minority people have been classified as "social problems". It is the government's view that such

ethnic conflicts and dissent can be eliminated by mitigating the growing gap and inequalities between rich and poor in society. The Chinese government does not acknowledge the differences in culture, religion, and traditional practices of the ethnic minority peoples. Instead, the government's policy has been to reduce these differences, and to apply the same repressive laws and restrictive measures in nearly all such cases. Outside observers and activists from ethnic minority groups have expressed concerns at the impacts of China's economic development and the "poverty reduction" programs. They have pointed out that these programs will lead to a more rapid assimilation of ethnic minorities into the mainstream Han Chinese society. ○

## Note and reference

- 1 Uyghur Human Rights Project 2015. "Legitimizing Repression: China's "War on Terror" Under Xi Jinping and State Policy in East Turkestan" . <http://docs.uyghuramerican.org/pdf/Legitimizing-Repression.pdf>

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## TAIWAN

The officially-recognized indigenous population of Taiwan numbers 534,561 people (2013), or 2.28% of the total population. Fourteen indigenous peoples are officially recognized. In addition, there are at least nine Ping Pu (“plains or lowland”) indigenous peoples who are denied official recognition. Most of Taiwan’s indigenous peoples originally lived in the central mountains, on the east coast and in the south. However, nearly half of the indigenous population has migrated to live in urban areas.

The main challenges facing indigenous peoples in Taiwan continue to be rapidly disappearing cultures and languages, low social status and very little political or economic influence. The Council of Indigenous Peoples (CIP) is the state agency responsible for indigenous peoples. A number of national laws protect their rights, including the Constitutional Amendments (2000) on indigenous representation in the Legislative Assembly, protection of language and culture, and 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 (2003), which allows indigenous peoples to register their original names in Chinese characters and to annotate them in Romanized script. 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.

Since Taiwan is not a member of the United Nations it has not been able to vote on the UN Declaration on the Rights of Indigenous Peoples, nor to consider ratifying ILO Convention No. 169.



## Legal battle over hunting rights

In recent years, there have been numerous legal prosecutions of indigenous hunters for using illegal firearms and killing protected wildlife species. In some cases the charges have been dropped while, in others, the hunters have been found guilty, depending on the different legal articles and interpretations cited by the judges as grounds for the decision.

In October 2015, a contentious court case on the illegal hunting of wild animals stirred up much public debate when Taiwan's Supreme Court upheld the guilty verdict and 3.5-year prison term for the defendant, Tama Talum, an indigenous Bunun man charged with breaking the laws on gun control and wildlife conservation. The judicial proceedings began when Talum was arrested and charged in July 2013, and pressed on in subsequent appeals through second and third rulings before the Supreme Court's ruling in October 2015. The prosecution centred on Talum's use of a modified 12-gauge shotgun to hunt the barking deer and

the Formosan serow, a forest-dweller related to the goat. Both animals are protected animal species under the Wildlife Conservation Act.

Due to some contentious issues in the case, indigenous peoples' groups, academics and other sectors of society voiced concerns, expressing the need to recognize that wildlife hunting is an important part of indigenous peoples' traditional culture, and stating that the existing laws on gun control and wildlife conservation were anachronistic and too rigid. However, the judiciary and other sectors of society also had their concerns. Law enforcement agencies said that permitting gun ownership on the part of indigenous peoples would lead to dangerous incidents and public security problems. A number of religious organizations, animal rights and conservation groups also opposed lifting the hunting bans that require individual registration of firearms, limiting wildlife hunting to areas and activities covered by indigenous communities' traditional cultural practices. They held that hunting has resulted in the killing of protected animal species and damage to the natural ecosystem. Legal proceedings and public debates on the outcome of the case will continue to have ramifications on the future development of indigenous peoples' call for recognition of the right to hunting. Since the ruling, the Supreme Prosecutors' Office has filed an extraordinary appeal to the Supreme Court, and the case is now pending appeal.

### **Ping Pu recognition supported by major political party**

2015 saw major organizing and lobbying efforts by the Ping Pu peoples. Elders and representatives from all ten Ping Pu groups gathered in Tainan City for a "national summit meeting" in August to press for their demand for official recognition as "indigenous peoples" of Taiwan, and ratify their recommendations and policy statements. These were later presented to the two major political parties, Democratic Progressive Party (DPP) and Kuomintang (KMT), for their endorsement in the upcoming campaign leading to the presidential and legislative elections. Tainan City Mayor William Lai, an influential figure in the DPP, attended the summit meeting and gave his support to the Ping Pu groups. They later received a huge boost when DPP presidential candidate Tsai Ing-wen promised to include their recommendations as part of her policy on indigenous peoples if she is elected as Taiwan's president next year.

## **Revival of night rituals in Pingtung County**

At the local level, a major wave of cultural revival movements has been seen in many Ping Pu communities in recent years. Most of these communities are farming villages in rural townships and low hill areas where people continue to cling on to their Ping Pu identity and ancient traditions. Ping Pu Makatao residents of Laobi Village of Neipu Township, in southern Taiwan's Pingtung County, for example, organized a traditional Makatao Night Ritual Celebration, which took place on November 24. It was the first time in five decades that the Laobi village had held the night ritual event, and the procession of ritual ceremonies had to be reconstructed from old documents and the memory of village elders. Another revitalized program was the Makatao Night Ritual and Pray for Rain Ceremony of Ganabo village, in Gaoshu Township of Kaohsiung, which was held in December.

## **Amended indigenous bills in parliament**

During its final session of the year, Taiwan's parliament approved the final reading of the bill to provide financial compensation for prohibiting development and logging on lands reserved for indigenous peoples. In the past, some 70 percent of these "reserved lands" were reserved for forestry. However, as the amount of government compensation was too low, most indigenous communities planted cash crops and this led to denuded forest cover which, in turn, resulted in landslides, flash flooding and other disasters when heavy rains hit the area. The new bill is expected to have a positive effect on forest protection while boosting the economic livelihoods of many indigenous communities.

Parliament also approved amendments to the Indigenous Peoples Basic Law. Among the most important items was that of giving indigenous communities the status of "a legal person or entity in public law". This elevates an indigenous community to an entity with its own set of vested legal powers and authorizations whereas, in the past, there were uncertainties over its legal status. This means that indigenous communities can now negotiate with outside interest groups on the sharing of benefits from economic development, and have the right to agree or refuse the negotiated deals. It also has important significance for the aim of "indigenous autonomy" in future policy plans. However, there remain disagree-

ments between government ministries and indigenous communities over the capacity and requirements of the administrative and economic burdens for the actual implementation of “indigenous autonomy”. More work and negotiations between all stakeholders is therefore needed before coming to an agreement for its implementation.

## **Programs for indigenous culture and rights protection**

The proposed site of the new National Taiwan Museum of Indigenous Peoples has been decided as a site in Yingge District (鶯歌區) in New Taipei City. It will join the already existing Yingge Museum of Ceramics and a proposed arts museum in the area to boost tourism and stimulate the local economy. Indigenous activists and academics hope the new museum will help to promote equality of cultural rights for all ethnic groups. However, the allocation of funds to the project’s budget, cultural scope and themes still need to be worked out. In February 2015, the Council of Indigenous Peoples (CIP) announced new amendments to the “Protection Act for the Traditional Intellectual Creations of Indigenous Peoples”. This came in response to increasing incidents of piracy and intellectual property theft of indigenous arts and cultural products by unscrupulous persons and business companies. The aim is to ensure that the traditional forms of indigenous totems, cultural symbols, emblems and music are registered and protected as intellectual property in the name of their proper owners, whether an entire indigenous group, one community or one clan of related families.

Under the act, users must obtain authorization from the owners and pay fees in accordance with the agreed benefit-sharing scheme. The past year has seen more universities, including the National Dong Hwa University in Hualien County, Taipei City’s National Chengchi University and the Chinese Culture University, offering courses on indigenous arts, culture and literature. It has become a popular trend to highlight the indigenous cultural elements of dance, music and other performing arts. Indigenous fashion, costume, art, sculpture and literature have all taken a higher prominence. Exhibitions and cultural performances by indigenous groups are now seen in most of Taiwan’s important national events.

The government frequently selects indigenous cultural groups to promote Taiwan for foreign tour programs. People can see that indigenous culture has evolved into a prominent cultural expression of Taiwanese society. It is the mani-

festation of Taiwan's rich ethnic and cultural diversity, and of the cultural legacy and treasures inherited from their indigenous Austronesian ancestors. ○

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## PHILIPPINES

The latest census conducted in the Philippines in 2010 included an ethnicity variable for the first time but no official figure for the indigenous peoples has yet come out. The country's indigenous population thus continues to be estimated at between 10% and 20% of the national population, which has been projected to currently lie at 102.9 million. The indigenous groups in the northern mountains of Luzon (Cordillera) are collectively known as *Igorot* while the groups on the southern island of Mindanao are collectively called *Lumad*. There are smaller groups collectively known as *Mangyan* in the central islands as well as even smaller, more scattered groups in the central islands and Luzon, including several groups of hunter-gatherers in transition.

Indigenous peoples in the Philippines have retained much of their traditional, pre-colonial culture, social institutions and livelihood practices. They generally live in geographically isolated areas with a lack of access to basic social services and few opportunities for mainstream economic activities, education or political participation. In contrast, commercially valuable natural resources such as minerals, forests and rivers can be found mainly in their areas, making them continuously vulnerable to development aggression and land grabbing.

Republic Act 8371, known as the Indigenous Peoples' Rights Act (IPRA), was promulgated in 1997. The law has been lauded for its support for indigenous peoples' cultural integrity, their right to lands and to the self-directed development of these lands. More substantial implementation of the law is still being sought, however, apart from there being fundamental criticism of the law itself. The Philippines voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) but the government has not yet ratified ILO Convention No. 169.



## State of Indigenous Peoples Address 2015

From 8 to 11 August 2015, 76 indigenous leaders and representatives from 41 indigenous peoples' communities in Luzon, Visayas and Mindanao gathered to celebrate the International Day of the World's Indigenous Peoples and to present the true state of indigenous peoples in the Philippines. They lamented the

glaring invisibility of indigenous peoples' situations and issues in the State of the Nation Address delivered by Philippine President Aquino on 27 July 2015 and raised urgent issues of particular concern to indigenous peoples. These concerns (mentioned below, among others) were contained in a State of Indigenous Peoples Address (SIPA) 2015,<sup>1</sup> which was officially presented to the government and UN agencies in a dialogue facilitated by UN Special Rapporteur on the rights of indigenous peoples, Ms Victoria Tauli-Corpuz.

### **More bureaucratic hurdles for land rights**

Indigenous peoples have had to endure tedious bureaucratic procedures and rigorous requirements for the recognition of ancestral domains and lands by the National Commission on Indigenous Peoples (NCIP). Many applications have not yet been approved despite long years of waiting for their Certificates of Ancestral Domain/Land Titles (CADT/CALT). Now, they face yet another challenge with Joint Administrative Order 01, series of 2012 (JAO 01-12) of the Department of Agrarian Reform, Department of Environment and Natural Resources (DENR), Land Registration Authority and the NCIP. JAO 01-12 is an administrative order meant to harmonize the ancestral domain recognition process by addressing issues of overlapping jurisdiction, operational issues and conflicting claims among the said agencies.<sup>2</sup> However, indigenous peoples see the imposition of JAO 01-12 as a surrender by the NCIP of its mandate to protect indigenous peoples' rights to ancestral lands and resources. JAO 01-12 has caused delays in the issuance and registration of CADT/CALTs. Meanwhile, ancestral lands are being lost through the issuance of Certificates of Land Ownership Awards (including fraudulent ones) by the Department of Agrarian Reform, without any coordination with NCIP. The Department of Environment and Natural Resources continues to issue Community-Based Forest Management Agreements and Integrated Forest Management Agreements, and to allow the entry of mining corporations and large-scale plantations onto indigenous peoples' lands, while CADT/CALT applications languish in the NCIP. Indigenous peoples are thus demanding the repeal and nullification of this joint administrative order as it is seen as detrimental to their interests and a violation of their land rights.<sup>3</sup>

## Indigenous peoples, mining and dams

Indigenous peoples continue to face major problems due to large and medium-scale corporate mining, unregulated and non-community controlled small-scale mining along with various hydroelectric dam and other energy generation projects.

The entry of mining companies into indigenous communities has caused not only displacement and destruction of the environment and property but also divisions and conflicts among indigenous families. For instance, the massive open-pit mining operations of OceanaGold in Didipio, Nueva Vizcaya, is flattening mountains and polluting rivers, to the detriment of the indigenous communities in the area. And yet traditional small-scale mining practices are criminalized in some areas. The presence of the military in mining areas has curtailed the freedom to work on their ancestral lands and human rights defenders, activists and environmentalists opposed to mining are being killed, intimidated, or harassed through the filing of cases against them.<sup>4</sup>

There has been an observed revival of plans for large dam projects in indigenous communities, causing displacement and anxiety among indigenous peoples. The Jalaur River Multipurpose Project in Panay island in the Visayas, which will start implementation in 2016, will affect 17,000 indigenous Tumandok. Numerous other dam and energy projects are in the pipeline in indigenous communities around the country including Pulangi Dam V, Kaliwa-Kanan (Laiban) dam, Sierra Madre dam, Balog-balog dam, Tinoc mini-hydro power plant, Alimit hydro-power complex, as well as a host of geothermal and coal-fired power plants.<sup>5</sup>

## National Greening Program

The government's National Greening Program (NGP) aims to plant 1.5 billion tree seedlings on 1.5 million hectares of public lands and to conduct land surveys nationwide from 2011 to 2016. Included in the areas targeted for tree planting are indigenous peoples' ancestral domains. The Katribu Kalipunan ng mga Katutubong Mamamayan ng Pilipinas, a national alliance of indigenous peoples, has criticized the NGP for opening up 105 sites covering more than 370,000 hectares of ancestral lands.<sup>6</sup> Indigenous peoples in Mindanao reported that fake indige-

nous leaders and non-governmental organizations had been created to make money out of the implementation of the NGP. In Panay island, indigenous Tuma-dok reported that some of their traditional farms had been converted for the NGP's tree planting projects, causing dislocation and conflicts among them. Likewise indigenous Agta in San Mariano, Isabela province reported being displaced due to the NGP. The Agta also lamented that they fear being shot by corporate loggers and warlords when they go hunting and gathering food within their own ancestral territories.<sup>7</sup> After five years of implementation, environmentalists such as the Save Sierra Madre Network Alliance have criticized the NGP as deceptive, saying that "the framework of the program is not to bring back our forest cover but to harvest trees." Another environmentalist observed that seedlings never got the chance to grow before forest fires burned them to the ground, leading him to call it the "National Browning Program". Locals say these reforestation sites are burned on purpose every year so that reforestation can continue and provide a livelihood for the settlers who are hired to plant the seedlings.<sup>8</sup> Likewise, Teddy Baguilat Jr., indigenous House of Representatives' member for Ifugao province, expressed his disapproval of the DENR's inadequate implementation of the NGP, which he said could lead to more soil erosion and damage to the (world-famous) rice terraces, claiming that inappropriate tree species had been planted in the watersheds of Ifugao.<sup>9</sup> In April 2015, the Commission on Audit declared the NGP "unsuccessful due to lack of efficient and effective system of implementing and monitoring the projects".<sup>10</sup> In spite of this, President Benigno S. Aquino III signed Executive Order No. 193 on 12 November 2015 extending the coverage of the NGP from 2016 until 2028 in order to cover the remaining estimated 7.1 million hectares of unproductive, denuded and degraded forestlands.<sup>11</sup>

## Human rights violations

2015 was another year of human rights violations committed with impunity against indigenous peoples. Most severely affected were the indigenous Lumad in Mindanao, who experienced extrajudicial killings, massacres, forced evacuations, political vilification, torture, sexual abuse, illegal arrests and detentions, harassment and intimidation. The government's counter-insurgency program, Oplan Bayanihan, continues to target indigenous peoples, in the light of public statements made by the Armed Forces of the Philippines Eastern Mindanao Command that

74% of revolutionary New People's Army (NPA) members in the region are believed to come from the ranks of indigenous peoples and that 90% of the NPA guerilla bases are allegedly located in the ancestral domains of indigenous communities.<sup>12</sup> On the other hand, the Armed Forces have also created paramilitary groups, called *Bagani* and *Alamara*, and are recruiting indigenous persons to assist the military, as well as to protect corporate interests in Lumad territories.

Since the start of President Aquino's term, which runs from June 2010 until October 2015, at least 72 indigenous persons, 57 of them Lumad, have been the victims of extrajudicial killings, for which the military and paramilitary groups are assumed to be responsible.<sup>13</sup> On 18 August, the 1st Special Forces Battalion massacred five Lumad, including Emer and Welmer Somina, and Norman, Herminio and Jobert Samia, in Pangantucan, Bukidnon, an incident which the military claimed was an armed encounter with members of the NPA. The victims were members of the Manobo Farmers Association. Emer Somina and Norman Samia were aged 17 and 14.<sup>14</sup> On 28 August, brothers Crisanto, 39, and Ely "Loloy" Tabugol, 34, of Siagao village were shot dead by "armed men with long firearms" suspected of being paramilitaries, said Karapatan-Caraga. The next day, 29 August, all 332 families left the village because the armed men had threatened that "they will be massacred".<sup>15</sup> On 1 September, a group of paramilitaries brutally killed Emerito Samarca, the executive director of the Alternative Learning Center for Agricultural and Livelihood Development (ALCADEV), which is known for providing alternative education to Lumad children. Immediately after killing Samarca, the perpetrators killed Dionel Campos and Datu Bello Sinzo, both known as staunch defenders of human rights, while the villagers were made to watch the vicious act.

Meanwhile in Luzon, northern Philippines, leaders and members of the Cordillera Peoples Alliance<sup>16</sup> continued to experience human rights violations resulting from military operations. In March, death threats were sent with a photo of the "gamong", a traditional burial blanket of the Ifugao indigenous people, to 10 members and leaders of the Ifugao Peasant Movement.

## Internal refugees

Thousands of indigenous Lumad had to flee their homes in Mindanao in fear of military operations, harassment and forced recruitment by paramilitary groups.

Human rights watchdog, Karapatan,<sup>17</sup> documented the evacuation of almost a thousand individuals from 15 villages in Agusan del Sur between January and March 2015 due to military operations and encampments in Lumad schools.<sup>18</sup> In May 2015, more than 700 Lumad were evacuated from Talaingod, Davao del Norte and they sought shelter at the Haran Center of the United Church of Christ in the Philippines (UCCP) in Davao City. In an attempt to force the evacuees to return to their villages, more than 500 policemen and government agents, led by Congresswoman Nancy Catamco, raided the evacuation center in July. Violence erupted as the Lumad refused, demanding that military troops leave their villages so that they could return home. As of December 2015, over 900 evacuees remained at Haran Center. In addition, almost 3,000 individuals were evacuated to Tandag City, Surigao del Sur following the massacre of Samarca, Campos and Sinzo on 1 September.

UN Special Rapporteur on Internally Displaced Persons, Dr. Chaloka Beyani, conducted an official visit to the Philippines from 21-30 July 2015 to look into the situation, needs and concerns of internally displaced persons. He visited Mindanao and learned about the massive displacement of indigenous peoples due to militarization and mining. In his statement after his official visit, Dr. Beyani urged the government, “in consultation with indigenous peoples themselves, to give greater attention to addressing the causes of displacement whether it be due to the militarization of their areas or due to development projects”.<sup>19</sup>

### **Violation of the right to traditional health practices**

The “No Home-Birthing Policy”<sup>20</sup> of the Department of Health requires that pregnant women give birth in hospitals and lying-in centers. Midwives are no longer allowed to deliver babies in homes. Facility-based births are instead required. This policy is putting an additional strain on indigenous women by prohibiting and penalizing home births assisted by traditional birth attendants. The non-governmental organization the Council for Health Development has said that the policy could increase maternal and neonatal mortality because public birthing facilities are few and far between.<sup>21</sup> The lack and inaccessibility of basic social services and health care providers in many indigenous communities amplifies the burden of indigenous women who have to hike for long distances just to give birth in the nearest

health facility.<sup>22</sup> Furthermore, the women have to deal with discriminatory attitudes and the insensitivity of health care providers towards indigenous peoples.

### **Attacks on indigenous schools**

Indigenous and non-governmental organizations have taken initiatives to set up indigenous schools offering culturally-sensitive and appropriate education. However, many of these schools are being branded as subversive and fronts for revolutionary groups, drawing attacks from the military and paramilitary forces. Eighty-two attacks on indigenous schools were documented over the 2011 to 2015 period involving 57 schools run by non-governmental organizations in Mindanao.<sup>23</sup> Kalumaran, an alliance of Lumad indigenous peoples in Mindanao, reported that the attacks against schools were concentrated in the provinces of Bukidnon, Davao del Norte and Surigao del Sur. In May 2015, hundreds of students were deprived of the right to attend classes after at least 24 primary and secondary indigenous schools were forcibly shut down by the Department of Education on the suspicion that they were training grounds for revolutionary groups. Military and paramilitary groups allegedly threatened to kill the teachers if they continued teaching in these schools. School administrators, teachers and community leaders experienced threats, intimidation and even burning of school buildings.

### **Salubungan: National Convergence of Indigenous Peoples' Protests**

From 19 October to 21 November 2015, a caravan of around 700 Lumad, including women and children, traveled all the way over land and sea from Mindanao to Manila for the *Manilakbayan ng Mindanao* (Journey to Manila) in order to “seek immediate action on the killings of Lumad in the name of militarization and plunder by big mining and plantations”.<sup>24</sup> The participants conducted numerous activities to highlight the situation of indigenous peoples, engaging with government agencies, schools, churches, media, NGOs, artists and peoples’ organizations in the capital. Despite sustained political repression and surveillance, the events were successful in drawing the attention and support of a wide section of the population.

Some 600 indigenous peoples and peasants traveled from the Cordillera, Ilocos and Cagayan regions in northern Luzon to Manila from 16-19 November 2015 under the banner of *Martsa Amianan* (March of the North). There they met up with more than 1,300 indigenous peoples and advocates from other regions of the country for the *Salubungan*, a national convergence of militant non-violent protest actions against the violation of indigenous peoples' rights and for the assertion of the right to self-determination.

## Mindanao Peace Process

After a long process of peace negotiations between the Government of the Philippines and the Moro Islamic Liberation Front (MILF), the draft Bangsamoro Basic Law (BBL) was filed in Congress in September 2014 as a key step in resolving the long-running armed conflict in Mindanao. However, the draft bill has encountered serious opposition from various fronts, including congressmen in the House of Representatives and the Senate, as well as affected indigenous peoples in Mindanao.

Non-Moro indigenous peoples in Mindanao, particularly those living within and adjacent to the so-called Bangsamoro territory, are of the view that in seeking to uphold the rights of the Moro people, the BBL, as presently written, violates the rights of indigenous peoples found within the proposed Bangsamoro territory. In its present form, the BBL recognizes only one Bangsamoro identity, a single ancestral domain, and self-determination only for the Bangsamoro people. According to them, subsuming the identity of indigenous peoples under a single Bangsamoro identity is tantamount to forced assimilation and internal colonization. Recognition of the ancestral domain of the Bangsamoro but not the ancestral domain of indigenous peoples is seen as a violation of the right to non-discrimination and indigenous land rights.<sup>25</sup> ○

## Notes and references

- 1 A copy of SIPA 2015 is available at <http://www.tebtebba.org/index.php/content/350-philippine-state-of-indigenous-peoples-address-2015>
- 2 Joint DAR-DENR-LRA-NCIP Administrative Order No. 1, Series of 2012
- 3 State of Indigenous Peoples Address (SIPA) 2015.
- 4 SIPA 2015

- 5 SIPA 2015
- 6 Katribu Kalipunan ng Katutubong Mamamayan ng Pilipinas statement on the occasion of the United Nations-declared International Day of the World's Indigenous Peoples
- 7 Sulong Katribu Cordillera. Press release. Cagayan Valley indigenous peoples unite for life, land and resources, 17 September 2015.
- 8 <http://www.rappler.com/move-ph/ispeak/60948-rethinking-national-greening-program>
- 9 <http://www.sunstar.com.ph/baguio/local-news/2016/01/10/ifugao-lawmaker-slams-denr-450973>
- 10 See: [http://www.lda.gov.ph/index.php?option=com\\_content&view=article&id=118&Itemid=511](http://www.lda.gov.ph/index.php?option=com_content&view=article&id=118&Itemid=511)
- 11 <http://ngp.denr.gov.ph/index.php/newandevents/news/1559-executive-order-193>
- 12 See: <https://natoreyes.wordpress.com/2015/09/11/aquino-policy-targeting-the-lumad-under-oplan-bayanihan-and-the-whole-of-nation-initiative/>
- 13 See: <http://www.rappler.com/nation/105847-timeline-attacks-lumad-mindanao>
- 14 <https://ipmsdl.wordpress.com/2015/09/07/urgent-alert-on-ip-killings-in-mindanao/>
- 15 <http://bulatlat.com/main/2015/08/31/2-peasants-killed-400-families-evacuate-in-surigao-del-sur/>
- 16 Cordillera Peoples Alliance is an alliance of progressive organizations, mostly grassroots-based indigenous peoples organizations in the Cordillera region.
- 17 Karapatan is a national alliance of human rights organizations.
- 18 See: <http://www.karapatan.org/Rights+groups+tackle+situation+of+evacuees+with+UN+SR+on+Internally+Displaced+Persons>
- 19 See: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16280&LangID=E#sthash.Rrp1C2lg.dpuf>
- 20 In an attempt to curb the country's maternal mortality ratio (MMR), the DOH—under President Gloria Macapagal-Arroyo—passed Administrative Order 2008-0029 entitled, "Implementing Health Reforms towards Rapid Reduction in Maternal and Neonatal Mortality" or the "No Home Birthing Policy". Facility-based deliveries under the supervision of a licensed SBA or doctor are considered to be a crucial factor in lowering the MMR. In 2011, the DOH updated the policy, called the Maternal, Newborn, Child Health and Nutrition (MNCHN) Strategy.
- 21 <http://www.philstar.com/nation/2013/03/04/915684/group-bucks-dohs-no-home-birthing-policy>
- 22 SIPA 2015.
- 23 SIPA 2015.
- 24 See: <http://www.manilakbayan.org>
- 25 SIPA 2015.

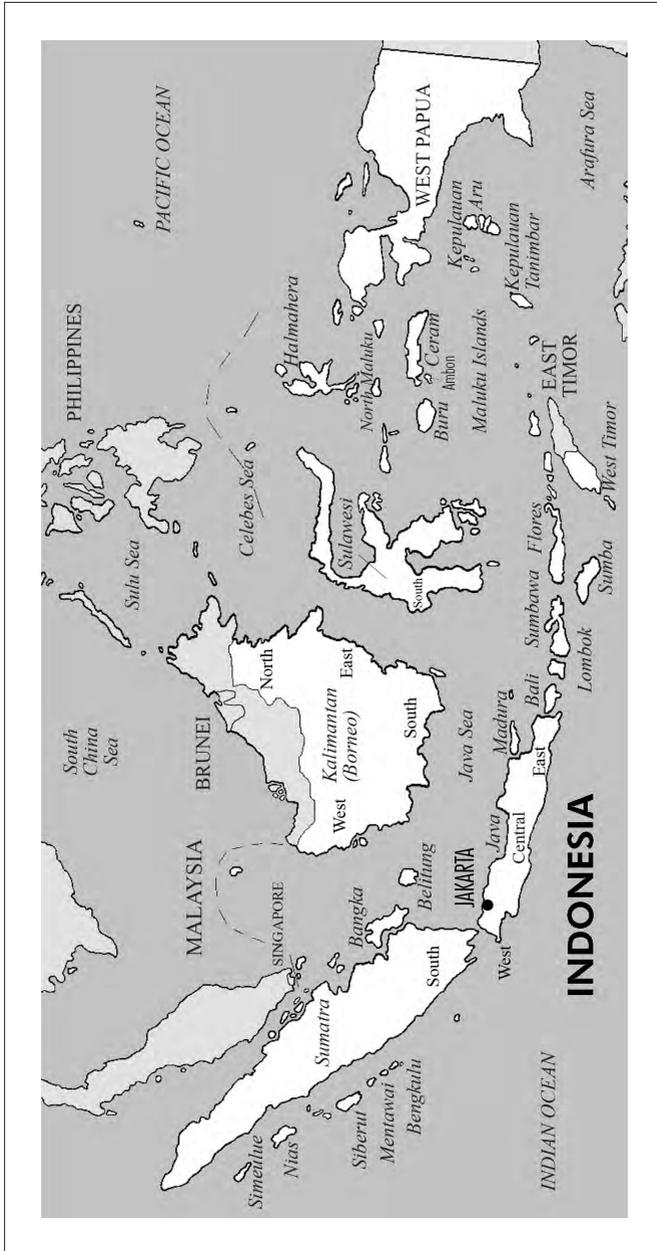
**Sarah Bestang K. Dekdeken** is a Kankanaey Igorot from the Cordillera region of northern Philippines. She is a staff member of the Cordillera Peoples Alliance, a federation of progressive people's organizations, mostly grassroots-based organizations of indigenous communities in the Cordillera region.

**Jill K. Cariño**, an Ibaloi Igorot, is the current Vice Chairperson for External Affairs of the Cordillera Peoples Alliance, and Convenor and Program Director of the Philippine Task Force for Indigenous Peoples' Rights (TFIP), a network of non-governmental organizations in the Philippines advancing the cause of indigenous peoples.

## INDONESIA

Indonesia has a population of approximately 250 million. The government recognizes 1,128 ethnic groups. The Ministry of Social Affairs identifies some indigenous communities as *komunitas adat terpencil* (geographically-isolated indigenous communities). However, many more peoples self-identify or are considered by others as indigenous. Recent government Acts and Decrees use the term *masyarakat adat* to refer to indigenous peoples. The national indigenous peoples' organization, Aliansi Masyarakat Adat Nusantara (AMAN), estimates that the number of indigenous peoples in Indonesia falls between 50 and 70 million people.

The third amendment to the Indonesian Constitution recognizes indigenous peoples' rights in Article 18b-2. In more recent legislation, there is implicit recognition of some rights of peoples referred to as *masyarakat adat* or *masyarakat hukum adat*, including Act No. 5/1960 on Basic Agrarian Regulation, Act No. 39/1999 on Human Rights, and MPR Decree No X/2001 on Agrarian Reform. Act No. 27/2007 on Management of Coastal and Small Islands and Act No. 32/2010 on Environment clearly use the term *Masyarakat Adat* and use the working definition of AMAN. The Constitutional Court in May 2013 affirmed the Constitutional Rights of Indigenous Peoples to their land and territories, including their collective rights over customary forest. While Indonesia is a signatory to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), government officials argue that the concept of indigenous peoples is not applicable as almost all Indonesians (with the exception of the ethnic Chinese) are indigenous and thus entitled to the same rights. Consequently, the government has rejected calls for specific needs by groups identifying themselves as indigenous. On 10 August 2015, the Ministry of Environment and Forestry agreed to be the trustee of 6.8 million hectares of indigenous maps, for inclusion in the One Map Initiative.



## **Policy developments at national level**

Indigenous peoples started 2015 with abundant expectations and determined to embark on reconciliation with the state. After all, President Joko Widodo and Vice-President Jusuf Kalla had included six Indigenous peoples' priorities in NAWACITA!<sup>1</sup> On 2 January 2015, President Joko Widodo welcomed AMAN in the Cabinet Secretary's office, where it was handed a draft Presidential Decree on an Indigenous Peoples' Task Force. The Task Force is key to Joko Widodo and Jusuf Kalla fulfilling their commitments related to indigenous peoples. Indigenous peoples believe the Task Force could be the first step towards reconciliation between indigenous peoples and the state. On 25 June 2015, the president welcomed indigenous delegates and agreed to form a Task Force. Later, on several occasions, the president again reaffirmed his commitment to indigenous peoples, for example, during the State Address at the 70<sup>th</sup> Independence Day of the Republic of Indonesia, during the Presidential Address at the climate change conference, at COP21 Paris, and during the Presidential Speech on International Human Rights Day.

However, almost all the items relating to an indigenous peoples' agenda have yet to be realized. The failure to include the Bill on Recognition and Protection of the Rights of Indigenous Peoples in the 2015 National Legislation Programme is one example.<sup>2</sup> Furthermore, the Draft Terms of Reference for an Indigenous Task Force have not yet been signed by the president.

## **Bureaucracy and sector reform: still a long way to go**

President Joko Widodo began his office with some striking efforts at "bureaucratic consolidation". One of them was the merging of the Ministry of Environment with the Ministry of Forestry to become the "Ministry of Environment and Forestry" with the intention of running the Ministry of Forestry under a paradigm of environmental development focusing on sustainability.

During 2015, the government created a new political climate. Space for discussion and dialogue became more available and accessible. The Ministry of Environment and Forestry, the Directorate General of Marine, Coastal, and Small Islands of the Ministry of Marine Affairs and Fisheries (MMAF) and some other

ministries frequently include civil society (including AMAN) in their discussion of government policies. AMAN appreciates the small steps taken by the government throughout 2015. For example, the Ministry of Environment and Forestry has given legal status to some forests used by indigenous peoples under the social forestry scheme. The ministry has also opened a space for grievances by establishing a special desk within the Ministry to receive complaints from the public, including indigenous peoples. However, little progress has been made in the actual implementation of these good intentions. For instance, processes in the National Parliament to amend the Forestry Law were, until recently, not prioritized, and thus been at a standstill. Furthermore, instead of amending the Land Registration Regulation by classifying indigenous territories as one of the registered objects, the Ministry of Agrarian and Spatial Planning issued Ministerial Regulation No. 9 of 2015, which fails to accept the reality of land tenure in the communities. The Ministerial Regulation also simplifies the concept of indigenous rights into communal rights.

As of August 2015, the Indigenous Territories Registration Body (BRWA), AMAN, and the Participatory Mapping Network (JKPP) had submitted 604 indigenous territory maps covering a total of 6.8 million hectares to the government through the Ministry of Environment and Forestry. This number will continue to increase as the indigenous territory mapping that is occurring across Indonesia gets up to speed. The question in this context is the legal validity of indigenous territory maps. Discussions in this respect were conducted throughout 2015. One of the entry points for legalizing indigenous territories is the use of the “indigenous forests” scheme as this is one of the initiatives in the Indicative Maps for the Social Forestry PIAPS mechanism. However, the challenge in this process is the “mandatory” recognition of indigenous peoples as the owner of the indigenous forest through local regulation.

Indigenous territory maps have also been legalized through the Geospatial Information Agency (GIA). However, this process is not even close to bringing the expected results. It is crucial for the GIA to form an Indigenous Territories Thematic Working Group within its organizational structure, so that indigenous peoples or their representatives can be parties in the decision making at the GIA. Until now, the government’s decision on data trustees is going nowhere between GIA, the Ministry of Environment and Forestry, and the Ministry of Agrarian and Spatial Planning. The path has been blocked in terms of ensuring indigenous territories are included in the One Map Policy.

## **Half-hearted decision: judicial review of Law on Prevention and Eradication of Forest Degradation**

Civil society organizations, including indigenous peoples' organizations, are making efforts to seek justice. Injustice in society mostly stems from laws and state policies. Fortunately, the State of Indonesia still provides opportunities for people to complain and request judicial examinations of laws and policies issued by both legislative and executive bodies.

Following the success of Constitutional Court Decision No. 35/2012, indigenous peoples filed another request in 2015 asking the Constitutional Court to grant the demands contained in a petition against the Law on Prevention and Eradication of Forest Degradation and Forestry Law. This law is reported to have become a source of criminalization and violence against indigenous peoples. After a year of waiting, the Constitutional Court finally gave its ruling on 10 December 2015. The Court granted indigenous peoples and other forest-dependent communities permission to collect forest products for non-commercial purposes. However, almost all the requests to review the provisions that criminalize indigenous peoples have been refused by the Constitutional Court.

## **Government of Indonesia's INDC continues to deny its indigenous peoples**

At the opening of the United Nations Framework Convention on Climate Change (UNFCCC) Conference of Parties (COP21) in Paris, the Indonesian president gave a speech in which he stated that indigenous peoples had contributed positively to Indonesia's reduced emissions. However, the term "indigenous peoples" did not appear in the written version of the official speech that was distributed to various parties, including the media.

Moreover, the president's commitment to indigenous peoples is not reflected in the Intended Nationally Determined Contribution (INDC) Document submitted by the Indonesian government.<sup>3</sup> The document shows that the Indonesian government refuses to use the term "Indigenous Peoples of Indonesia" – it only uses the term when beneficial at the international level, even though Indonesia is one of the UN member states that voted for the adoption of the UNDRIP. Likewise, the

INDC document is not in line with Constitutional Court Decision No. 35/2012 that uses UNDRIP and ILO Convention No. 169 on *Indigenous and Tribal Peoples* as evidence and considerations for Constitutional Court Decisions.

This denial of indigenous peoples is not consistent with the actions and attitude of the Indonesian government. In various treaties and international arenas, as well as in various official Indonesian documents and events, the term *Indigenous Peoples* has been consistently used, e.g., when celebrating International Day of the World's Indigenous Peoples in 2006 (on the part of former President Yudhoyono); in the Letter of Intent (LoI) between the Government of Norway and the Government of Indonesia concerning *Cooperation on reducing greenhouse gas emissions from deforestation and forest degradation*; in the Forest Investment Programme (FIP); and in the Convention on Biological Diversity (CBD), the Nagoya Protocol, and Law No. 11 of 2013 on Ratification of Nagoya Protocol.

Furthermore, the Indonesian government's refusal to recognize and use the term *indigenous peoples* is considered a rejection of the "Concluding observations on the initial report of Indonesia" issued by the Committee on Economic, Social and Cultural Rights of the United Nations on 19 June 2014. The Committee called on the Indonesian government to immediately ratify the Law on recognition and protection of the rights of Indigenous Peoples and to recognize Indigenous Peoples as *Indigenous Peoples*.

What's more, the lack of reference to indigenous peoples and their rights in the INDC does not reflect the fact that Indonesia has a very progressive constitution with regard to indigenous peoples' rights (Article 18, Para. (2) and Article 28I Para. (3) of the 1945 Constitution and various laws).

It is obvious that the officials representing Indonesia in the climate change negotiations have not followed developments in Indigenous peoples' rights over the last four decades in the various UN forums in which Indonesia has, in fact, participated extensively. The biggest concern is that this is the result of Indonesian diplomats at the UN not communicating the developments at the international level to government officials back home.

## **Policy development at local level**

Encouraging developments are happening in the legislative process for indigenous peoples in various regions across the archipelago. The trend of adopting

legislation that recognizes and protects indigenous peoples at the regional level became widespread in 2015. Some districts included the draft Local Regulation on Indigenous Peoples in their 2015 Local Legislation Programme. This was, among others, the case in the districts of Luwu in South Sulawesi, Bulungan in East Kalimantan, Ende in Flores, East Nusa Tenggara, Mentawai Islands, Lebak in West Java, Enrekang in South Sulawesi, and Bulukumba in South Sulawesi and Central Halmahera in North Maluku. At the end of 2015, two districts passed the Local Regulation on Recognition and Protection of Indigenous Peoples, namely Lebak and Bulukumba districts.

Some districts have submitted draft local regulations on indigenous peoples for discussion in 2016, for example: Banyuwangi in East Java, Hulu Sungai Selatan in South Kalimantan, and several other districts. In addition, some districts are initiating and building common perceptions with indigenous peoples regarding the importance of introducing local regulations on indigenous peoples in their respective regions. This has, among others, been the case in the Sinjai regency in South Sulawesi, Hulu Sungai Tengah in South Kalimantan, West Kotawaringin in Kalimantan Central, Musi banyu Asin in South Sumatra, and North Bengkulu regency in Bengkulu. The most encouraging part is that AMAN's political cadres are currently sitting in the legislative bodies of some regions and have become drivers of this legislative process.

Policy development at the local level was quite encouraging in 2015 and it is projected to continue in the years to come. AMAN notes that the recognition and protection of indigenous peoples in the regions must be followed by political awareness among the local apparatus and indigenous peoples so that policies are enforceable and not left on the shelf. Another challenge is the limited capacity of the state apparatus at the local level both in substantive aspects, such as its understanding of indigenous peoples, legislation, human rights, and in technical aspects such as preparing academic papers and draft local regulations.

## **The human rights' situation**

### **Voices from behind bars: when will the president set us free?**

2015 was a year of waiting for indigenous peoples. Waiting to see whether or not the government they have supported would earnestly implement its commitments. The president has, on many occasions, promised to grant clemency for

the victims of unjustified criminalization, most recently on Human Rights Day, 10 December 2015. However, this commitment to granting clemency to unjustly convicted indigenous individuals has not been fulfilled to date. AMAN has taken proactive steps to identify and verify the names of convicted indigenous persons who should be pardoned by the president, and proposed 168 names to the government through the National Commission on Human Rights. In addition, clemency was also requested through the lawyers providing assistance to these indigenous individuals. There has thus far been no encouraging information in this respect. As of December 2015, the number of indigenous individuals with a criminal conviction amounted to 217 persons, 11 of them still languishing in prisons in various regions.

### **The search for justice stumbles upon the state legal paradigm**

Regarding criminalization and violence against indigenous peoples, AMAN notes that 2015 was not very different from previous years. However, there are situations in which the criminalization of and violence against indigenous peoples seems to have declined. It should be noted that the reduction in number of convictions and violence is not due to adequate legal and political efforts by the state to protect its indigenous peoples, either through policy change or a paradigm shift in the implementation of law. State officials' behaviour in the field thus remains unchanged.

Criminal cases continue to go through the district courts. This shows that the perception of a range of problems facing indigenous peoples remains unchanged. Everyone knows that the injustices suffered by indigenous peoples are a result of state laws, meaning that they should be resolved outside of the normative legal framework, i.e., outside the law. If indigenous peoples' issues are resolved only within the normative legal framework then indigenous peoples will never obtain justice. The same applies to situations where indigenous peoples act as "plaintiffs", either against the policies issued by the state or the business community. The "requirement" for a legal umbrella such as legislation on Indigenous peoples becomes a barrier for the indigenous peoples in their pursuit of justice. There should instead be special legislation for indigenous peoples.

On the other hand, the state remains silent when it comes to the laws and policies that criminalize indigenous peoples. The Law on Prevention and Eradication of Forest Degradation and Forestry Law remain untouched and continue to

be a legal tool with which state officials are able to criminalize, violate and deny indigenous peoples' rights to indigenous land and territories.

Some of the following events illustrate how the state continues to use a formal legal paradigm in perceiving the problems facing indigenous peoples.

- Semunying Jaya indigenous people vs PT. Ledo Lestari ended in the rejection of the Semunying Jaya indigenous peoples' lawsuit by the judges of Bengkayang District Court in West Kalimantan, even after the indigenous peoples had gone through the judicial process with dozens of hearings. Semunying Jaya indigenous peoples, Jagoi Subdistrict, Babang Bengkayang District of West Kalimantan filed a lawsuit against PT. Ledo Lestari, a plantation company that had grabbed the indigenous lands, at Bengkayang District Court. After going through more than 27 trials, the judges of Bengkayang District Court decided on a NO (*niet ontvankelijke verklaard*) verdict and the claims were not accepted with the argument that the plaintiffs did not have legal standing. In the judges' legal consideration, the indigenous peoples were considered to have no legal status in the form of a local regulation or decree from the relevant ministries that would recognize their existence as indigenous peoples.
- More than 700 families belonging to the Tana Ai indigenous people in Sikka, Flores, East Nusa Tenggara, received threats of evictions from Sikka Local Government, Flores, East Nusa Tenggara. They are accused of living on the concession area of PT. Diosis Agung (DIAG), a company engaged in coconut plantation and which later changed its name to PT. Krisrama. The company's HGU (Right to Use Building) expired on 31 December 2013. The people repeatedly attempted to reclaim the public land and territory through a series of activities, both by visiting the relevant agencies as well as by engaging in dialogue with the Local Parliament and Sikka District Head. The result of this dialogue is unclear. The Local Parliament and Sikka District Head claim that they cannot issue a decision because it is the central government that has sole authority to solve the problem. In November 2015, several Tana Ai indigenous representatives struggled to get to Jakarta to seek the settlement of their case. They met with the National Land Agency (BPN), which issued a recommendation: BPN must not process the renewal of the HGU (Right to Use

Building) permit requested by the company until the problems affecting the Tana Ai indigenous people have been resolved.

- In March 2015, five Sedulur Sikep persons from the two districts of Kayen and Tambakromo in central Java filed a lawsuit with the State Administrative Court in Semarang. The lawsuit was against District Head Decree No. 660.1/4767 dated 8 December 2014 on the Environmental Permit for the Cement Plant Construction and Limestone and Clay Stone Quarry in Pati District to Sahabat Mulia Saksi Factory (SMS). The District Head Decree potentially displaced and eliminated the people's farmland, which has been contributing to their food security. The District Head Decree is contrary to several laws.<sup>4</sup> After going through a quite lengthy and tiring process, on 17 November 2015, the State Administrative Court in Semarang granted the plaintiffs demands entirely and invalidated the District Head Decree. In the consideration made by the judges, the decree was proved contrary to the Regional Spatial Planning (RTRW) of Pati District and good governance principles.

AMAN noted that besides the lack of legality in the eyes of the law, indigenous peoples are in some cases also obliged to deal with the security forces even though they realize that they risk violence and criminalization. Even the case of the Seko indigenous people, for example, shows clearly how state security officers are siding with the company. The state security officers are not only intimidating the Seko indigenous people but fundamentally neglecting the indigenous people who are fighting for justice. ○

## Notes and references

- 1 President Joko Widodo's Presidential Candidates Pledge in 2014.
- 2 See *The Indigenous World* 2015, p. 262. Available at <http://www.iwgia.org>
- 3 One of the major elements of the discussions among the parties to the UNFCCC in 2015 was the elaboration of Intended Nationally Determined Contributions (INDCs). Through their INDCs, nations submit their individual plans / pledges for reducing emissions. These individual plans should then add up to a common global goal for reducing emissions.
- 4 Law No. 26 of 2007 on Spatial Planning, Government Regulation No. 26 of 2008 on the National Spatial Plan, the Energy and Mineral Resources Ministerial Decree No. 0398 K/40/MEM/2005 on Determination of Karst Sukolilo Area and Ministry of Environment Regulation No.16 of 2012 on

Guidelines for Preparation of Environmental Documents, and contrary to the general principles of good governance.

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***Rukka Sombolinggi*** is a Toraya from Sulawesi, and is Deputy to AMAN's Secretary General on Policy Advocacy, Legal Issues and Politics.

## MALAYSIA

As of 2015, the indigenous peoples of Malaysia are estimated to account for around 13.9% of the 31 million population.<sup>1</sup> They are collectively called *Orang Asal*. The *Orang Asli* are the indigenous peoples of **Peninsular Malaysia**. The 18 *Orang Asli* subgroups within the Negrito (Semang), Senoi and Aboriginal-Malay groups account for 205,000 or 0.84% of the population in Peninsular Malaysia (24,457,300). In **Sarawak**, the indigenous peoples are collectively called *Orang Ulu* and *Dayak*. They include the Iban, Bidayuh, Kenyah, Kayan, Kedayan, Murut, Punan, Bisayah, Kelabit, Berawan and Penan. They constitute around 1,899,600 or 70.1% of Sarawak's population of 2,707,600 people.<sup>2</sup> In **Sabah**, the 39 different indigenous ethnic groups are called natives or *Anak Negeri* and make up about 2,203,500 or 60% of Sabah's population of 3,736,200. The main groups are the Dusun, Murut, Paitan and Bajau groups. While the Malays are also indigenous to Malaysia, they are not categorised as indigenous peoples because they constitute the majority and are politically, economically and socially dominant.

In Sarawak and Sabah, laws introduced by the British during their colonial rule recognising the customary land rights and customary law of the indigenous peoples are still in place. However, they are not properly implemented, and are even outright ignored by the government, which gives priority to large-scale resource extraction and the plantations of private companies and state agencies over the rights and interests of the indigenous communities. In Peninsular Malaysia, while there is a clear lack of reference to *Orang Asli* customary land rights in the National Land Code, *Orang Asli* customary tenure is recognised under common law. The principal Act that governs *Orang Asli* administration, including occupation of the land, is the Aboriginal Peoples Act 1954. Malaysia has adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and endorsed the Outcome Document of the World Conference on Indigenous Peoples, but not ratified ILO Convention No. 169.

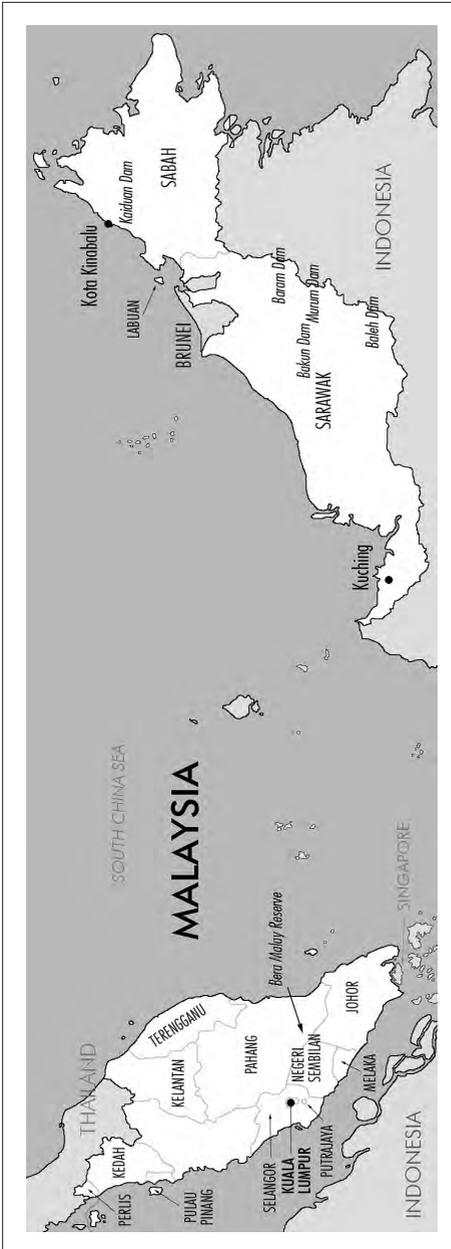
## Follow-up to the National Inquiry into the Land Rights of Indigenous Peoples

In 2013, the Human Rights Commission of Malaysia (SUHAKAM) published its findings from its National Inquiry into the Land Rights of Indigenous Peoples. A Task Force was appointed by the government to assess the findings and recommend steps for their implementation (see *The Indigenous World 2012, 2013, 2014, 2015*). The Task Force report was completed in late 2014 but made available only to the Federal Cabinet and Task Force members and not to the public. In June 2015, the Federal Cabinet “accepted” all of the Task Force’s 50 recommendations but rejected the call for a National Commission on Indigenous Peoples to be established, saying that the function of the Commission would, for the time being, be best served by a Cabinet Committee for the Land Rights of Indigenous Peoples.<sup>3</sup>

The Cabinet Committee was headed by the Deputy Prime Minister, Muhiyidin Yassin, but its work may now be shelved following his removal from office due to the current political turmoil in Malaysia.

The Task Force has categorised the implementation of the recommendations into short-, medium- and long-term plans. Upon closer examination, some of the proposed plans either diverge from the original intent or are limited in their scope. For example, SUHAKAM’s original recommendation to conduct a comprehensive and independent review of the Orang Asli Development Department (JAKOA), which has been heavily criticized for acting against the interests of the Orang Asli), has instead become a request to restructure it in order to empower JAKOA. Another concern is the number of recommendations made by the Task Force with regard to using the legal instrument of “communal title” as a rapid way of demarcating land, despite the fact that SUHAKAM’s study revealed that applying the communal title concept in Sabah has been problematic, and has been rejected by the Orang Asal as a solution to their land rights problems. The concept was rejected because it has been used more as a land development scheme than as recognition of customary lands and territories.

Another key recommendation of the Task Force that was accepted by the Federal Cabinet is the suspension of any decision by the local authorities on customary rights land that are the subject of a court process. Monitoring of the implementation of this decision and other processes is unclear, however, includ-



ing the participation of Orang Asal representatives. Ensuring clear monitoring with the participation of indigenous peoples' representatives is an important component of many of the accepted recommendations but it has not been sufficiently established in the implementation plans.

In June 2015, the Indigenous Peoples Network of Malaysia (JOAS) moved proactively to raise these points of concern with 20 Members of Parliament and presented a proposal to form a Parliamentary Select Committee on indigenous land issues. JOAS's briefing and proposal was well-received, and the MPs asked to visit communities and receive further briefings to clarify the concept of traditional lands and territories. JOAS's advocacy work on the recognition of indigenous customary laws and rights to land also included conducting research on, and mapping of, traditional lands and territories.

## Challenging encroachment on indigenous lands and territories

As encroachment and aggressive economic development continues on Orang Asal traditional lands and territories, efforts to challenge such development aggression through press statements, police reports, complaints to the government and, ultimately, filing cases in court also continue.

In 2015, two significant cases that were referred to court were the *Nohing case* in Peninsula Malaysia and the examination of the extent of traditional land and territories in Sarawak.

In the first case, the *Tok Batin* (village headman) of Bukit Rok, Mohamad Nohing and five others filed a claim against the Director of the State Land and Mines Office, the state government, the Director-General of the Department of Orang Asli Development (JAKOA) and the federal government in 2007. They sought a ruling that the state authority had failed to administratively gazette 2,023 hectares of their traditional lands that they claimed were approved for gazetting in 1974. The state has handed over a significant portion of this land to FELCRA Berhad (Federal Land Consolidation and Rehabilitation Authority, a fully government-owned company) for development as an oil palm plantation for neighbouring communities (non-Orang Asli).

After a five-year court battle, the Court of Appeal ruled in October 2015 that the creation of the Bera Malay Reservation in 1923 did not extinguish the pre-existing native title rights of the Semelai people. It also held that they had native title rights to their customary lands as long as those lands were settled, planted, occupied and controlled by the Semelai people. However “roaming lands” (*ka-wasan rayau*) which they did not occupy or exercise control over were not considered part of their *tanah adat* or customary lands.

In the second case, on 9 September 2015, a full bench of the Malaysian Federal Court heard the Sarawak government’s appeals at the Kuching High Court that the pre-existing rights under native laws and customs (governed by common law) should not go beyond felled and cultivated lands and should not therefore include rights to land, trees, fruit trees, hunting, fishing, grazing areas and areas to gather food and forest produce in uncultivated areas within the broader territorial domain or communal areas. It also argued that there was no need for these non-codified native customs to be expressly given the force of law by the legislative or executive arms of the government of Sarawak. In his argu-

ment, legal counsel for the Sarawak government, JC Fong, said the government did not recognise these areas as native customary lands as they had failed to satisfy the legal requirement that the lands should be continuously occupied.<sup>4</sup>

The Federal Court deferred its decision without giving a date on which it would consider the arguments presented. The Federal Court's decision will potentially have major legal implications for large tracts of customary land currently occupied, used and enjoyed by indigenous peoples of Malaysia.<sup>5</sup>

### **Anti-dam campaign**

In November 2015, two years of protests and blockades by the Baram community ended with a decision by the Sarawak Chief Minister to shelve the proposed 1,000 MW Baram dam in Sarawak. However, attention has now shifted to constructing the 1,200 MW Baleh dam.<sup>6</sup>

Meanwhile, in Sabah, protests at the construction of the Kaiduan dam along the Papar River continued throughout 2015. The government is adamant that the dam is the best option to prepare for a purported water shortage, and has shot down every recommendation made to adopt alternative water supply measures and step up efforts to reduce pipe leakages, reported to stand at more than 30% of water lost. The Sabah Water Department did not go to the public forum, attended by about 400 people, in which various alternatives were proposed and the significance of protecting the watershed that feeds the Papar River was raised. The local government, for its part, has used various tactics to intimidate the indigenous communities living in the areas directly affected by the dam. In November, the government finally announced that the cabinet had decided to go ahead with the project after keeping communities hanging on the claim that the project was still at the research stage.<sup>7</sup>

### **Categorising indigenous peoples**

Criticisms on the continued use of "*lain-lain*" (other) on official government forms as the only ethnic category that includes indigenous peoples (the alternatives being Malay, Indian or Chinese) gathered momentum in 2015. The Sarawak Chief Minister gained political ground when he ruled that official forms should add

the category Dayak, which is a generic term for many of Sarawak's Orang Ulu communities. Many accepted this as an important first step towards recognition of Sarawak's indigenous peoples. The Dayak category was later also approved by the Federal Cabinet and will now be included on all official government forms.<sup>8</sup>

The Sabah government, taking its cue from Sarawak, held a Sabah Ethnic and Sub-Ethnic Listing and Classification Workshop in an effort to endorse Sabah's 42 ethnic and over 200 sub-ethnic groups. The Sabah Tourism, Culture and Environment Minister Datuk Seri Masidi Manjun said he would submit the list to the government, particularly the National Registration Department, to be gazetted as a reference on Sabah's ethnic groups.<sup>9</sup>

### **Political insecurity**

Recent laws such as the Peaceful Assembly Act 2012, Security Offences (Special Measures) Act 2012, Printing Presses and Publications Act 2012, Universities and University Colleges Act 2012, amendments to the Penal Code (section 124b), the Evidence Act (section 114a) and Seditious Act are restricting the civil and political rights of civil society and have been used to intimidate and oppress activists. In 2015, two new laws were passed without much debate: the Prevention of Terrorism Act and the National Security Council Bill, drawing more criticism of the government.

On 29 and 30 August 2015, large groups of ordinary people peacefully assembled in major cities in Malaysia, including Kuala Lumpur, Kota Kinabalu and Kuching, to express their frustration at deteriorating developments in human rights, oppression of civil society and corruption. Indigenous leaders were at the forefront of organising the assemblies (referred to as BERSIH 4, peaceful assemblies organised by the Movement for Clean & Fair Elections, BERSIH,) in Sabah and Sarawak, and active participants in Peninsular Malaysia.

Jannie Lasimbang, a former SUHAKAM commissioner and member of the United Nations Expert Mechanism on the Rights of Indigenous Peoples, and currently the Secretary General of JOAS was the first person to be charged under the Peaceful Assembly Act 2012 (PAA) for her role in organising BERSIH 4 in Sabah. She was charged on 21 October 2015 at the Kota Kinabalu Magistrate Court under section 9(1) of the PAA for having organised the assembly without giving 10 days' notice to the city police chief. Although notice was submitted, the

failure to obtain City Hall's consent to use the Likas Bay Park was construed as not having given 10 days' notice. ○

## Notes and references

- 1 Data sourced from the Statistics Department on 27.1.2015 at <http://pqi.stats.gov.my/searchBl.php> "current population estimates" for ethnic groups for Sabah and Sarawak. For Sabah and Sarawak, the figure used is under "bumiputera" which includes the Malays i.e. the "Brunei Malays" (Sabah) and "Malays" (Sarawak). The actual number of natives should therefore be lower than this estimate. There is no breakdown by ethnic group. There is no current population data available for the Orang Asli but this is sourced from the estimate of the Department for Orang Asli Development (JAKOA).
- 2 Ibid. NB. The estimated percentage of indigenous peoples in Sarawak given by the Statistics Departments has risen from 45.5% in 2014 to 70.1% in 2015. There is no explanation offered for this sudden increase.
- 3 <http://www.thestar.com.my/news/nation/2015/06/17/cabinet-approves-indigenous-lands-rights/>
- 4 <http://www.themalaysianinsider.com/malaysia/article/federal-court-defers-decision-on-contentious-native-customary-lands-case#sthash.b4cP9Bwj.dpuf>
- 5 Two other court cases involving Orang Asli customary lands are the Senta (Semai) and Kampung Peta (Jakun) court victories. Details can be found at <https://www.facebook.com/notes/center-for-orang-asli-concerns-coac/high-moments-in-2015/1034124863298106>
- 6 <http://www.survivalinternational.org/news/11030>
- 7 <http://www.dailyexpress.com.my/news.cfm?NewsID=104692>
- 8 <http://www.themalaysianinsider.com/malaysia/article/putrajaya-approves-dayak-for-race-category-in-all-official-forms>
- 9 <http://www.themalaymailonline.com/malaysia/article/sabah-lists-42-ethnic-groups-to-replace-lain-lain-race-column>

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## THAILAND

The indigenous peoples of Thailand live mainly in three geographical regions of the country: indigenous fisher communities (the Chao Ley) and small populations of hunter-gatherers in the south (Mani people); small groups on the Korat plateau of the north-east and east; and the many different highland peoples in the north and north-west of the country (the Chao-Khao). Nine so-called “hill tribes” are officially recognised: the Hmong, Karen, Lisu, Mien, Akha, Lahu, Lua, Thin and Khamu.<sup>1</sup> According to the Department of Welfare & Social Development, there are 3,429 “hill tribe” villages with a total population of 923,257 people.<sup>2</sup> The indigenous peoples of the south and north-east are not included.

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 them in the northern highlands. Despite positive developments in recent years, this continues to underlie the attitudes and actions of government officials.

Thailand has ratified or is a signatory to the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (UNFCCC), the Convention on the Rights of the Child (CRC), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Universal Declaration of Human Rights. It voted in support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) but does not officially recognise the existence of indigenous peoples in the country.

### **Pushing the rights of indigenous peoples into the Constitution of Thailand**

**T**he demand of the indigenous peoples’ movement in Thailand over the past several decades to obtain official recognition of the country’s indigenous peo-



ples from the state has finally borne some fruit. For the first time, the term “indigenous peoples” was written into the recent draft constitution. The issue of indigenous peoples was covered in Chapter II: Directive principles of fundamental state policies, section 82, which states that “the state shall provide support to strengthen local communities in all aspects, in particular the following areas... (5) to protect indigenous peoples and ethnic groups.”<sup>3</sup> The draft was rejected by the

National Reform Council (NRC) on 6 September 2015 by 135 votes to 105, with seven abstentions.

The crucial question is therefore: what caused the NRC to reject the first draft of the constitution? There were several factors. Some NRC members said they wanted to give the current government more time to improve the ailing economy and reduce internal conflict within Thai society. NRC members and political analysts commented that the content of the draft constitution itself was problematic, in particular the inclusion, at the last minute, of a provision that would allow the military to take over the control of the government in times of conflict. This even outraged some who might otherwise have supported the draft constitution, causing them to reject it. Others say this draft would probably not have passed a national referendum. It has simply been a waste of the budget and may have further ignited conflicts that could spiral out of control. Indigenous leaders concluded that the draft was rejected because there was simply a lack of good coordination between the drafting committee and the NRC in terms of thoroughly discussing and agreeing the content of the draft constitution before finalising it. The reference to indigenous peoples in the draft constitution is not considered to have been one of the reasons for its rejection since the rights of indigenous peoples have been maintained in the new draft, under the responsibility of a newly-established constitutional drafting committee. The new draft is expected to be completed by 29 January 2016 and then opened up for comments before being finalised and submitted to a national referendum in July 2016. The drafting process is ongoing, and nobody knows what direction it will take. It is therefore a very challenging issue for indigenous peoples in Thailand.

### **The National Council of Indigenous Peoples is fully functioning**

The first assembly of the National Council of Indigenous Peoples (NCIP) was successfully convened in November 2014, in Mae Sot, Tak province. One of the decisions taken at the assembly was to establish an ad-hoc working group comprising 13 members drawn from five sub-regions to administer the work of the Council. Its mandates are: 1) to establish the NCIP secretariat; 2) to facilitate the selection of council members at different levels, and 3) to organise the 2<sup>nd</sup> Council Assembly.

The working group was able to facilitate the selection of council members from 38 ethnic groups in July 2015, with the full consultation of each indigenous group. Their term of office will be four years. The total number of NCIP members is now 190.

The 2<sup>nd</sup> NCIP Assembly was convened on 8-10 August 2015 at Chulalongkorn University in Bangkok. This was the first assembly in which all selected indigenous representatives from different parts of Thailand fully participated and actively engaged in the discussion. With this mechanism in place, the NCIP is now ready to work and find ways of collectively solving their problems. Some of the key issues the NCIP wants to pursue are: 1) urging the government to respect and recognise the existence of indigenous peoples and speed up the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP); and 2) calling on the government to approve the draft law on the establishment of a national indigenous peoples' council, as adopted by the Law Reform Commission on 7 August 2015 and submitted to the Prime Minister, the National Legislative Assembly and National Reform Council for consideration.<sup>4</sup> This latter activity is ongoing. A small working group has been established comprising members of NCIP and the National Legislative Assembly to work specifically on this issue.

### **World Heritage Committee postpones nomination of natural heritage site**

As mentioned in last year's report on Thailand in *The Indigenous World*,<sup>5</sup> most of the Karen living in Kaeng Krachan Forest Complex (KKFC) have expressed concerns at the proposed inscription by UNESCO of the KKFC as a natural world heritage site. These concerns include a lack of information and participation of indigenous peoples in all processes, and that a number of critical issues have still not been resolved, such as compensation and allocation of farming land and settlement areas for the evicted families, the forced disappearance of a Karen activist in April 2014, and securing land and resource management rights for indigenous peoples. These concerns were submitted to the UNESCO World Heritage Committee through IUCN and the Office of the United Nations High Commissioner for Human Rights. At its 39<sup>th</sup> session in Bonn, Germany from 28 June to 8 July 2015, the World Heritage Committee decided to refer the nomination of the

Kaeng Krachan Forest Complex, and urged the Thai government to: “Address in full the concerns that have been raised by the Office of the United Nations High Commissioner for Human Rights concerning Karen communities within the Kaeng Krachan National Park including the implementation of a participatory process to resolve rights and livelihoods concerns and to reach the widest possible support of local communities, governmental, non-governmental and private organizations and other stakeholders for the nomination”.<sup>6</sup>

To address these issues, the Department of National Parks, Wildlife and Plant Conservation (DNP) prepared a roadmap and convened further consultations with communities living in KKFC, both Karen and lowland Thai. A number of issues were discussed and raised at these consultations but no clear solution has thus far been identified on lands and natural resource rights, which is the most crucial issue for the Karen people living there.<sup>7</sup> The DNP is about to conclude these consultations and to re-submit the proposal to the World Heritage Committee for consideration in the upcoming session.

### **Progress in implementation of cabinet resolutions to restore livelihoods of Chao Ley and Karen**

The cabinet passed two resolutions in 2010 to restore the traditional livelihoods of Chao Ley and Karen, on 2 June and 3 August 2010 respectively (see *The Indigenous World 2011*). Five years have since passed but the problems faced by the Chao Ley and Karen remain the same. Some have even become worse, particularly those related to land and livelihood practice issues. This can be seen from the number of conflicts that have been occurring in Chao Ley and Karen communities. These relate, for example, to the land grabbing of U-Rak-La-woy ancestral lands in Rawai beach and Sirae Island by businessmen from Phuket province, the arrest of Chao Ley fisher people in marine national parks, encroachment of burial sites of Moklen in Phang-Nga province by businessmen and local communities, and the arrest of 39 Karen villagers at Thung Pakha, Mae La Luang Sub-district, Mae La Noi district, Mae Hong Son province in 2014 (see *The Indigenous World 2015*).

There are a couple of reasons why progress in implementing these resolutions has been very slow and ineffective. Firstly, most of the government agencies

involved are not aware of (or lack a proper understanding of) these cabinet resolutions and they lack the necessary coordination to be able to implement activities with which to enforce these resolutions. Secondly, the Ministry of Culture, the lead agency in terms of getting these resolutions passed, does not have a mandate to force other government agencies to implement their assigned tasks/activities. Thirdly, there is not enough budget to implement the activities. ○

## Notes and references

- 1 Ten groups are sometimes mentioned, i.e., the Palaung are also included in some official documents. The directory of ethnic communities of 20 northern and western provinces of the Department of Social Development and Welfare of 2002 also includes the Mlabri and Padong.
- 2 The figure given is sometimes 1,203,149 people, which includes immigrant Chinese in the north. They are from 2002. No updated figures are available.
- 3 Draft constitution submitted to the National Reform Council for adoption on 6 September 2015.
- 4 Statements of the National Council of Indigenous Peoples (NCIP) on 10 August 2015.
- 5 *The Indigenous World 2015*, pp. 280-283
- 6 Decision: 39 COM 8B.5, Decisions adopted by the World Heritage Committee meeting at its 39<sup>th</sup> session held in Bonn, Germany from 28 June – 8 July 2015, document WHC-15/39.COM/19 page 158.
- 7 Observation made by Karen leaders who participated in these consultations.

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## CAMBODIA

Cambodia is home to 15-24 different groups of Indigenous Peoples, who speak mostly Mon-Khmer or Austronesian languages.<sup>1</sup> The international human rights meaning of “Indigenous Peoples” has not yet been fully adopted in Cambodia by either the legal system or the media. Groups are referenced as “ethnic minorities” or “indigenous ethnic minorities”.<sup>2</sup> They live mainly in the six northeastern upland provinces of Rattanakiri, Mondulakiri, Stung Treng, Kratie, Preah Vihear, and Kampong Thom, but Indigenous communities are also located in nine other provinces around the country. Indigenous Peoples are generally counted as 1-2% of the national population, but they are not clearly disaggregated in national census data.<sup>3</sup>

The 1993 National Constitution guarantees all citizens the same rights “regardless of race, color, sex, language, and religious belief” or other differences. National legislation specifically recognizing indigenous peoples and their rights to communal land is confirmed in subsequent laws and policies dating from 2001, 2002, 2009, and 2011.<sup>4</sup> National policy on Indigenous Peoples’ rights in Cambodia is arguably the most progressive of all the countries in mainland Southeast Asia.<sup>5</sup> However, the main problem still is the lack of effective policy implementation on the ground. Indigenous Peoples continue to see their lands and forests grabbed through state-granted “economic land concessions” (ELCs) to commercial companies.<sup>6</sup> As of 2015 Cambodia was ranked the most corrupt country within the region of Southeast Asia.<sup>7</sup>

The Cambodian government has ratified several international human rights conventions, including the Convention on Civil and Political Rights, the Convention on Economic, Social and Cultural Rights (both of which affirm peoples’ rights of self-determination in the first article) and the Convention on the Elimination of Racial Discrimination. In 2007, the Cambodian government supported the adoption of the UN Declaration on the Rights of Indigenous Peoples (which affirms Indigenous peoples’ rights of



## Land grab updates: rubber, gold and sugar

**D**espite Prime Minister Hun Sen's declaration of a national moratorium on economic land concessions in 2012, followed by a national plan in 2013 to rapidly settle all outstanding land disputes in the country (known as Directive 01BB), land grabbing continues in Cambodia unabated. The following are just a few examples of what is a widespread problem of increasing land insecurity. The 2001 Cambodian Land Law recognizes Indigenous Peoples' rights to communal land titles. In 2015, an additional three communities received title to some of their traditional lands, making a total of ca. 10 communities that have received such title in the 15 years since the Land Law was passed. That leaves some 500 Indigenous communities without communal land titles. In 2015 the Bunong peoples of O'Rona, a community in Monduliri that gained communal land title several years ago, successfully used their title to defend their land in court.

## Update on the HAGL case in Rattanakiri: Rubber

Last year's article discussed the situations of some 17 Indigenous village-communities of mainly Tampuan, Jarai, Kachok and Kreung peoples, whose lands had been grabbed for economic land concessions (ELCs) by Hoang Anh Gia Lai (HAGL), a rubber company based in Vietnam, with a finance chain that linked to the World Bank's International Finance Corporation (IFC). As of late 2015, the combined ELCs claimed by HAGL and its subsidiaries reportedly included almost 80,000 ha (eight times the official 10,000 ha limit). The HAGL land grab has displaced thousands of Indigenous Peoples, destroyed their forests, ruined water supplies and subjected the communities to violent interactions with rubber developers. With the assistance of NGOs and IPOs, in 2013-2014 these communities took their grievances not to the government but to the IFC's Compliance Advisor Ombudsman (CAO). In September 2015, the CAO facilitated negotiations between HAGL representatives, the communities and their NGO representatives. The dialogue resulted in a relatively satisfactory agreement in which HAGL agreed to facilitate the communal land title processes for 11 of the affected communities, and provide other remedies to the disruption caused by its development activities in Rattanakiri province.<sup>9</sup> While far from perfect, and it remains to be seen

if HAGL will keep its promises, this outcome is better than many other similar situations in other Indigenous territories in Cambodia. It shows that investigating the finance chains of companies that are taking Indigenous lands can provide useful information that may halt or at least slow down this kind of development aggression. This case also shows how weak and uninvolved the state is with respect to the communal land rights it formally recognized in its 2001 National Land Law, and that not all multilateral agencies are working transparently.

### **Land Grabs for Gold**

With regards to mining issues, in 2015 nine other Indigenous communities in Ratanakiri (in Oyadev, Lamphat and Andong Meas districts) joined together to protest against the “exploratory” activities of two gold mining companies, Angkor Gold (a Canadian company) and Mesco Gold (an Indian company). These activities negatively impact Indigenous lands and cultural systems, including peoples’ livelihoods, which are dependent on shifting cultivation and gathering of forest resources including non-timber forest products, food, medicines and other materials. Angkor Gold and Mesco are charged with using toxic chemicals in the extraction process, and importing workers who do not respect the local Indigenous culture and who increase social insecurity, particularly for women and girls. For its part, Mesco Gold announced in March 2015 that it would pay out USD \$63,000 to 18 families whose lands were completely taken over by the company.

### **Land Grabs for Sugar in Kuy Territory**

In 2015, Kuy communities in Preah Vihear province continued to struggle against economic land concessions granted in 2011 to Chinese companies Lan Feng and Rui Feng. Together with three other concessions, all apparently jointly owned, they comprise 40,000 ha – four times the legal limit for a single concession owner.<sup>10</sup> Lan Feng and Rui Feng continued to clear the communities’ land and plant sugarcane this year, despite assurances from the Ministry of Agriculture and provincial governor that the companies would not clear communities’ land prior to resolving the dispute with them.

These communities have attracted attention inside and outside Cambodia for their ongoing resistance to the concessions, led by Kuy women. At the end of December, 2014, the communities had seized two bulldozers and briefly detained their two drivers who were ploughing their land.<sup>11</sup> Attempts to file a complaint against the drivers have been unsuccessful, but the community has successfully blocked attempts by the authorities to take the bulldozers back and so they remain in one of the villages. The communities chased bulldozers away when they ploughed their land, held press conferences, gave radio interviews, and held two ceremonies to curse the companies. Indigenous leaders from throughout Asia visited the communities in a show of moral support.

In 2013, under the Prime Minister's nationwide land titling program (known as Directive 01BB), local authorities had attempted to coerce community members into accepting individual land registration, but many held out for communal land registration as called for by the Cambodian Land Law. The communities continue to make progress registering their land communally by mapping their lands, including land taken by the companies. The authorities responsible for registering their land have failed to take action. Representatives of communities affected by economic land concessions throughout the province attempted a protest against ELCs, and as a result the authorities promised to take action to register the land of the Kuy communities that was taken by Lan Feng and Rui Feng. When still no action was taken, community representatives went to follow up with the provincial governor in December. A leader from another community was arrested in an apparent effort to intimidate the community representatives.

No end is in sight yet for the communities' struggle. Rui Feng has now built what is described as one of Asia's largest sugarcane processing factories within the Kuy people's territory.<sup>12</sup> An EU-supported audit of sugarcane plantations by an interministerial committee has examined these concessions but their findings have not been made public.

## **The Cambodia Indigenous Peoples Democracy Party (CIPDP) forms in 2015**

Indigenous activism took a new turn in Cambodia in 2015, from rights advocacy to direct politics. In late 2015, the CIPDP became the sixth officially registered political party in Cambodia. Several years in the making, the CIPDP initially devel-

oped within Bunong networks out of Mondulkiri, but has since expanded into other provinces and other Indigenous communities. The CIPDP faces numerous challenges it will have to overcome in the run-up to the 2018 general elections.○

## Notes and references

- 1 There is variation in the estimates of how many groups there are, because different writers perceive linguistic boundaries differently, c.f., past editions of *The Indigenous World*, as well “Indigenous Groups in Cambodia 2014: An Updated Situation” by Frédéric Bourdier (published by Asia Indigenous Peoples Pact). The term, Indigenous, is capitalized here to reflect its growing acceptance as a name, a proper noun; rather than as an adjective.
- 2 As illustration of this ongoing ambiguity, the official Khmer proxy term for indigenous peoples – *chuncheat daoem pheak tech* – literally translates as “original ethnic minority people”.
- 3 All of these numbers are estimates, based on triangulation of multiple sources of information.
- 4 Cf. the 2001 Cambodian National Land Law: NS/RKM/0801/14; the 2002 National Forestry Law: NS/RKM/0802/016. 2009 legislation affecting indigenous peoples include a “National Policy on the Development of Indigenous People,” prepared by the Ministry of Rural Development, a “Sub-Decree on Procedures of Registration of Land of Indigenous Communities” (No.83 ANK/BK), both approved by the Council of Ministers on 24 April 2009; and a “Circular of the Ministry of Rural Development on the Procedures and Methods of Implementing National Policy on the Development and Identification of an Indigenous Community,” approved on 22 July 2009. Another circular was approved on 31 May 2011, from the Ministry of Interior and the Ministry of Land Management, Urban Planning and Construction, an “Inter-ministerial Circular on Interim Protective Measures Protecting Lands of Indigenous Peoples that Has Been Requested for Collective Ownership Titling, While Awaiting Titling Process According to Procedure to be Completed.” This is not an exhaustive list of national policies relating to Indigenous Peoples.
- 5 Although this is not saying all that much. All of the others (Vietnam, Thailand, Myanmar and Laos) maintain the common Asian stance that there are no Indigenous peoples in their countries, or that everybody is Indigenous. Either way, the result is that there is no recognition of Indigenous rights at all. That Cambodia does recognize the existence of Indigenous peoples is progressive, but its recognition is quite limited and does not meet the standards of international law, according to the OHCHR Special Rapporteur on Indigenous Rights. This is discussed at length in Keating, N. B. (2013), “Kuy Alterities: The Struggle to Conceptualize and Claim Indigenous Land Rights in Neoliberal Cambodia.” *Asia Pacific Viewpoint* 54(3):309-322.
- 6 Global Witness (an NGO) has documented at length the state-corporate practices of Cambodian land concessions, which involve logging, plantations, mining, and land speculation. All of their research is available at <http://www.globalwitness.org/campaigns/corruption/oil-gas-and-mining/cambodia>.
- 7 <http://thediplomat.com/2016/02/cambodia-now-aseans-most-corrupt-country/>. Accessed 24 January 2016.
- 8 C.f. para. 13, UN document A/HRC/26/16. There is an extensive literature documenting Cambodian state and corporate practices of dispossessing Indigenous lands, including every entry for Cambodia in past editions of *The Indigenous World*. Bourdier (2014) – see note 1 above – pro-

- vides a good current overview of this situation. "Consultation"—when it does happen—is usually an asymmetrical "take it or leave it" offer, accompanied by threats.
- 9 [http://www.equitablecambodia.org/website/index.php?option=view\\_media&id=158](http://www.equitablecambodia.org/website/index.php?option=view_media&id=158).
  - 10 Cheng Sokhorng (2016) Giant sugar mill set to open in Preah Vihear. Phnom Penh Post, 4 February, 2016.
  - 11 Phak Seangly (2014) Villagers hold company drivers over land dispute. Phnom Penh Post. 31 December, 2014.
  - 12 Cheng Sokhorng (2016) Giant sugar mill set to open in Preah Vihear. Phnom Penh Post, 4 February, 2016.

*This year's article has two named authors —**Vichet Mong**, an Indigenous Tampuan activist and a member of the Highlanders Association in Rattanakiri, Cambodia and **Neal B. Keating**, an anthropologist and professor at The College at Brockport, State University of New York —and one anonymous author.*

## VIETNAM

As a multi-ethnic country, Vietnam has 54 recognised ethnic groups, 53 of which are ethnic minority groups comprising an estimated 13 to 14 million people or around 14% of the country's total population of 90 million. Each ethnic minority group has its own distinct culture and traditions.

The ethnic minorities live scattered throughout the country but are concentrated mostly in the Northern Mountains and in the Central Highlands (*Tay Nguyen*) in the south. The Vietnamese government does not use the term “indigenous peoples” for any groups but it is generally the ethnic minorities living in the mountainous areas that are referred to as Vietnam's indigenous peoples. The term “ethnic minorities” is thus often used interchangeably with “indigenous peoples” in Vietnam.

Poverty is still high among the ethnic minorities. While the national poverty rate has been reduced to below 4.5%, it is still above 50% in many ethnic minority areas. The process of poverty reduction is unstable and there is a high poverty relapse rate.<sup>1</sup>

All ethnic minorities have Vietnamese citizenship, and Vietnam's constitution recognises that all people have equal rights. There is no specific law on ethnic minorities but a ministry-level agency, the Committee on Ethnic Minority Affairs, is in charge of ethnic minority affairs. The Government of Vietnam has not ratified ILO Convention No. 169 but voted in favour of the UNDRIP, although it does not recognise ethnic minorities as indigenous peoples.

### Preparations for legislation on ethnic minorities

**T**here is a possibility that legislation on ethnic minorities in Vietnam will become a reality. With the support of the World Bank, a group of experts has developed a proposal for such legislation, to be submitted to the National Assembly. In 2015, the group of experts had consultations with civil society organisations, ministries of relevant sectors and local governments. The proposed legislation will be discussed and hopefully approved by the National Assembly at its first meeting in July 2016.

## **Progress in language policies**

In mountainous areas, government officials have been encouraged to learn ethnic minority languages by a government instruction and a decision of the Ministry of Education and Training on teaching the Cham language.<sup>2</sup> However, there is no law instructing the learning of ethnic minority languages in school and so they have not been on the curriculum. There is some progress, however, with regard to the use of Thai and Dao, the languages of two of the larger ethnic minority groups. In 2014, the Ministry of Education and Training issued Circular No.46/2014/TT-BGDĐT<sup>3</sup> on Thai language for the elementary school level. This circular provides a legal basis for teaching the Thai language in elementary schools. This is largely the result of policy advocacy undertaken by the Vietnam Indigenous Knowledge Network (VTIK), with the support of the Centre for Sustainable Development in Mountainous Areas (CSDM), since 2007. Thai language teaching has also been conducted in the communities by VTIK members over the past eight years.

In 2015, the Thanh Hoa Provincial People's Committee (PPC) recognised a Dao script text book which will become part of the curriculum for teaching and learning in provincial general education units and regular education centres where the Dao live.<sup>4</sup> The traditional script of the Dao in Thanh Hoa province (called Dao Nom Thanh Hoa script) was developed and chosen as the general script of the Dao people in Vietnam by Dao members of the VTIK.

## **Vietnam ethnic minorities deliver message at COP21 in Paris**

In December 2015, Vietnam's ethnic minorities held dialogues with Vietnamese government agencies related to climate change and delivered their message at the 21<sup>st</sup> Conference of Parties (COP21) of the UN Framework Convention on Climate Change (UNFCCC) in Paris. It was the first time that ethnic minorities' representatives from Vietnam had delivered a message at such a meeting.<sup>5</sup> During October and November 2015, with the support of the UN Development Programme (UNDP), CSDM organised four meetings and one dialogue between line government agencies and 127 representatives of 16 ethnic minority groups from 23 mountainous provinces in the northern and central region and the Central



Highlands (Tay Nguyen). A message covering three issues was prepared and delivered to the Vietnamese government delegation, and included in the presentation by UNDP at the COP21 in Paris. The message included the following recommendations from Vietnam's ethnic minorities:

1. Work out a route and radical and practical actions for preventing greenhouse gas emissions;
2. Recognise the role and potential of ethnic minority peoples as local forces able to respond proactively and effectively to climate change;

3. Assess correctly the huge losses that ethnic minorities and other vulnerable communities are faced with as a result of climate change, and commit to common efforts to respond to climate change.

## Population policy

Vietnam's population policy seeks to encourage families to restrict themselves to one or two children but three is possible if either or both spouses belong to ethnic minority groups with a population of less than 10,000 people, or ethnic groups at risk of population decline (as well in some exceptional cases, such as twins, malformation or fatal disease of the newborn).

In May 2015, the Vietnamese government issued a new policy supporting women from poor ethnic minority households in childbirth. It targets ethnic minority women, or women whose husbands are from ethnic minorities, residing in disadvantaged areas.<sup>6</sup> According to this policy, each eligible woman will receive two million Vietnamese Dong (around US\$100) in cash at the time of the birth. In return, they are asked to commit to not having any more children and, should they break this commitment, they have to return the money. This policy is not in line with the culture of the ethnic minority peoples being targeted by this policy.

## Land rights

In recent years, rights over land and forest have become a hot issue in Vietnam. In order to stabilise the area of residential and agricultural land and contribute to ensuring livelihood security for ethnic minorities, Lam Dong province issued a decision in 2015 regulating the conditions of assignment, transfer, donation or leasing of the land use rights of ethnic minority households and individuals.<sup>7</sup> This decision opens up more opportunities for outsiders to access ethnic minority land in Lam Dong. This will lead to loss of land due to sale and mortgaging, increased migration to ethnic minority areas and more encroachment onto their land.

In 2015, the Vietnamese central government also issued a resolution on mechanisms and policies to protect and develop forests, associated with the policy of rapid and sustainable poverty reduction and support for ethnic minorities over the period 2015-2020.<sup>8</sup> The resolution regulates mechanisms and policies to

encourage forest protection, reforestation, afforestation, the development of non-timber forest products, and raising incomes in line with the policy of rapid and sustainable poverty reduction for ethnic minorities, who make up more than 50% of the country's poor. The resolution stipulates that ethnic minority households and villages will gain a contract of a maximum of 30 hectares of forest for protection and they will receive 400,000 dong (about US\$18) per hectare per year. This humble payment will not add much to the little income ethnic minority households have and is hardly going to help them escape from poverty.

### **Poverty and lack of access to basic social services**

As reported by Deputy Prime Minister Nguyen Xuan Phuc to the Parliament on 16.11.2015,<sup>9</sup> by the end of 2015, the national poverty rate had fallen to below 4.5%, with the rate in poor districts now below 30%. However, his report also stated that, in many places in the northern mountainous regions and Central Highlands, the poverty rate remains above 50%, in some areas even 60-70%. Poor ethnic minority households account for almost 50% of poor households in the country and the average income of ethnic minority households is only 1/6 of the average national income.

In 2015, the Vietnamese government issued a new poverty standard called the "multidimensional poverty standard".<sup>10</sup> The new criteria for this multidimensional poverty standard, which is applicable to the 2016-2020 period, include levels of income and access to basic social services, i.e. health, education, housing, water and sanitation. There are 10 indicators for measuring levels of access to basic social services. It is likely that, by applying this new multidimensional poverty standard, the rate of poverty among ethnic minorities will increase significantly, to maybe double or more, because access to basic social services remains a huge challenge for ethnic minorities, and one that can certainly not be resolved overnight. ○

### **Notes and references**

1 Decision No.59/2015/QĐ-TTg of 19 November 2015 on the multidimensional approach to poverty standard for the period 2016-2020

- 2 Instruction No 38/2004/CT-TTg, of 9 November 2004 on increase of teaching of ethnic minority languages for government officers in mountainous and ethnic minority areas. Decision No 29/2006/QĐ-BGDĐT of 4 July on the Program of Teaching the Cham Language for teachers to teach Cham to government officers in mountainous and ethnic minority areas.
- 3 Circular No.46/2014/TT-BGDĐT of 23 December 2014 of the Ministry of Education and Training on the Program of Thai language for the primary level.
- 4 Decision No.877/ QĐ-UBND of 17 March 2015 of Thanh Hoa Provincial People's Committee on the approval of the Nom Dao script of Thanh Hoa province.
- 5 A report by CSDM about the dialogue between representatives of ethnic minorities in Vietnam and national representative bodies on climate change and COP21 in December 2015. Centre for Sustainable Development in Mountainous Areas – CSDM).
- 6 Decree No.39/2015/ND-CP on 27 May 2015 in Hanoi: Regulations on supportive policies for women from poor EM households in childbirth under the national population policy.
- 7 Decision No.08/2015/QĐ-UBND of 03/01/2015 of Lam Dong PPC: Regulations on conditions of assignment, transfer or donation, or leasing of the land use rights of ethnic minority households and individuals in Lam Dong province.
- 8 Resolution No.75/2015/ND-CP on 9/2015 on the mechanism and policies to protect and develop forests, associated with the policy of rapid and sustainable poverty reduction and support for EMs over the period 2015-2020.
- 9 Report No 627/BC-CP on Implementation of National Assembly policies on monitoring and interpellation, from 13<sup>th</sup> century to 2015. By Deputy Prime Minister Nguyen Xuan Phuc. Date 15 November 2015
- 10 Decision No.59 op.cit.

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## LAOS

With a population of over seven million, Laos is the most ethnically diverse country in mainland Southeast Asia. The ethnic Lao, comprising around a third of the population, dominate the country economically and culturally. There are, however, pockets where the number of ethnic groups exceeds that of the Lao and where their culture is prominent. Another third of the country consists of members of other Tai language-speaking groups. The remaining third have first languages belonging to the Mon-Khmer, Sino-Tibetan and Hmong-lu Mien families. Sometimes, the latter two groups, more often only ethnic groups belonging to the third group, are considered to be the indigenous peoples of Laos. Officially all ethnic groups have equal status in Laos, and the concept of indigenous peoples is not recognised by the government, despite the fact that Laos voted in favour of adopting the UN Declaration on the Rights of Indigenous Peoples.

The Lao government currently recognises 160 ethnic sub-groups within 49 ethnic groups. Indigenous peoples, especially of the third group, are unequivocally the most vulnerable groups in Laos, representing 93% of the country's poor. They face territorial, economic, cultural and political pressures and are experiencing various threats to their livelihoods. Their land and resources are increasingly under pressure from pro-investment government development policies and commercial natural resource exploitation.

Laos has ratified ICERD (1974) and ICCPR (2009). The Lao government, however, severely restricts fundamental rights, including freedom of speech (media), association, assembly and religion, and civil society is closely controlled. Organisations openly focused on indigenous peoples or using related terms in the Lao language are not allowed and open discussions about indigenous peoples with the government can be sensitive, especially as the issue is seen as pertaining to special (human) rights. In 2014, the Universal Periodic Review of the Lao People's Democratic Republic (Lao PDR or Laos) made no direct reference to indigenous peoples.

## Cultivating transnational relationships

Many of the indigenous peoples found in Laos are, in fact, transnational ethnic groups scattered over national boundaries that maintain cultural ties with communities from the same group across the border and even on a regional level. Tao Hom village<sup>1</sup> is an ethnic Akha village located in Long District, Louang Namtha Province next to the Burmese border. In 2015, Tao Hom village hosted an international Akha festival with Akha groups from neighbouring Yunnan province in China, Burma, and Thailand. Written forms of Akha language are increasingly being used in the village, which is a relatively recent phenomena inspired to a large extent by more frequent interactions with Akha groups from neighbouring countries.<sup>2</sup> Some members of indigenous peoples are also increasingly becoming involved in regional networks supported by the Asia Indigenous Peoples Pact (AIPP), for instance.<sup>3</sup>

## Political developments and human rights

The political scene was relatively quiet in Laos in 2015 despite the celebration of two historic days: the 60<sup>th</sup> anniversary of the establishment of the Lao People's Revolutionary Party and the 40<sup>th</sup> anniversary of the establishment of the Lao PDR.<sup>4</sup> This said, the most striking political development related to the establishment of Provincial Assembly (PA) branches at provincial level which will allow indigenous and local communities to raise their concerns, grievances and seek access to justice.<sup>5</sup>

On 20 January 2015, the United Nations Human Rights Council (HRC) met in Geneva, Switzerland to examine Laos's human rights record through the Universal Periodic Review (UPR) process.<sup>6</sup> On 23 June, Laos accepted 118 of the 196 UPR recommendations. This included recommendation from Cambodia on protection of the cultural rights and languages of indigenous peoples, and from Ghana on ensuring that all ethnic groups are treated equally and have equal access to social services, including health and education.<sup>7</sup>

According to Thongphane Savanhphet, the Lao government's Permanent Representative to the UN in Geneva, the remaining 80 recommendations "did not enjoy the full support" of the government, especially with regard to forced disap-



pearance.<sup>8</sup> The government remained non-committal regarding ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). The Lao government said it needed “more time to study” the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention for the Protection of the Rights of Migrant Workers and their Families, and the 1951 Convention relating to the Status of Refugees. It also said it was “not ready” to become a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), the Optional Protocol to the Convention against Torture (CAT) or the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>9</sup> With regard to indigenous peoples, Laos also did not

agree on recommendation 121-191 which calls on the government to “Acknowledge and guarantee the indigenous peoples’ rights, including by fully engaging indigenous peoples of the country in decision-making in all the matters that affect them”.<sup>10</sup>

In 2015, the Department of Ethnic and Religious Affairs (DOERA), which is the organ in charge of ethnic policy under the Ministry of Home Affairs (MOHA), secured funding to draft a decree on Ethnic Minority Work based on the model elaborated by the Committee for Ethnic Minority Affairs (CEMA) in Vietnam. This body promulgated a decree on ethnic minority affairs in 2011. The decree in Vietnam aims to ensure and promote equality and solidarity, preserve the language, scripts and identity and promote the customs, habits, traditions and culture of each ethnic minority group. It also envisages that ethnic minority people should hold key posts in ethnic minority areas.<sup>11</sup>

### **Civil society and international projects advocating for recognition of customary land tenure**

International organisations have supported recognition of the customary use of land and forest and recognition of the collective rights of indigenous peoples over their traditional land through the inclusion of communal land titling in drafts of the first National Land Policy. The SUFORD-SU Project<sup>12</sup> has produced a draft Guidelines for Registration and Communal Land Titling of Village Use Forests in Production Forest Areas (PFA). Although the scope of the guidelines covers only PFAs, the main principles of the guidelines could also be applied to uncategorized forests. The project has also piloted inventories of customary land use through Participatory Land Use Planning (PLUP) inside PFAs in Northern Laos in order to revise the three forest categories based on the recommendation from the National Assembly. SUFORD has also innovated by conducting Forest Land Use Zoning and using the Free, Prior and Informed Consent (FPIC) process for communities to decide on the use of their fallow forest land. This forms part of their rotational shifting cultivation system of land use, and is targeted for regeneration by the government under four possible scenarios: keeping fallow forest to ensure food security; using the fallow for planting indigenous tree species; agroforestry schemes; or natural regeneration. On the ground, the practice of PLUM-FLUZ<sup>13</sup> promotes the safeguarding of customary land tenure in Laos so that communities

are not losing access to forest land but are undergoing change in the use of their resource towards medium and long-term management systems. The Land Issue Working Group (LIWG)<sup>14</sup> and the Mekong Region land Governance (MRLG) are currently also supporting recognition of customary land tenure in Laos.<sup>15</sup> 2015 furthermore witnessed increased donor support around the country, including KfW<sup>16</sup> and the World Bank for National Protected Areas, and this is a step further towards supporting indigenous peoples to secure their collective right to their land and resources.

### **Concerns over adverse impacts of Chinese banana plantations and mining**

Economic growth in Laos is driven by foreign investment, particularly in the commodification of natural resources. Large-scale projects in hydropower, mining, agriculture and industrial development have attracted investors from China, Thailand and Vietnam. Despite massive investment, the per capita Gross National Income reached only US\$1,232 in 2015, which is considered just below the requirement for a nation to graduate from Least Developed Country (LDC) status.<sup>17</sup> What's more, the investments involve heavy social and environmental costs, and these have triggered indigenous peoples' concerns and resulted in land and forest conflicts in which they generally do not receive fair and just treatment.

Since the first Chinese prospectors came to Laos seeking their fortune in the banana business more than a decade ago, production and exports have risen dramatically. A total of 100,000 tons of bananas were expected to be harvested in the northern part of the country and shipped to China in 2015. Heavy use of pesticides in banana plantations by Chinese investors raised concerns in various parts of northern Laos in 2015,<sup>18</sup> and rightly so as, in China, growers apply 550 kilograms (1,212 pounds) of fertiliser to every hectare of fruit trees.<sup>19</sup>

Such a concern was raised by indigenous peoples in Oudomxay, Louang Namtha, Bokeo, and Phongsaly provinces. According to Mekong Watch, the system for managing project investors is underdeveloped and thoroughgoing efforts are not being made to ensure observance of the law. There are concerns about health impacts on indigenous communities. It has been observed that youths and mothers are spraying agricultural chemicals while carrying infants on their backs and small children are helping with chemical agent spraying without the use of

any safety equipment. Water disputes are also foreseen between the banana plantations and surrounding communities, and banana plantations have been found to threaten their sustainable land use and food security.<sup>20</sup> Through the National Assembly hotline during the recent ordinary session, a resident from Bokeo province accused a banana farm run by Chinese investors of being the source of chemical substances damaging his crops and killing the fish in his pond.<sup>21</sup>

Indigenous peoples are also using social media to report their concerns at the environmental impact on health being caused by extractive industries. Fearing health and environmental risks due to unsafe practices, Tarieng people from Dakpong and Dakchang in Dakcheung district, Xekong province have posted a letter on social media begging the relevant sectors to conduct an inspection as their communities are being troubled by gold diggers. The letter asked concerned sectors to make haste in inspecting the mountain where gold miners are digging because people want to know if they are acting illegally or not, given that they have been using mercury to extract the gold.<sup>22</sup> In both cases, of pesticide used in Chinese banana plantations and chemicals used in illegal gold mining, indigenous peoples are becoming increasingly aware of and making use of various channels available, including the National Assembly and social media to make their voices heard, advocating for greater accountability from investors operating on their traditional land. ○

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  - 16 KfW is a German government-owned development bank, based in Frankfurt. Its name originally comes from Kreditanstalt für Wiederaufbau. See: <https://en.wikipedia.org/wiki/KfW>
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*Due to the sensitivity of some of the issues covered in this article, the author prefers to remain anonymous.*

## BURMA

Burma's diversity encompasses over 100 different ethnic groups.<sup>1</sup> The Burmans make up an estimated 68 percent of Burma's 51.5 million people. The country is divided into seven mainly Burman-dominated regions and seven ethnic states. The Burmese government refers to those groups generally considered indigenous peoples as "ethnic nationalities". This includes the Shan, Karen, Rakhine, Karenni, Chin, Kachin and Mon. However, there are more ethnic groups that are considered or see themselves as indigenous peoples, such as the Akha, Lisu, Lahu, Mru and many others.

Burma has been ruled by a succession of Burman-dominated military regimes since the popularly-elected government was toppled in 1962. Despite positive steps taken by President Thein Sein (installed in 2011) and his nominally civilian administration, many critical issues remain un-addressed, such as ongoing human rights violations and military offensives in ethnic nationality areas, and a lack of significant legislative and institutional reforms. The general election held on 8 November 2015 saw Aung San Suu Kyi's National League for Democracy (NLD) unseat the Union Solidarity and Development Party (USDP) in a landslide. The transfer of power is due to take place in March 2016.

Burma voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the UN General Assembly in 2007, but has not signed the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), nor ratified ILO Convention No. 169. It is party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC), though so far it has failed to take into account many of the CEDAW and CRC committees' respective recommendations.



### Ceasefire negotiations and conflict in ethnic minority states

In 2015, the government continued ceasefire negotiations with ethnic armed groups amid ongoing armed conflict between the *Tatmadaw* (Burma Army) and

several of the ethnic armed groups. In February, the government signed a preliminary peace deal with representatives from the Karen National Union (KNU), the Democratic Karen Benevolent Army (DKBA), the Karen National Union/Karen National Liberation Army Peace Council (KNU/KNLA Peace Council), and the Restoration Council of Shan State/Shan State Army-South (RCSS/SSA-S). However, the government refused to extend invitations to the entire United Nationalities Federal Council (UNFC), a coalition of ethnic armed groups. The UNFC had proposed in January that the peace agreement should establish a federal union, including political guarantees for ethnic groups—a proposal that the government rejected.

In March, the ethnic armed groups' peace agreement negotiation team, the Nationwide Ceasefire Coordination Team (NCCT) and the government's Union Peace-making Working Committee (UPWC) concluded a draft text for the nationwide ceasefire agreement, agreeing to leave chief points of contention until later, a decision that not all ethnic armed groups were comfortable with. In August, President Thein Sein turned down the KNU's request to include the Myanmar National Democratic Alliance Army (MNDAA), the Ta'ang National Liberation Army (TNLA), and the Arakan Army in the agreement due to the ongoing conflict involving these groups in the Kokang Self-Administered Zone, Shan State. On 15 October, President Thein Sein signed the nationwide ceasefire with seven ethnic armed organizations and one other organization after more than two years of negotiations (see *The Indigenous World 2015*).<sup>2</sup> The remaining ten organizations refused to sign the agreement until the government agreed to include several smaller groups in the ceasefire.<sup>3</sup> The Women's League of Burma (WLB) criticized the government for failing to guarantee the meaningful participation of women in the peace process, reflected in the fact that only four women were involved in the negotiations.<sup>4</sup>

Amid the nationwide ceasefire negotiations, armed conflict between the *Tatmadaw* and the Kachin Independence Army (KIA), which began in June 2011 (see *The Indigenous World 2012*), continued in Kachin and Northern Shan States throughout 2015. Clashes between the *Tatmadaw* and several ethnic armed groups in Kachin and Shan, Karen, Chin, and Rakhine States also continued, with *Tatmadaw* offensives against the KIA and the Shan State Army-North (SSA-N) intensifying after the two ethnic armed groups refused to sign the nationwide ceasefire.

On 6 October, the *Tatmadaw* launched air and ground missile attacks against the Shan State Progress Party (SSPP)/SSA-N in Mongyawng and Monghsu Townships, Shan State. The attacks resulted in the displacement of around 10,000 people from Kyethi, Monghsu, and Mongyawng Townships.<sup>5</sup> More than 100,000 people in Kachin and Shan States have been displaced since the conflict restarted in 2011.<sup>6</sup>

## **Impact of conflict on ethnic minority populations**

Reports on the shooting and shelling of civilians, abductions, the use of civilians as human shields and for forced labour by the *Tatmadaw* emerged throughout the year. Activists, farmers, and land rights defenders in conflict-affected ethnic nationality areas were also subjected to violence and intimidation for their involvement in land rights disputes. On 2 July, unknown assailants shot and killed Karen land rights defender Saw Johnny in front of his house in Eindea Village, Hpa-an Township, Kayin State.

*Tatmadaw* soldiers in conflict zones continued to subject indigenous women to sexual violence. On 19 January, assailants violently raped and murdered two Kachin schoolteachers in Kawng Hkar Village, Muse Township, Shan State. Local groups accused *Tatmadaw* soldiers from Light Infantry Battalion (LIB) 503, who had made their encampment in the area, of their rape and murder. The WLB said the incident was further evidence that the *Tatmadaw* was still using sexual violence as a “weapon of war” against ethnic minority communities.<sup>7</sup> In August, the UN Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, said that the militarization of conflict over indigenous land in Burma had led to gang rape, sexual enslavement, and the killing of tribal women and girls.<sup>8</sup>

## **Continued persecution of Rohingya**

The government made no progress during 2015 with regard to granting basic rights to Rohingya Muslims, an ethnic minority in Rakhine State bordering Bangladesh. The government repeatedly denied the existence of the term “Rohingya”, negating their existence as an ethnic minority and ignoring recommendations

made in the UN resolutions on Burma to amend the 1982 Citizenship Law and grant them citizenship.<sup>9</sup>

An estimated 140,000 people – most of them Rohingya – remained displaced within Rakhine State in 2015 as a result of the 2012 violence. Legislation approved in 2015 further restricted Rohingya rights. In February, President Thein Sein issued an executive order invalidating temporary ID (white) cards, held mainly by Rohingya. The invalidation of temporary ID cards deprived Rohingya of the right to vote as well as of any form of official documentation.

In addition, security forces continued to commit human rights abuses against Rohingya in 2015. In October, a legal analysis prepared by the Allard K Lowenstein International Human Rights Clinic at Yale Law School found “strong evidence” of genocide against Rohingya.<sup>10</sup> Since the beginning of the year, tens of thousands of Rohingya have fled Burma by boat and via trafficking networks as a result of their ongoing persecution.

## **Legislative reforms**

The parliaments of Burma’s seven ethnic nationality states played minimal roles throughout the year. In Naypyidaw, the National Parliament (dominated by the USDP and military-appointed MPs) achieved marginal results in the area of ethnic minority rights. The approval of the 2015 Ethnic Rights Protection Law and changes to the final version of the National Education Law, approved in June, allow ethnic minority languages, culture, and tradition to be incorporated into school curricula for primary school students. However, constitutional amendments fell short of effecting amendments to articles related to federalism or which favoured ethnic minority rights. On 8 July, proposed changes to Article 261 of the Constitution, which outlines provisions for the appointment of chief ministers of states and regions by the President, and was strongly supported by ethnic minority MPs, failed to garner enough favourable votes for its amendment.

Despite repeated commitments to guarantee fundamental rights to freedom of expression, association, and peaceful assembly, the government made no attempt in 2015 to repeal or further revise laws restricting these rights and end the targeting of peaceful protesters. Burma has yet to sign the International Covenant on Civil and Political Rights (ICCPR) to guarantee these rights. On 16 July, Burma signed the International Covenant on Economic, Social and Cultural Rights (ICESCR).

## November general election

On 8 November, Burma held its first openly-contested general election in 25 years. Ethnic minority parties constituted 61.5% of the 91 political parties that contested the polls. Ethnic minority parties won 18 seats out of 168 in the *Amyotha Hluttaw* (House of Nationalities) and 37 out of 323 seats up for election in the *Pyithu Hluttaw* (House of Representatives).<sup>11</sup> The NLD, led by Nobel Peace Prize laureate Aung San Suu Kyi, won 390 out of 491 seats up for election in the *Amyotha Hluttaw* and the *Pyithu Hluttaw*.

However, the election was marred by the disenfranchisement of hundreds of thousands of Rohingya as a result of the expiry of their temporary ID cards. In addition, the Union Election Commission (UEC) disqualified more than 60 Muslim candidates from running in the election. The UEC also cancelled voting in more than 400 village-tracts and seven townships in Shan, Kachin, Mon, and Kayin States and in Bago Region, preventing several hundred thousand people from ethnic minority groups from casting their vote, due to concerns over armed conflict in these areas. ○

## Notes and references

- 1 The official English name of the country was changed by the military regime from 'Burma' to 'Myanmar' in 1989. Many human rights groups and opposition parties have criticized it as, contrary to the regime's claim, non-inclusive and thus disrespectful of Burma's ethnic minorities. Until this controversy is resolved, we are thus retaining the old name.
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- 3 The ten organizations are: Arakan National Council (ANC); Kachin Independence Organization/Army (KIO/A); Karenni National Progressive Party (KNPP); Lahu Democratic Union (LDU); New Mon State Party (NMSP); Shan State Progressive Party/Shan State Army-North (SSPP/SSA-N); Wa National Organization (WNO); United Wa State Party/Army (UWSP/A); National Socialist Council of Nagaland-Khaplang (NSCN-K); and National Democratic Alliance Army (NDAA).
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SOUTH ASIA

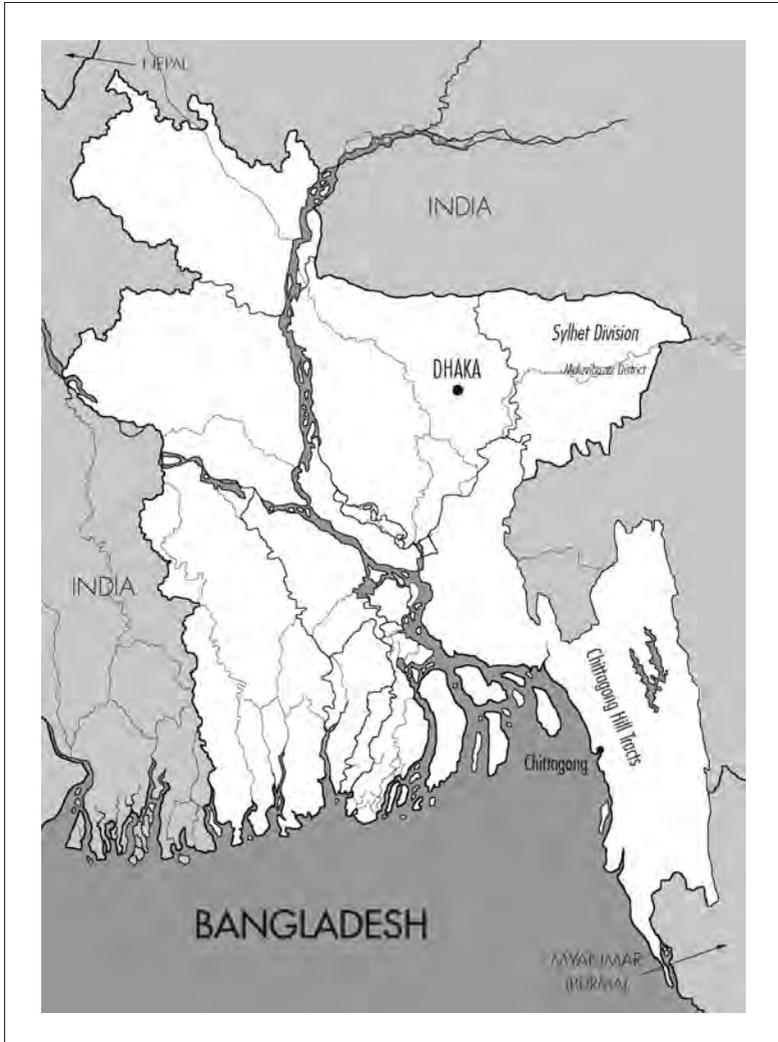
## BANGLADESH

Bangladesh is a country of cultural and ethnic diversity, with over 54 indigenous peoples speaking at least 35 languages, along with the majority Bengali population. According to the 2011 Census, the country's indigenous population is approximately 1,586,141,<sup>1</sup> which represents 1.8% of the total population of the country. However, indigenous peoples in the country claim that their population stands at about 5 million.<sup>2</sup> Eighty per cent of the indigenous population lives in the plain land districts of the North and in the South-East of the country,<sup>3</sup> and the rest in the Chittagong Hill Tracts (CHT). In the CHT, the indigenous peoples are commonly known as *Jummas* for their traditional practice of swidden cultivation (crop rotation agriculture), locally known as *jum*. The Government of Bangladesh does not recognise indigenous peoples as "indigenous". Nevertheless, since the 15<sup>th</sup> amendment of the constitution adopted in 2011, people with distinct ethnic identities other than the mainstream Bengali population are now mentioned.<sup>4</sup> However, only cultural aspects are mentioned, whereas issues related to indigenous peoples' economic and political rights, not least their land rights, remain ignored.

The CHT Accord of 1997 was a constructive agreement between indigenous peoples and the Government of Bangladesh. However, even after 18 years, major issues of the Accord, such as the Land Commission, devolution of power and function to the local bodies, militarisation, rehabilitation of internally displaced people, etc., remain unaddressed.

### The Parliamentary Caucus on Indigenous Peoples and the BIPRA

In 2010, some progressive-minded political leaders and members of the National Parliament took the initiative to establish a Parliamentary Caucus on Indigenous Peoples with a mandate of bringing the issues that affect the life and livelihoods of indigenous peoples up for consideration by the parliament.<sup>5</sup> The



Caucus has initiated a number of activities to address the problems, and protect and promote the rights of indigenous peoples in the country. These initiatives include a draft proposal for constitutional recognition of indigenous peoples; policy dialogue for the implementation of the CHT Accord; emergency responses for the

communal violence in the CHT and the gross human rights violations against indigenous peoples in the plains; promotional work on ILO Convention No. 169; and, not least, drafting of the Bangladesh Indigenous Peoples Rights Act (BIPRA). After organising a series of stakeholder consultations in different regions, the Caucus submitted the BIPRA to the Honourable Speaker as a Private Bill on 22 November 2015, with the aim of placing it before the National Parliament.

### **Status of CHT Accord implementation**

The Chittagong Hill Tracts Accord of 1997 (known as the CHT Accord, and signed between the Government of Bangladesh and the indigenous party, the PCJSS<sup>6</sup>) has entered its 18<sup>th</sup> year. The government claims that 48 of the 72 provisions of the CHT Accord have been implemented, while the PCJSS and several others claim that the figure stands at only 25 so far.<sup>7</sup> While the matter of numbers can be debated, what is beyond doubt is the lack of implementation, or only very marginal implementation, of some of the most crucial and some would say “core” elements of the agreement, including with regard to: (a) de-militarisation (through the dismantling of all non-permanent army camps and the withdrawal of “Operation Upliftment” or “*Operation Uttoron*”);<sup>8</sup> (b) devolution and self-government (primarily through the CHT Regional Council and the Hill District Councils); (c) rehabilitation (through the CHT Task Force on Refugees and Displaced People); and (d) the resolution of land disputes (by the CHT Land Disputes Resolution Commission, which has been inactive or dysfunctional since its inception). Despite the government’s express commitments, made nationally and at international forums, such as the Universal Periodic Review of the UN Human Rights Council, and the UN Permanent Forum on Indigenous Issues, the implementation of the aforesaid core provisions thus remains stalled, or “frozen”. Unless and until these matters are addressed, including through the agreed-upon amendments to the CHT Land Commission law, and by effective measures to preserve the “Special Tribal Area” status of the CHT as per the CHT Accord, true development acceptable to the people of the CHT will remain merely words.

## Indigenous women and girls

Violations of the human rights of indigenous women and girls are increasing, and have never been adequately addressed in the justice system. During 2015, a total of 69 cases of sexual and physical violence against indigenous women and girls were reported, and 85 women and girls were the victims of multiple forms of violence.<sup>9</sup> The most concerning issues are the incidents of rape, gang rape and attempted rape, exceeding all other forms of violence encountered by indigenous women in Bangladesh. A total of 45 such cases were reported in 2015.<sup>10</sup> The majority of the perpetrators are from a non-indigenous background, and the victims' access to justice is curtailed by a strong culture of impunity.<sup>11</sup> Moreover, most of the cases of gender-based violence arise from the land issue, in the sense that indigenous women are often targeted as one of the key tools of oppression.<sup>12</sup> Subduing women and creating terror in indigenous communities is thus a key element in many processes of forced eviction by non-indigenous peoples.<sup>13</sup> Masculine hegemony over indigenous women's and girls' voices,<sup>14</sup> and control over their bodies, is another root cause of the widespread violence against indigenous women.

The government has endorsed a number of development commitments to address the human rights concerns in relation to women, security and empowerment. A *National Women's Development Policy* was adopted in 2011 with the aim of establishing women's human rights, although it includes little on indigenous women's concerns and needs. The allocation of gender responsive budgets in 40 ministries, and the 6<sup>th</sup> Five Year Plan 2011-2015 do not adequately address indigenous women's safety, empowerment, or access to and capacity building in information and communication technology, health and education. Furthermore, indigenous women have limited or no land rights, and government interventions in indigenous territories in the name of development only exacerbate the vulnerability of indigenous women, as they have a severe impact on their traditional economic practices such as vegetable plantations in *jums* and the maintenance of village common forests (VCFs).<sup>15</sup>

## Right to land and natural resources

Alienation of the lands of the country's indigenous peoples, both in the CHT and in the plains, is alarming and the situation continues to deteriorate. Vast tracts of

land have been declared as reserved forests since the 1990s—to be unilaterally administered by the Bangladesh Forest Department (BFD). In the CHT, the military and private companies have established a number of tourism centres without the consent of the local communities or local administrative bodies, including the CHT Regional Council and three Hill District Councils.<sup>16</sup> In the plains, influential Bengali tea estate holders and leaders of national political parties are responsible for evicting the indigenous peoples from their lands. They ignore the indigenous peoples' customary land management system, as well as national laws and policies that protect indigenous peoples' land rights.<sup>17</sup> In most cases, local police and officials of land offices support the land grabbers in the plains, while military authorities protect the Bengali settlers and private companies in the CHT region. Restitution of alienated lands to the indigenous peoples is a longstanding demand of indigenous peoples and civic rights groups in the country. Despite the present government's assurance in its election manifesto,<sup>18</sup> it has yet to take any such measures or form a Land Commission for the indigenous peoples of the plains.<sup>19</sup> A number of events in 2015 underlined the seriousness of the issue:

In 2015, a total of 26 houses of indigenous families in the plains were burnt to ashes or set on fire, while 65 more were looted and ransacked by Bengali land grabbers. Further, a total of 44 indigenous people were physically assaulted and injured in land-related hostilities, and one indigenous boy was killed with a fire-arm.<sup>20</sup>

On top of this, at least 45 indigenous families were evicted from their ancestral lands in 2015, while 1,400 more were threatened with eviction, 657 of them in the CHT.<sup>21</sup> In another act of land-related hostility, at least one indigenous village was attacked by Bengali land grabbers in the plains, while a total 5,216 acres of land were grabbed by both state and non-state actors. In 2015, land grabbers filed false cases against at least 28 indigenous people, including 11 persons from the plains, in order to suppress and annul indigenous peoples' resistance.

A new dimension in the land-related problems of indigenous peoples in the plains emerged too: as a result of a land boundary agreement between Bangladesh and India, signed in 1974, it was agreed in 2015 that a total of 360 acres of land would be transferred to India, lands on which the livelihoods of around 350 indigenous Garo and Khasi people of Pallathol under Barlekha upazila (subdistrict) in Moulavibazar depend.

## Sustainable Development Goals and indigenous peoples

The Sustainable Development Goals (SDGs), also known as the 2030 Agenda for Sustainable Development, were adopted on 25 September 2015 under the slogan of “Leave No-One Behind”. Bangladesh actively engaged in formulating the SDGs, and at the national level the new Government Plan—*Vision 2021* is aligned with the SDGs. Prime Minister Sheikh Hasina has said that Bangladesh is committed to leading by example in terms of implementing the SDGs, as it did in the case of the MDGs. Bangladesh is viewing Agenda 2030 with great interest, and wants to maintain the momentum of the MDGs, build on their successes and transform Bangladesh for the better.<sup>22</sup> Indigenous peoples share this dream, and look forward to being a full part of the SDG journey of inclusive development - which was not the case in the implementation of the MDGs. The design of culturally-relevant indicators, preceded by the disaggregation of data by the Bangladesh Bureau of Statistics, is a vital precondition for monitoring the extent to which the implementation of the SDGs is inclusive, and achieving its goal of leaving no-one behind. Moreover, one major challenge persists, as indigenous peoples are not recognised legally, and non-governmental development agencies are unlikely to gain government approval for their projects and development initiatives if they use the term “indigenous” in their description of activities.<sup>23</sup> ○

## Notes and references

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- 17 Including the CHT Accord in CHT Region, and the East Bengal State Acquisition and Tenancy Act 1950 in plain land areas.
- 18 Awami League Election Manifesto: "*special measures will be taken to secure their original ownership on land, water bodies, and their age-old rights on forest areas. In addition, a land commission will be formed*".
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## NEPAL

According to the 2011 census, the indigenous nationalities (*Adivasi Janajati*) of Nepal comprise 35.81% of the total population of 26,494,504, although indigenous peoples' organisations claim a larger figure of more than 50%. The 2011 census listed the population as belonging to 125 caste and ethnic groups, including 63 indigenous peoples, 59 castes, among them 15 Dalit castes, and 3 religious groups, including Muslim groups.

Even though indigenous peoples constitute a significant proportion of the population, throughout the history of Nepal they have been marginalised by the dominant groups in terms of land, territories, resources, language, culture, customary laws, and political and economic opportunities.

The newly promulgated Constitution of Nepal of 2015 has been disowned by indigenous peoples and the Madhesis, as it denies identity-based federalism and the rights of indigenous peoples, Madhesis, Dalits, Muslims and women. Nepal has ratified ILO Convention No. 169 on Indigenous and Tribal Peoples and voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The implementation of ILO Convention No. 169 and UNDRIP is still weak, however. It is yet to be seen how the new constitution will bring national laws into line with the provisions of ILO Convention No. 169 and the UNDRIP.

2015 will go down in Nepal's history as a disastrous year for all the victims of the devastating earthquakes in April and May, many of whom were indigenous peoples and Dalits.<sup>1</sup>

### **New constitution adopted in the aftermath of the earthquake**

The second elected Constituent Assembly had publicly declared it would promulgate the new constitution on 22 January, three years before the end of its four-

year term. The year began with intense political controversy over many thorny issues, such as whether the final constitution should be passed through the “process” (sticking to the 22 January deadline) or an “agreement” (allowing more time for consultation and consensus-building); whether the provinces should be carved out on the basis of identity or not; and whether past agreements on specific articles, adopted by the first Constituent Assembly, should be incorporated or not. A coalition of 33 political parties led by the Unified Nepal Communist Party of Nepal (Maoist) backed the proposal on identity-based federalism and sought a consultation-based approach to the adoption of the constitution. The governing Nepali Congress and the Communist Party of Nepal (Unified Marxist-Leninist) opposed identity-based federalism, and promoted fast-tracking the adoption of the constitution. As no agreement was reached between these two warring camps, the 2<sup>nd</sup> CA failed to agree on a new constitution by the promised 22 January deadline. Since then, political parties and the common people have been further divided and highly polarised.

The major earthquake of 26 April, followed by hundreds of aftershocks, brought together the supreme leaders of the main political parties under one umbrella to work together for search and rescue, relief, rehabilitation and reconstruction work. As the earthquake victims were trying to come to terms with the rubble of their flattened houses, and trying hard to cope with the natural disaster, Nepali Congress President and Prime Minister Sushil Koirala, CPN (UML) Chairman KP Sharma Oli, UCPN (Maoist) Chairman Pushpa Kamal Dahal and Madhesi Janadhikar Forum Nepal Loktantrik’s Chairman Bijaya Kumar Gachchhadar signed a 16-point agreement to finalise the draft constitution on 8 June.<sup>2</sup> Anticipating that there would be no street protests against their sudden agreement, even though it dealt with the most controversial issues of the whole constitution-drafting process, they agreed to a federal structure whereby only five of the nine provinces would be based on identity, their names would be decided by the provincial assemblies by a two-thirds majority vote, and the controversial demarcation of the provinces would be dealt with by a Federal Commission, reporting to the legislative assembly within a six-month period, which would then take the final decision by a two-thirds majority vote.<sup>3</sup> With this move, they cleared the way for adoption of the text in its entirety instead of passing each article one by one, as per the mandate of the CA. The foundation for fast-tracking the promulgation of the constitution had been laid, shrinking the time available for debates in the CA, and consultations with the Nepalese people.



Finally, on 16 September, 532 out of the 601 CA members cast their vote with 65 abstaining. Of the 532 members who voted, 507 voted for and 25 voted against the new constitution.<sup>4</sup> On 20 September, President Ram Baran Yadav officially promulgated the Constitution of Nepal 2015, putting his signature to five copies, and announcing its entry into force in an address to the Constituent Assembly and the nation.<sup>5</sup>

### **Protests against the new constitution**

The three main political parties branded the new constitution one of the best in the world, claiming that it protects the rights of all, including indigenous peoples, Madhesi,<sup>6</sup> Dalits and women. On the other hand, indigenous peoples and Madhesi, who make up an overwhelming proportion of the total population, started burning copies of the new constitution in the streets. They denounced it as racist, patriarchal, anti-secular, anti-indigenous peoples, anti-Madhesi, undemocratic, against the peace process, against the Interim Constitution of Nepal, against international human rights standards, including UNDRIP, and against past agreements between the government and the movements of indigenous peoples and Madhesi.

In a detailed analysis of the 2015 Constitution, the indigenous lawyers' association LAHURNIP criticised it for distorting or limiting whatever nominal provisions had been made in the name of secularism, identity, social inclusion and other issues that are key for indigenous peoples. For example, it characterises Nepal as a mono-cultural nation-state (Articles 3 and 4); its definition of secularism provides special status to Hinduism (Article 4); the Khas Nepali language is the only official language of Nepal, allowing for a few mother tongues to be official state languages only (Articles 6 and 7); the cow and other Hindu symbols continue to be national symbols (Article 9.3); the right to live with dignity has been limited to being a part of the state policies, which are unenforceable (Articles 16 J Para. 8, and 55). Participation in state bodies on the basis of inclusive principles (Article 42) has no meaning if it is not proportional with caste, ethnicity, region and gender identifiers. Further, the federal state structure and the distribution of power is far from the identity-based federalism the CA was mandated to develop as per the Interim Constitution, with its seven provincial and local levels (Article 56 and Schedule 4), the highly centralised power of the state (Schedule 5), the composition of the House of Representatives, which falls short of the Interim Constitution's provisions on proportional representation for *janajatis* and other marginalised groups (Article 84), etc. A movement of indigenous peoples and Madhesis hence demanded that the constitution be rewritten.

The indigenous Tharus and the Madhesis intensified their protest movement, demanding the rewriting of the constitution as soon as it had been promulgated. The protests were particularly intense in the Western Terai, from where the national daily, *The República*, reported:

*Tikapur area was declared a prohibited zone following violent protests by Tharuhat<sup>7</sup> activists for the past several days. Around 20,000 Tharuhat activists had arrived in Tikapur from various parts of the district to put up signboards of Autonomous Tharuhat in government offices and organize a protest rally." "At least eight persons, including a Senior Superintendent of Police (SSP), two inspectors of the Nepal Police,<sup>8</sup> and a two-year-old toddler were killed and 42 other policemen were injured in the clash with agitating Tharuhat activists in Shankarpur area of Tikapur Municipality on Monday.<sup>9</sup>*

In Tikapur and other places, the government-imposed curfew mobilised the army, and many Tharu leaders were arrested, killed or disappeared, and women were

abused. People belonging to the Unified Far West Movement, which opposed the formation of an identity-based Tharuhat province, burned houses, including a local FM radio station. Some 50 innocent people, including children and elderly, were killed due to the excessive force used by the security forces, disproportionately targeting the Tharu community.<sup>10</sup>

The Madhesi agitators have used sit-ins at the Nepal-India border entry points as part of a civil disobedience movement but the Nepal government has considered it an “economic blockade” enforced by India since 23 September. Since then, there has been a scarcity of petroleum products, cooking gas, and generally sky-rocketing inflation, causing serious problems for the general population.

### Neighbours’ changing gestures

The gestures of Nepal’s two neighbouring countries, India and China, have far-reaching consequences for both indigenous peoples and the Madhesis of Nepal: India did not welcome but rather “noted” the promulgation of the constitution, and China invited Nepal’s indigenous peoples’ leaders to visit the country. India issued a statement on 20 September, saying

*We note the promulgation in Nepal today of a Constitution” and “We are concerned that the situation in several parts of the country bordering India continues to be violent. Our Ambassador in Kathmandu has spoken to the Prime Minister of Nepal in this regard. We urge that issues on which there are differences should be resolved through dialogue in an atmosphere free from violence and intimidation, and institutionalized in a manner that would enable broad-based ownership and acceptance. This would lay the foundation of harmony, progress and development in Nepal.<sup>11</sup>*

India’s strong position was a result of the Madhesi and indigenous peoples’ protests, including their demands for identity-based federalism (reflected in past agreements between the government and movements of Madhesi and indigenous peoples), and a reaction to the excessive violence used by the Nepal government against agitating Madhesi and Tharus in the Nepal Terai. It clearly shows that India is seriously concerned about the direct effects of any violent conflict in the neighbouring Nepali Terai region, with which India shares a 1,700-km-long border.<sup>12</sup>

The reaction of China was equally interesting, with the Chinese Embassy in Nepal arranging a week-long visit of a 25-member team of Nepal's indigenous peoples' leaders in Sichuan province in China from 14 to 21 December, as a part of the increasing people-to-people cooperation between China and Nepal.<sup>13</sup> This is, indeed, the very first time that China has invited Nepal's indigenous peoples' leaders to visit the country, and marks a significant change from past Chinese practice. It indicates that although China welcomed the promulgation of the new constitution of Nepal, it is familiar with Nepal's indigenous peoples' protest against it, and well aware of the fact that any escalation of ethnic conflict in Nepal and denial of rights of indigenous peoples' of Nepal could generate violent conflict, and subsequently bring political instability to Nepal that could pose a security threat to its northern neighbour, China.

## The big earthquake

On Saturday 26 April, at 11:56 local time, a 7.8 magnitude earthquake struck Nepal, with the epicentre in Barpak in Gorkha District, 76 km northwest of Kathmandu. It was followed by a series of aftershocks, including a 6.7 magnitude earthquake at 12:54 on 12 May, with disastrous effects in 31 of the country's 75 districts. Of the 31 districts, 14 were declared "crisis-hit". These are all the ancestral lands of several indigenous peoples, including Ghale, Gurung, Tamang, Jirel, Surel, Sunuwar, Thami, Majhi, Danuwar, Pahari and Newar. The Post-Disaster Needs Assessment report prepared by the National Planning Commission of Nepal states: "*Approximately 9,000 people lost their lives and more than 22,000 people were injured. As per the latest estimates, more than half a million houses collapsed or are damaged*".<sup>14</sup> It is estimated that 70% of the 9,000 dead belonged to indigenous peoples and Dalits and, of these, some 33% were from the indigenous Tamang people.<sup>15</sup>

There was discrimination against indigenous peoples' and Dalits' right from the search and rescue through to the relief and rehabilitation efforts, and the government's inability to provide adequate relief to vulnerable groups such as children and the elderly has been widely criticised. Reconstruction work should have started immediately after the relief work was over but, as the government was greedy enough to ask for cash donations from international donors, and international donors were cautious enough not to give cash to be misused by the government authority, the government failed to provide timely help and support in the form of warm clothes, medicine and support for the reconstruction of houses

to the earthquake victims. Such a conspicuous neglect on the part of the government led to many deaths of children, pregnant mothers and elderly people due to severe cold, illness and lack of timely medicine. ○

## Notes and References

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- 4 <http://thehimalayantimes.com/kathmandu/constituent-assembly-endorses-constitution-bill/>
- 5 <http://kathmandupost.ekantipur.com/news/2015-09-20/people-celebrate-constitution-promulgation-in-photos.html>
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- 8 <http://myrepublica.com/politics/story/26925/scores-injured-as-demonstrators-clash-with-police.html>
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- 12 <http://www.bbc.co.uk/news/world-asia-india-34313280?utoken=403857.82797.aa30eddf022ed-094ef0462cb4a26eb2c>
- 13 <http://www.rajdhani.com.np/article/0060896001451101665>
- 14 See page 7 at [http://www.npc.gov.np/images/download/PDNA\\_Volume\\_A.pdf](http://www.npc.gov.np/images/download/PDNA_Volume_A.pdf)
- 15 These figures are based on the presentation made by the panelists in an interactive programme on Post-Earthquake Reconstruction and Social Justice jointly organised by the Jagaran Media Center, Samata Foundation and COCAP as a part of the Darnal award programme on 15 August 2015 in Kathmandu.

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# INDIA

In India, 461 ethnic groups are recognized as *Scheduled Tribes*, and these are considered to be India's indigenous peoples.<sup>1</sup> 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 to West Bengal.

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. The laws aimed at protecting indigenous peoples have numerous shortcomings and their implementation is far from satisfactory. The Indian government voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). However, it does not consider the concept of "indigenous peoples", and thus the UNDRIP, applicable to India.

## Legal rights and policy developments

In a major victory for the indigenous peoples, the Government of India dropped the controversial land acquisition ordinance that sought to amend—and would have considerably weakened—the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The ordinance, first issued in December 2014 and amended three times, lapsed on 31 August 2015. The Prime Minister of India announced that the ordinance would not be reissued.<sup>2</sup>



In another major development, on 21 December 2015, Parliament passed the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill to provide for stringent action against those involved in crimes against Scheduled Castes and Scheduled Tribes.<sup>3</sup> The Bill amends certain existing categories and adds new categories of actions to be treated as offences, as given below:<sup>4</sup>

- Forcing a Scheduled Caste (SC) or Scheduled Tribe (ST) individual to vote or not vote for a particular candidate in a manner that is against the law is an offence under the Act. The Bill adds that impeding certain activities related to voting will also be considered an offence.

- Wrongfully occupying land belonging to SCs or STs is an offence under the Act. The Bill defines “wrongful” in this context, which the Act had not done.
- Assaulting or sexually exploiting an SC or ST woman is an offence under the Act. The Bill adds that: (a) intentionally touching an SC or ST woman in a sexual manner without her consent,<sup>5</sup> or (b) using words, acts or gestures of a sexual nature, or (c) dedicating an SC or ST woman as a *devadas*<sup>6</sup> to a temple, or any similar practice will also be considered an offence.
- New offences added under the Bill include: (a) garlanding with footwear,<sup>7</sup> (b) compelling to dispose or carry human or animal carcasses, or do manual scavenging,<sup>8</sup> (c) abusing SCs or STs by caste name in public, (d) attempting to promote feelings of ill-will against SCs or STs or disrespecting any deceased person held in high esteem, and (e) imposing or threatening a social or economic boycott.
- Preventing SCs or STs from undertaking the following activities will be considered an offence: (a) using common property resources, ... (c) entering any place of worship that is open to the public, and (d) entering an education or health institution.
- The court shall presume that the accused was aware of the caste or tribal identity of the victim if the accused had personal knowledge of the victim or his family, unless proved to the contrary.
- Role of public servants: the Act specifies that a non-SC or ST public servant who neglects his duties relating to SCs or STs shall be punished with imprisonment for a term of six months to one year. The Bill specifies these duties, including, among others: (a) registering a complaint or First Information Report (FIR), (b) reading out information given orally before taking the signature of the informant and giving a copy of this information to the informant.
- Role of courts: under the Act, a Court of Session at the district level is deemed a Special Court to provide speedy trials for offences. A Special Public Prosecutor is appointed to conduct cases in this court. The Bill substitutes this provision and specifies that an Exclusive Special Court must be established at the district level to try offences under the Bill. In districts with fewer cases, a Special Court may be established to try offences. An adequate number of courts must be established to ensure that cases are disposed of within two months. Appeals of these courts shall lie with the High Court, and must be disposed of within three months. A Pub-

lic Prosecutor and Exclusive Public Prosecutor shall be appointed for every Special Court and Exclusive Special Court respectively.

- Rights of victims and witnesses: the Bill adds a chapter on the rights of victims and witnesses. It shall be the duty of the state to make arrangements for the protection of victims, their dependents and witnesses. The state government shall specify a scheme to ensure implementation of the rights of victims and witnesses.
- The courts established under the Bill may take measures such as: (a) concealing the names of witnesses, (b) taking immediate action in respect of any complaint relating to the harassment of a victim, informant or witnesses. Any such complaint shall be tried separately from the main case and be concluded within two months.

## **Human rights violations against indigenous peoples**

Over the past year, atrocities against indigenous peoples witnessed a substantial increase. According to the latest report “Crime in India 2014”, published in 2015 by the National Crime Records Bureau (NCRB) of the Ministry of Home Affairs, a total of 11,451 cases were reported in the country during 2014 as against 6,793 cases in 2013, thus showing an increase of 68.6% in 2014 over 2013.<sup>9</sup> These are only the reported cases of atrocities committed by non-tribals and do not include cases of human rights violations by the security forces.

### **Human rights violations by the security forces**

In 2015, the security forces continued to be responsible for human rights violations against tribals. In the areas affected by armed conflicts, the tribals are sandwiched between the armed opposition groups (AOGs) and the security forces.

Cases are numerous and many not reported. Only a few cases that became public are included here to illustrate the kind of atrocities committed by the security forces against indigenous peoples. On 28 June, a 52-year-old tribal farmer died due to alleged torture while in the custody of the 7<sup>th</sup> Sikh Light Infantry in Bijnri district of Assam. He was picked up by the Army for his suspected links with the Songbijit faction of the National Democratic Front of Bodoland (NDFB, a banned armed group of Assam) on 26 June.<sup>10</sup> Also in the state of Assam, an

Adivasi youth died due to alleged torture in army custody on 18 August in Sonitpur district. He was picked up from his house on suspicion of being an insurgent.<sup>11</sup>

On 29 November, two tribals (including a school teacher) aged 35 and 30 respectively were allegedly killed by army personnel belonging to the Gorkha Regiment at Rajasimla, Kharkutta outpost, in North Garo Hills district of Meghalaya state. The Army claimed that the deceased were taken as militants and killed in a case of mistaken identity.<sup>12</sup>

The security forces also targeted women for sexual abuse. In October 2015, four women, including a 14-year-old, were allegedly blindfolded and gang-raped by security forces involved in anti-Naxal (Maoist armed group) operations in Bijapur district of Chhattisgarh state.<sup>13</sup>

### **Human rights violations by armed opposition groups**

Armed opposition groups also continued to be responsible for gross violations of international humanitarian law, including killings, during 2015.

Maoists continued to kill innocent tribals on charges of being “police informers”, or simply for not obeying their diktats. Most of the victims were killed in *Jan Adalats*, (“People’s Courts”) held by the Maoists. The Naxal Division of the Ministry of Home Affairs recorded 28 *Jan Adalats* held by the Maoists during 2015 (up to 15 September).<sup>14</sup> Some of the alleged killings by the Maoists in 2015 took place at Keriaguda village in Malkangiri district, Odisha state, on 5 January;<sup>15</sup> at Kitahatu village in Khunti district, Jharkhand state, on 23 January;<sup>16</sup> at Durma village in Sukma district, Chhattisgarh state, on 3 May;<sup>17</sup> inside a forest in Sukma district, Chhattisgarh on 8 May;<sup>18</sup> at Mundaguda village in Malkangiri district, Odisha on 17 October;<sup>19</sup> at Dandipadar village in Malkangiri district, Odisha on 30 October;<sup>20</sup> at Madathakonda village in Vishakapatnam district, Andhra Pradesh on 22 December;<sup>21</sup> and at Badapadar and Raba villages in Malkangiri district, Odisha on 25 December,<sup>22</sup> among others.

### **Alienation of tribal land**

The 5<sup>th</sup> Schedule and 6<sup>th</sup> Schedule to the Constitution of India provide stringent protection of the land belonging to the tribal peoples. In addition, at the state level, there is a plethora of laws prohibiting the sale or transfer of tribal lands to

non-tribals and restoration of alienated tribal lands to them. Yet these laws remain ineffective as these have not been invoked and in 2015, the lands of the tribals continued to be alienated.

The lack of seriousness of the Government of India towards the alienation of tribal land is reflected in the delay in implementing the recommendations of the High Level Committee (HLC) report submitted in May 2014 (see *The Indigenous World 2015*). The HLC had recommended several changes to the laws to prevent further alienation of tribal land and allow them greater control over their resources.<sup>23</sup> In December 2014, the Prime Minister's Office asked all the ministries and states, including the National Institution for Transforming India (NITI) Aayog, formerly the Planning Commission of India, to send their comments on the HLC report. The NITI Aayog asked the Ministry of Tribal Affairs (MoTA) to take up the issue with the Ministry of Environment, Forests and Climate Change (MoEFCC). However, the MoTA had not received any comments from the MoEFCC as of 7 September 2015. According to information received under the Right to Information (RTI) Act, 2005 by the daily newspaper *Hindustan Times*, in its comments on the HLC report the NITI Aayog observed that all the key features of the Forest Rights Act, which provides for the recognition of traditional rights of tribals over forest land, "have been undermined by a combination of apathy and sabotage during the process of implementation". It also stated that the central and state governments had actively pursued policies that were in direct violation of the spirit and letter of the Act. Further it recommended that, "Unless immediate remedial measures are taken, instead of undoing the historical injustice to tribals and other traditional forest dwellers, the Act will have the opposite outcome of making them even more vulnerable to eviction and denial of their customary access to forests".<sup>24</sup>

## **The conditions of the internally displaced tribal peoples**

### **Conflict-induced displacement**

There were no reports of displacement caused by conflict during 2015. However, thousands of tribals who were displaced in previous years had yet to be rehabilitated by the year's end. The case of over 30,000 Bru (Reang) tribals sheltering in six temporary relief camps in Tripura following their displacement from Mizoram in 1997 is testimony to this. Their repatriation process to Mizoram, which started

in 2009, remained stalled over various issues, including land, security, rehabilitation package, etc.<sup>25</sup> As a result, the Bru continued to live in sub-human conditions in the relief camps in Tripura. They live on government-provided rations and without proper education and health facilities. They also do not have voting rights in Tripura.

### **Development-induced displacement**

Land has been acquired for mining, industrialization and non-agricultural purposes as per the requirement of projects in tribal areas. The government admits the tribals experience a much higher displacement burden.<sup>26</sup> However, tribals who lost their lands due to development projects have been denied compensation years after displacement.

On the other hand, the tribals continue to face displacement due to the acquisition of land for various projects. In Tripura, over 1,200 tribal families have been facing imminent displacement due to attempts by the state government to acquire land to set up a firing range for the Assam Rifles in 13 villages in Dhalai district. The state government reportedly issued eviction notices to the families in September 2015.<sup>27</sup>

Those who opposed land acquisitions were met with a strong hand. In April 2015, Akku Kharwar, a tribal leader, and eight others were seriously injured, while 35 others sustained minor injuries when police opened fire on tribal protesters who had gathered at the construction site of the Kanhar dam in Sonbadhra district of Uttar Pradesh. The tribals were protesting against the land acquisition for the project.<sup>28</sup>

The displaced tribals were never provided with proper compensation. For example, on 29 December 2015, over 75 affected tribals from Jawhar tehsil in Thane district of Maharashtra walked 180 km on foot in four days to reach Mumbai to demand proper compensation and action against government officers who snatched their lands and livelihoods for the Lendi Irrigation project in 2007. The land was acquired without following due procedure. Repeated demands for compensation by the displaced tribals have fallen on deaf ears. Following their displacement, the tribals who grew paddy in the agricultural land were forced to move out and work as labourers.<sup>29</sup>

## Repression under forest laws

Section 4(5) of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 provides that no member of a forest-dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from land under his occupation until the recognition and verification procedure for settlement of forest rights is complete.

However, a large number of forest-dwelling tribals have continued to be denied rights. According to the information available from the Ministry of Tribal Affairs, as of 31 October 2015, a total of 4,405,395 claims had been received across the country under the Forest Rights Act. Of these, a total of 3,813,344 claims (86.56% of the total received) have been disposed of, and for which 1,708,973 titles were distributed. This means that a majority of the claims have been rejected or are pending.<sup>30</sup>

Further, state governments' recognition and vesting of community rights and community forest resources under the Forest Rights Act was very low. According to the progress report received from the states by the Ministry of Tribal Affairs on 31 May 2015, the total community rights claimed were 1.11 lakh (equivalent to 111,000), of which only 37,000 were recognized across the country.<sup>31</sup>

Further, tribal peoples are facing eviction threats in the name of forest conservation or are being threatened for opposing evictions or relocations. In January 2015, Telenga Hassa, a tribal leader, was threatened by a forest official who allegedly asked his fellow villagers to attack him or drive him out of Similipal Tiger Reserve in Odisha if he did not agree to their relocation.<sup>32</sup> The tribals who are evicted often receive little if any compensation.<sup>33</sup> For example, around 450 tribal families belonging to the Gond and Baiga tribes in the Kanha Tiger Reserve in Madhya Pradesh who were evicted in June 2014 had been neither resettled nor provided with any source of income as of 15 January 2015. Some families received a fraction of the agreed compensation, while others received nothing. The communities were living scattered in the surrounding areas.<sup>34</sup>

## Nagalim

Due to its impact on the central government's policies and politics for the country's entire north-east region, the Naga people's struggle for self-determination

has been of particular significance and has thus been regularly covered in *The Indigenous World*.<sup>35</sup> With a population of approximately four million and comprising more than 50 different tribes, the Nagas are a transnational indigenous people inhabiting parts of north-east India and north-west Burma. Like other indigenous peoples, such as the Mizos, the Nagas were divided between the two countries with the colonial transfer of power from Great Britain to India in 1947. Nagalim is the name coined to refer to the Naga homeland transcending the present state boundaries, and is an expression of their assertion of 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 when the newly-formed Indian state sought to crush the Naga people's declaration of independence with violent repression and heavy militarization of the Naga territories. Armed conflict between the Indian state and the Nagas' armed opposition forces began in the early 1950s and it is one of the longest armed struggles in Asia. In 1997, the Indian government and the largest of the armed groups, the National Socialist Council of Nagaland Isaac-Muivah faction (NSCN-IM), agreed on a ceasefire and, since then, have held regular peace talks. Largely as a result of India's divide-and-rule tactics, the armed movement was split into several factions fighting each other. In 2010, a reconciliation process started among the main armed factions, facilitated by the Forum for Naga Reconciliation (FNR). Despite the signing of the "Lenten Agreement" among the armed groups in 2014, full reconciliation has still not been achieved as each group continues to stick to the claim of representing the entire Naga nation.

### **Peace agreement with NSCN-IM**

With more than 80 rounds of political talks between the Government of India (GoI) and the NSCN-IM over the past 18 years, the peace talks seem to have become low profile and the public seem to have lost their confidence in the political negotiations. Furthermore, without a regular program designed to assist the resistance organizations to reintegrate into civilian life and with less demand for active duty, they are in danger of losing control over their cadres. Naga civil society has also become weak as a result of deepening internal differences among them. Finally, on 3 August 2015, the GoI and the NSCN-IM signed a peace framework agreement (henceforth the Agreement). This came as a surprise to the Naga public, who received the Agreement with mixed feelings mainly because its content re-

mains undisclosed. While some expressed hope, others expressed skepticism, and some their outright opposition. Other resistance organizations, including NSCN-K (Khaplang faction) and NNC (Naga National Council), have strongly questioned the legitimacy of the Agreement and condemned the veil of secrecy surrounding its content. Several civil society organizations (CSOs), including some Tribe Councils, have expressed similar reservations.

Since the content of the framework has not been released to the public to date, the scope of the framework and the opportunities it may offer have yet to be examined and evaluated.

### **Naga civil society and the peace process**

Over the years, NSCN-IM leaders have held many consultations with CSOs. However, these meetings were of restricted scope and lacked space for open sharing. This is one of the key reasons for the alienation of the peace process from the general public, resulting in widespread resentment and frustration among the people. So the Agreement has not generated the popular enthusiasm that the NSCN-IM had been hoping for. However, on a positive note, the NSCN-IM has urged the CSOs to “take forward the Peace process”. The challenge is to revitalize Naga CSOs so that they are able to play an active and meaningful role in this.

Exhausted from decades of intimidation, arbitrary arrest and detention, sexual violence, summary executions and intentional destruction of homesteads and fields, ordinary people are very eager to see an end to the armed conflict. However, the feeling of alienation from the peace process and the resistance organizations’ competing claims to represent the entire Naga nation in an exclusive manner continue to cast doubts over the prospects for meaningful peace.

There are also two critical questions that have been raised by Naga CSOs and outside observers with regard to the sincerity of India’s commitment to the peace talks. First is the case against Anthony Ningkhan Shimray, the Head of Foreign Mission of the NSCN-IM, who has been accused and jailed by the Gol for purchasing arms for his organization. The question being asked is whether jailing him for activities he was involved in before the ceasefire, and for alleged arms deal after the ceasefire, which apparently never took place,<sup>36</sup> is helping or obstructing the search for a lasting political solution. His continuing detention by the Gol is even more questionable in light of the fact that he was following the orders

of the very same NSCN-IM leaders with whom the government has signed the peace framework agreement.

In a similar fashion, questions are being raised over the Gol's forced exiling of two prominent peace activists and members of the Naga Peoples Movement for Human Rights (NPMHR), Mr. Luingam Luithui and Ms Peingamla Luithui since 1995 without providing any substantiated reasons. A case has been filed by their family since, according to Article 9 of the Constitution of India and the Citizenship Act, 1955 they have not surrendered or lost their citizenship. The impounding of their passports and refusal to issue a new one is clearly a case of outright abuse of power by the Gol. The case is currently being heard at Delhi High Court.

### **Developments in Eastern Nagalim (Myanmar)**

In the eastern part of the Naga territory, which is part of Burma/Myanmar, the peace process did not make much progress in 2015. The National Socialist Council of Nagaland (NSCN-K) signed a ceasefire agreement with the government on 9 April 2012 and opened its liaison office in Khamti, Sagaing Division, for the purpose of facilitating the talks. However, the NSCN-K has not signed any agreement with the Union Government, although it did agree to hold discussions regarding peace, stability and development in the Naga region and has participated in the Union Peace Working Committee (UPWC) meetings as an observer. The NSCN-K is not part of the United Nationalities Federal Council (UNFC), whose main demand is a federal constitution, and it has not put forward its conditions for becoming a party to the negotiations but has demanded economic and social development for their area.<sup>37</sup> The Naga CSOs in general have welcomed the ceasefire initiative and are raising land rights as one of their key issues.

The most important recent development for Naga civil society in Burma/Myanmar is the formation of the Council of Naga Affairs (CNA) as a result of the large Conference of the Naga Nationals (CNN) held in Khamti, from 27 - 30 November 2014. The CNA was formed with the aim of building a common understanding on political developments and unity among the Nagas, promoting peace and reconciliation, resource mobilization and capacity building, monitoring activities of the government, NGOs and companies, etc. The CNA has 49 executive members representing various sectors of Naga society, i.e., 19 township representatives, three state political parties, experts, and representatives of the business community, religious organizations, students, youth and women. Structur-

ally, the CNA has a Working Committee and a Board of Administrators, and it has eight organs. The first meeting of the CNA Executive took place from 8 – 9 January 2015 and it reaffirmed its commitment to advocating for the recognition of the rights of the Nagas, incorporating the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) into its framework of awareness raising, capacity building and advocacy. ○

## Notes and references

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- 4 See “The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014” PRS, <http://www.prsindia.org/billtrack/the-scheduled-castes-and-the-scheduled-tribes-prevention-of-atrocities-amendment-bill-2014-3327/>
- 5 “Consent” has been defined as a voluntary agreement through verbal or non-verbal communication in the amended Act.
- 6 A *devadasi* is a girl or woman dedicated to the worship and service of a deity or a temple all her life. The *devadasis* are often subjected to sexual exploitation.
- 7 SCs are considered untouchables by the upper castes and often garlanded with footwear to demean them. However, this common atrocity was not covered under the SCs and the STs (Prevention of Atrocities) Act, 1989, resulting in an increase in such cases. This has therefore been made an offence in the amended Act.
- 8 SCs are considered untouchables by the upper castes and often forced to dispose of or carry human or animal carcasses, or do manual scavenging to demean them. However, these common atrocities were not covered under the SCs and the STs (Prevention of Atrocities) Act, 1989, resulting in an increase in such cases. These acts have therefore been made offences in the amended Act.
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- 10 See “Assam: Man dies in custody, Army says he was injured while fleeing”, *The Indian Express*, 30 June 2015, <http://indianexpress.com/article/india/india-others/assam-man-dies-in-custody-army-says-he-was-injured-while-fleeing/>
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- 35 There are and have been numerous other indigenous peoples’ movements for self-determination in north-east India, such as that of the Bodos in Assam or that of the Mizos in the 1960s. In the case of the latter, a permanent solution was found with the creation of Mizoram state. This is not the case with respect to the creation of Nagaland state. The number and diversity of the various movements are too high to be covered in this brief report. Thus the focus has been on the largest and politically and militarily most important movement, that of the Nagas.
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NORTH AND WEST AFRICA

## MOROCCO

The Amazigh (Berber) peoples are the indigenous peoples of North Africa. The most recent census in Morocco (2006) estimated the number of Tamazight speakers to be 28% of the population. However, the Amazigh associations strongly challenge this and instead claim a rate of 65 to 70%. This means that the Amazigh-speaking population may well number around 20 million in Morocco, and around 30 million throughout North Africa and the Sahel as a whole.

The Amazigh people have founded an organisation called the “Amazigh Cultural Movement” (ACM) to advocate for their rights. It is a civil society movement based on universal values of human rights. There are now more than 800 Amazigh associations established throughout the whole of Morocco.

The administrative and legal system of Morocco has been highly Arabized, and the Amazigh culture and way of life is under constant pressure to assimilate. Morocco has for many years been a unitary state with a centralised authority, a single religion, a single language and systematic marginalisation of all aspects of the Amazigh identity. The Constitution of 2011 officially recognises the Amazigh identity and language. This could be a very positive and encouraging step forward for the Amazigh people of Morocco but unfortunately its official implementation is still pending enactment of the organic law that would establish rules as to how Tamazight is to be officially implemented, along with methods for incorporating it into teaching and into life generally as an official language. Work to harmonise the legal arsenal with the new Constitution has not, in fact, yet commenced and no steps have been taken to implement the Constitution.

Morocco has not ratified ILO Convention No. 169 and did not vote in favour of the UN Declaration on the Rights of Indigenous Peoples.



## Implementing official recognition of Tamazight

**T**he organic law establishing Tamazight's official implementation has yet to see the light of day. In his speech to Parliament on 9 October 2015, King Mohammed VI called on the government to speed up its enactment of this law. Following this, the government established a committee to prepare a draft bill of law on the Council of Languages and Cultures. The procedure for creating this committee has been seriously challenged by the Amazigh Cultural Movement (ACM), which has issued several press releases denouncing the marginalisation of Amazigh regions from the formation of this committee.

It seems that this law is likely to be enacted before this government's term in office concludes at the end of 2016. According to information from the ACM, however, if the draft bill contains none of the recommendations made by the Amazigh associations, the ACM will reject it.

## **Amazigh language teaching, a botched project**

The Amazigh language (Tamazight) was introduced into Morocco's education system in 2003 and a timetable for its expansion across primary schools established in 2011. This plan has not been implemented, however. Following the language's official recognition in 2011, the ACM has noted a net decline in its teaching.

The Minister of Education has, in effect, stated his opposition to the teaching of Tamazight in the 2030 plan published by his cabinet just before the beginning of the school year 2015/2016, which makes no mention of the language.

In an interview with *Tamazgha*, a Tamazight magazine, Meryam Demnati, a researcher with the Royal Institute for Amazigh Language and Culture (IR-CAM) confirmed: "The Ministry of Education's indifference is causing the level of Tamazight teaching to plateau and decline, not to mention the 2030 plan produced by the same ministry, which is based on Arabic, with no mention of Tamazight. Instead of being rolled out, at the very least, in primary schools, there are scarcely half a million children being taught Tamazight, out of 4,141,000 pupils in primary and 815,000 pupils in secondary school".<sup>1</sup>

At the start of the 2015-2016 school year, the Ministry of Education required all Tamazight teachers to teach Arabic instead of Tamazight, which led to demonstrations and protests at a decision which the ACM has described as discriminatory.

According to the report submitted by Amazigh associations (TAMUNT N IF-FUS, TAMAYNUT, AGHARAS LKHIR) to the Committee on Economic, Social and Cultural Rights (CESCR) during its 56th session from 21 September to 9 October 2015 in Geneva, teaching of the Amazigh language is at a standstill: "Twelve years after the launch of Tamazight teaching in Morocco, the government has done nothing to improve the situation of this language in the education system. The rate of implementation is too slow. In reality, in 2014, Tamazight teaching

reached only 14% of primary school pupils, according to the leaders and researchers of the Royal Institute for Amazigh Culture (IRCAM)”.<sup>2</sup>

## **Land, a problematic issue**

Land remains a problematic issue in Morocco. A number of Amazigh tribes had their land expropriated by France during the Amazigh people’s resistance to colonisation. Following independence, these tribes never recovered that land, despite a number of demands and protests. The government now considers these lands to be State lands.

One flagrant example of this is Tadouart village in the region of Agadir Idaoutanan where more than 400 families risk being evicted from their ancestral lands. This problem led the Amazigh to take their case to the CESCR’s 56th session in 2015.

According to the NGO stakeholder report made during this session, 4,000 inhabitants living in 2,000 houses on 420 hectares of land 20 km to the south-east of Agadir are being forced to leave their property. This eviction forms part of a process of demarcating more than 12 million hectares of indigenous land in favour of the State. The families are consequently moving to the cities where, uprooted, they assimilate and lose their identity. This is threatening a large number of people and violating a whole set of rights that are guaranteed by international instruments”.<sup>3</sup>

King Mohamed VI had, however, in his discourse dated 8 December 2014, given instructions to review the situation of lands known as “*sulalya* lands” (lands managed by tribes)<sup>4</sup> and the tribes are waiting enthusiastically for solutions that can guarantee their rights.

## **Amazigh and the media**

The main focus of the ACM is and always has been the media. There is an Amazight TV channel that broadcasts in Tamazight but the terms and conditions laid down by the Minister for Information do not respect the Amazigh quota. The seven Moroccan channels give no importance to Tamazight whatsoever.

## A glimmer of hope

By way of conclusion, during COP21 in Paris, the Moroccan Minister for the Environment received representatives of Africa's indigenous peoples in her office at the Moroccan pavilion and noted her admiration for their role in adaptation to climate change and biodiversity conservation. She also gave a similar speech to the representatives of the Global Caucus of Indigenous Peoples. This is a sign of recognition of indigenous peoples' rights and it gives us hope that 2016 may be the year in which Morocco's official recognition of the Amazigh language and identity is finally implemented. ○

## Notes and references

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*The author takes no responsibility of the map, which has been produced solely by IWGIA.*

## ALGERIA

The Amazigh, the Mozabite and the Tuareg are the indigenous peoples of Algeria, as well as of other countries of North Africa and the Sahara, and have been present in these territories since ancient times. They can primarily be distinguished from other inhabitants by their language (Tamazight) but also by their way of life and their culture (clothes, food, beliefs). The Algerian government, however, does not recognise their indigenous status, and hence no official statistics on their demographics exist. Associations defending and promoting the Amazigh culture estimate the Tamazight-speaking population to be around 11 million people, or 1/3 of Algeria's total population.

The Amazigh of Algeria are concentrated in five large regions—namely in Kabylia in the north-east, Aurès in the east, Chenoua, a mountainous region on the Mediterranean coast to the west of Algiers, M'zab in the south and Tuareg territory in the Sahara. A large number of Amazigh populations also exist in the south-west of the country (Tlemcen and Béchar) and in the south (Touggourt, Adrar, Timimou), accounting for several thousand individuals. Large cities such as Algiers, Blida, Oran, Constantine, etc., are home to several hundred thousand people who are historically and culturally Amazigh but who have been partly Arabised over the course of the years, succumbing to a gradual process of acculturation.

After decades of demands and popular struggles, the Amazigh language was finally recognised as a “national language” in the Constitution in 2002. Despite this achievement, the Amazigh identity continues to be marginalised and folklorised by State institutions, and Arabic remains the country's only official language. There has to date been no law ensuring the protection and promotion of Amazigh political, economic, social, cultural and linguistic rights in Algeria. Consequently, State resources remain entirely directed at promoting the Arab-Islamic identity of Algeria while the Amazigh identity remains concealed or relegated to an inferior position.<sup>1</sup> At the same time, anti-Amazigh laws remain in place and new ones have been enacted.<sup>2</sup>

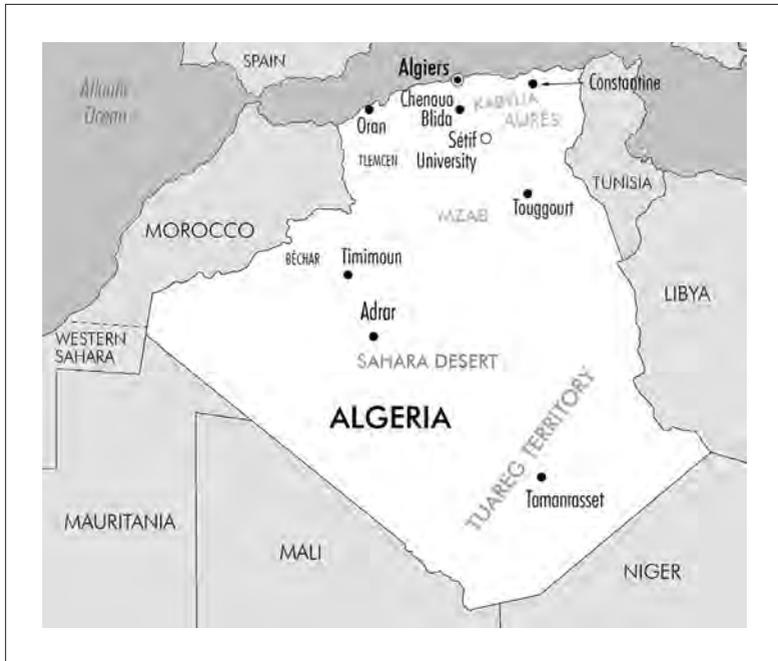
Internationally, Algeria has ratified the main international standards, and it voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007. However, these remain unimplemented, which has led to the UN treaty monitoring bodies making numerous observations and recommendations to Algeria in this regard.

### **Towards the recognition of the Amazigh people?**

**T**he Constitution of Algeria notes that Algerian identity comprises “the Islamic, Arab and Amazigh identities” while Article 3 states that “Tamazight is also a national language”.

In December 2015, the government published a draft constitutional revision that is likely to be adopted by referendum sometime during 2016.<sup>3</sup> With regard to the Amazigh language, this draft amends Article 3 as follows: “Tamazight is also a national and official language. An Algerian Academy for the Amazigh Language shall be established under the President of the Republic. The Academy shall draw on the work of experts in order to establish the conditions for promoting Tamazight and, in time, implement its status as official language. The methods for applying this article shall be set out in an organic law”.

This article, which elevates Tamazight to the level of “national and official language”, should have been a cause for celebration among the Amazigh people and their representative organisations as it responds to an age-old demand of their people. In reality, however, they received this news with huge scepticism because, as the article is drafted, the suggestion is that their language will remain discriminated against and marginalised. In fact, the concrete implementation of official language status for Tamazight is conditional upon the creation of an “Academy” that will need to put in place the conditions for promoting Tamazight with a view to achieving its status of official language “in time”. The article adds that an organic law will then be necessary to establish how this article will be implemented. Given that no deadline has been set for such implementation, and given that the Parliament is of a majority Arab nationalist persuasion, the Amazigh people are convinced that Tamazight will never actually become an official language in Algeria. The Moroccan example reinforces this conviction because, al-



though Tamazight has been an official language there since 2011, as of 2016 there has still been no discussion of an organic law to implement it.

Moreover, Algeria's Amazigh organisations are aware that Tamazight's recognition as "national language" in 2002 never resulted in any concrete achievements. Moreover, the new constitutional text offers no recognition or rehabilitation of Amazigh culture and language and the Amazigh identity remains largely marginalised in comparison with the Arab-Islamic identity. In fact, the draft constitutional reform emphasises: "Algeria, land of Islam, an integral part of the Grand Maghreb, Arab country...", "Islam is the State religion" (Article 2), "Arabic is the national and official language. Arabic remains the official State language. A High Council for the Arabic Language shall be created under the President of the Republic. The High Council shall be responsible, in particular, for working to promote the Arabic language and extending its use in the scientific and technological fields, as well as encouraging translation into Arabic in this regard" (Article 3). Finally, Article 178 confirms the supremacy of the Arab-Islamic component of Al-

gerian identity by stipulating that “No constitutional revision may adversely affect Islam, as State religion, or Arabic, as national and official language”.

In the eyes of all observers, there exists a serious discrimination in practice, given that there is one privileged language, Arabic, and one secondary one, Tamazight, and consequently a hierarchy of citizens: Arabs, who are full citizens, and Amazigh, who are second-rate citizens. This is what the Amazigh organisations are denouncing.

### **Police violence and judicial harassment**

As in 2013 and 2014, 2015 too was marked by serious violence in Mزاب —the Amazigh region 600 km to the south of Algiers. In early July 2015, the indigenous At-Mزاب population was the target of organised attacks from groups belonging to the Chaamba Arab community. These resulted in around 20 deaths, dozens of injuries, and the destruction and looting of sacred sites, stores and houses belonging to the Mozabites. When the Algerian police force intervened, it sided systematically with the Chaamba groups. Numerous photos, videos and statements present evidence of the logistical support provided by the police to the Chaamba community. In the aftermath of these attacks, the police arrested numerous Mozabites, including human rights defenders and former locally-elected representatives. Fearing persecution, many fled abroad, primarily to Morocco and Europe. Some six months later, around 30 Mozabites are still being held without trial. Two Mozabite detainees have died as a result of the bad treatment suffered in prison.

In the Kabylia region, Amazigh rights defenders are subjected to all kinds of harassment: police threats and intimidation, pressure on their employers to fire them and, when they run their own companies or are self-employed, numerous administrative obstacles are placed in their path to force them to close down thus depriving them of all sources of income. Members and supporters of the Movement for Kabyl Self-Determination (MAK), a political movement that is not officially recognised, have also been targeted by the Algerian authorities, who are attempting to criminalise their activities and thus justify the repression against them.

The cultural events organised by independent Amazigh associations receive no state support and numerous public expressions of anti-Amazigh racism are never followed up by the justice system. Alongside this, however, significant support is provided to projects that promote the Arab identity, such as designating the

town of Constantine, former capital of the Amazigh King Massinissa, as the “capital of Arab culture 2015”; supporting the Oran Arabic Film Festival; the Djemila festival of Arabic song; the festival of Arab and African folkloric dance at Tizi-Wezzu, and many other festivals devoted to promoting Arab culture in Algeria. Although the Amazigh make up one-third of the population, there are only two local festivals that feature their culture: the Amazigh film festival and the Vgayet festival of Amazigh song.

Under the pretext of the war in Azawad (northern Mali), Algeria regularly closes its border with that country, preventing traditional trade between the indigenous populations of Kel-Tamacheq (Tuareg), particularly in the regions of Kidal (Azawad) and Tamanrasset (Algeria), and thereby depriving them of basic goods such as food and medicine. Local citizens and traders who circumvent the ban and cross the border are treated as smugglers, and promptly prosecuted and sentenced. This has resulted in a number of protests in locations along the border (Bordj-Baji-Mokhtar, Timiaouin, In-Guezzam). ○

## Notes and references

- 1 The few initiatives taken in the area of communication and teaching suffer from a severe lack of resources and a large number of obstacles are placed in the path of their implementation.
- 2 Law on the generalisation of the Arabic language, Law on associations and political parties, which stipulates exclusive use of the Arabic language, Family Code based on Sharia law, etc...).
- 3 <http://www.aps.dz/images/doc/projet-de-revision-de-la-constitution-28-decembre-2015.pdf>

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## TUNISIA

As elsewhere in North Africa, the Amazigh form Tunisia's indigenous population. There are no official statistics regarding their number but specialists estimate that there are around 1 million speakers of Tamazight (the Amazigh language) in Tunisia, or around 10% of the total population.<sup>1</sup> It is in Tunisia that the Amazigh have suffered the greatest forced Arabisation. This explains the low proportion of Tamazight speakers in the country. There are nonetheless many Tunisians who, while no longer being able to speak Tamazight, still consider themselves to be Amazigh rather than Arab.

The Amazigh of Tunisia are spread throughout all of the country's regions, from Azemour and Sejnane in the north to Tittawin (Tataouine) in the south, and passing through El-Kef, Thala, Siliana, Gafsa, Gabès, Djerba and Tozeur. As elsewhere in North Africa, many of Tunisia's Amazigh have left their mountains and deserts to seek work in the cities and abroad. There are thus a large number of Amazigh in Tunis, where they are working primarily in skilled crafts and petty trade. The indigenous Amazigh population can be distinguished not only by their language (Tamazight) but also by their culture (traditional dress, cooking, Ibadite religion practised by the Amazigh of Djerba).

Since the fall of the Ben-Ali regime in 2011, numerous Amazigh cultural associations have emerged with the aim of getting the Amazigh language and culture recognised and used. The Tunisian state does not, however, recognise the existence of the country's Amazigh population. Parliament adopted a new Constitution in 2014 that totally obscures the country's Amazigh (historical, cultural and linguistic) dimensions. In its recitals, the text refers to the Tunisians' sources of "Arab and Muslim identity" and expressly affirms Tunisia's membership of the "culture and civilisation of the Arab and Muslim nation", committing the State to working to strengthen "the Maghreb union as a stage towards achieving Arab unity...". Article 1 goes on to reaffirm that "Tunisia is a free State, (...), Islam is its religion, Arabic its language" while Article 5 confirms that "the Tunisian Republic forms part of the Arab Maghreb".<sup>2</sup>



On an international level, Tunisia has ratified the main international standards and voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007. These international texts remain unknown to the vast majority of citizens and legal professionals, however, and are not applied in the domestic courts.

## Towards a renaissance of Amazigh culture in Tunisia?

For the State, “the Amazigh identity remains a taboo and, in a Tunisia that considers itself democratic and respectful of human rights, suffers from a manifest denial of rights”.<sup>3</sup> While Tunisian public institutions completely ignore or obscure the Amazigh issue, pan-Arab organisations, including Arab-Islamist political parties that are extremely hostile to the Amazigh culture, consider it a threat to the unity of the Arab nation. They also prefer to use the term “Berber” instead of “Amazigh” because, in Arabic, Berber is pronounced “barbar”, which conjures up images of savage, backward barbarians. Alongside this, a folklorised version of the Amazigh cultural heritage and past is used by Tunisia’s tourist industry (Berber carpets, Berber couscous, Berber tent) in an attempt to attract European tourists in search of the exotic. “The ‘Berber’ connotation appears as a mark of authenticity, a stamp attesting to its local and ancestral nature but also harking back to a bygone age aimed at tourists and intended to relegate it to the history books”.<sup>4</sup>

The political changes that commenced in Tunisia after 2011 made the Tunisian Amazigh aware of the need to act rapidly in order to establish the conditions for a renaissance of Amazigh identity in the country. Since then, almost a dozen cultural associations have thus emerged to defend and promote the Amazigh language and culture in Tunisia.<sup>5</sup> Following the example and experience of Amazigh cultural movements in Algeria and Morocco, the Tunisian Amazigh have revived features of Amazigh identity such as the Tifinagh script and traditional Amazigh festivals (Yennayer—Day of the Amazigh Year, Tafsut Imazighen—Amazigh spring) and regularly organise different activities (conferences, forums, exhibitions, publication of press articles), using the Internet to get their culture known and valued. These associations, their members and supporters have even organised a number of demonstrations in Tunisia’s main thoroughfare (Bourguiba Avenue) over the last few years, calling on parliament and the government to recognise the Amazigh component of Tunisia. ○

## Notes

- 1 The number of Amazigh peoples is estimated from demographic statistics from the territories where the Amazigh language and culture are practiced.

- 2 <http://www.legislation.tn/sites/default/files/news/constitution-b-a-t.pdf>
- 3 Nassim Said, Tunisia: la nouvelle Constitution et la dimension amazighe, 3 March 2014, <http://nassim-said.blogspot.fr/>
- 4 Stéphanie Pouessel, "Premiers pas d'une 'renaissance' amazighe en Tunisie. Entre pression panamazighe, réalités locales et gouvernement islamiste", Le Carnet de l'IRMC, 7 December 2012. <http://irmc.hypotheses.org/646>
- 5 Some of the Amazigh associations established in Tunisia since 2011: *Association Tunisienne de la Culture Amazighe* (Tunisian Association of Amazigh Culture), *Association Azrou*, *Association El-Mechmel*, *Association Twiza*, *Association de la culture et du patrimoine amazigh de Tunisie* (Tunisian Association of Amazigh Culture and Heritage), *Club de la culture Amazighe* (Amazigh Cultural Club), *Association tunisienne patrimoine et environnement* (Tunisian Association for Heritage and the Environment), *Association de protection du patrimoine de Tamzret* (Association for the Protection of Tamzret Heritage), *Association de la femme amazighe de Tunisie* (Tunisian Association of Amazigh Women), etc.

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## MALI

Mali's total population is estimated at around 17.8 million inhabitants. The Tuareg represent approx. 8% of the population. They live mainly in the northern regions of Timbuktu, Gao and Kidal, which together cover 2/3 of the country's area of 1,241,021 km<sup>2</sup>. The Tuareg (pastoralists) and the Songhaï (sedentary, from Gao and Timbuktu) represent the largest groups in northern Mali, and are historically opposed to each other.<sup>1</sup>

Traditionally, Tuareg are semi-nomadic pastoralists, rearing dromedaries, goats and sheep. They occasionally engage in trade, bartering game and dromedary meat, along with rock salt, in return for dates, fabrics, tea, sugar and foodstuffs. They have a distinct culture and way of life for which they have their own concept, "*temust*", which can be translated as "identity" or "nationality". They speak the Tamashek language.

Tuareg living in Mali belong mainly to three different traditional political entities called "confederations": the Kel Tademekat, living around and to the north of Timbuktu; the Iwellemeden, living east of Gao and having Menaka and In Gall in the state of Niger as their main urban centres; and the Kel Adrar living around the Adrar Massif and the city of Kidal. Each of these political entities has a paramount chief, or *Amenokal* in Tamashek. Each federation is subdivided into a web of sub-clans (or tribes) traditionally belonging to one of the five classes of Tuareg society: the *imazaghen* or nobility, the *ineslimen* or religious experts, the *imghad* or vassals, the *inaden* or handicraft workers and the *iklan* or servants/slaves. Today, the rigid difference between these classes is diminishing but the Kel Adrar (*Iforagh*) and the Iwellemeden are still the most influential *imazaghen* clan, with differing interests. The *imghad* clans are often opposed to the *imazaghen* clans. These social and political structures and alliances are reproduced in the membership of the different armed groups and political orientations in Mali.

The Constitution of Mali recognises cultural diversity and the National Pact recognises the specific nature of the Tuareg-inhabited regions.



In addition, legislation on decentralisation gives local councillors, including some Tuareg, a number of powers although not the necessary resources with which to exercise them. Mali voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). However, the state of Mali does not recognise the existence of indigenous peoples on its territory as understood in the UNDRIP and ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

## Peace negotiations

From an initial Tuareg-led military campaign for a free Azawad<sup>2</sup> waged against the Malian military forces in 2012, the fighting in Mali turned into a guerrilla war in which former allies were fighting each other.<sup>3</sup> Pro-Azawad groups were fighting Jihadi groups, pro-government militia groups and the Malian security forces. Inter-ethnic conflicts between the Tuareg, Arabs, Fulani and Songhaï also flared up in the wake of the withdrawal of the Jihadi groups (see The Indigenous World 2014). In June 2013, a ceasefire agreement was signed in Ouagadougou between the Government of Mali and groups representing the Tuareg-led rebellion.

Following the elections of July 2013, the Malian government showed a reluctance to continue the peace negotiations with the pro-Azawad forces. The rebels claimed that the Malian government was not respecting its commitments made in the Ouagadougou ceasefire agreement and that the negotiations were making no progress. The High Council for Unity of Azawad (HCUA) proposed a dialogue with international mediators outside of Mali. In July 2014, an Algerian-led mediation mission was appointed by the United Nations and individual meetings commenced with the Malian government, pro-Azawad armed groups and pro-government armed groups.

The third round of the Algerian-led negotiations took place at the beginning of 2015. Disagreements persisted over the formal status of the northern part of Mali. Despite the peace negotiations, new and serious inter-communal fighting and clashes continued between the pro-Azawad armed groups, the Malian army and the pro-government armed groups, with many soldiers and civilians killed and wounded. Jihadi groups continued to attack civilians as well as camps and convoys from the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA). Clashes between MINUSMA and forces of the National Movement for the Liberation of Azawad (MNLA) also occurred. A new ceasefire was signed in February 2015 but, shortly after, broken by GATIA (pro-government militia group of *imghad* Tuareg and allies) which captured the city of Menaka, previously controlled by the MNLA.

After months of consultations, diplomacy, international pressure and the withdrawal of GATIA from Menaka, the Azawad Movement Coalition (CMA)<sup>4</sup> officially signed the peace agreement in Bamako on 20 June 2015. The Malian govern-

ment and the Algiers Platform, a coalition of pro-government armed groups, had already signed the document in May 2015.

Unfortunately, no leader from the central region attended the peace talks in Algiers, which may prove a challenge to establishing a lasting peace. Furthermore, the conflict between *Iforagh* and *Imghad* Tuareg clans continues to aggravate the conflict between the CMA and GATIA. New fighting broke out near Kidal when GATIA seized the city of Anéfi on 16 August 2015. The CMA suspended its participation in the *Monitoring Committee of the Agreement* (CSA). At the request of the Malian president, Ibrahim Boubacar Keïta, and following the threat of UN sanctions, GATIA withdraw from Anéfi.

A peace agreement was signed on 11 October by *Iforagh* and *imghad* tribal leaders in Anéfi aimed at ending the local conflict in the Kidal region. Another inter-communal agreement was signed between the Tuareg and the Arabs. With these inter-communal agreements, Mali is edging closer to a lasting peace.

### **Implementation of the peace agreement**

There are many outstanding issues and the implementation of the peace agreement remains a huge challenge. First, the CSA, in which Algeria and MINUSMA play a leading role, met in July 2015. However, disagreements persisted between the government, the CMA and the Algiers Platform over representation and responsibility sharing. New groups have also now requested a seat on the commission. Second, the CMA signed the agreement under high international pressure. The status of the Azawad region remains unclear. This will complicate the implementation of different parts of the agreement. Furthermore, CMA leaders will have to restrain those who are against the peace framework, especially with regard to the status of Azawad. Third, the agreement focuses on *Disarmament, Demobilisation and Reintegration of combatants (DDR)*. The DDR process began in October 2015 when the Technical Security Committee (CTS) conducted the first identification mission for cantonment sites in Gao and Timbuktu. However, the reorganisation of the Malian army and integration of the rebels into a common security force remains unclear. Fourth, while the agreement focuses on security, it only briefly mentions measures for reconstructing society through reconciliation, justice, a return to basic services in the north and administrative decentralisation.

## Insecurity

The ongoing fighting, suicide bombings and criminal attacks have left the population in northern and central Mali in a situation of lawlessness and insecurity, threatening the livelihoods of the population and affecting their access to market, communication lines, education, food and water.<sup>5</sup> According to OCHA (the UN Office for the Coordination of Humanitarian Affairs)<sup>6</sup> more than 54,000 people have insufficient access to drinking water due to the late rainfall and unrepaired pumps. Two million people are currently suffering from food insecurity. This means approximately 12% of the population either does not have enough to eat or lacks access to nutritious foods. Many schools in the north are still closed.

The situation has been exacerbated by reduced access to grazing lands for animals and increasing numbers of farmers abandoning their fields for fear of attacks by armed groups. Animal herders report that armed men have driven off entire herds of livestock, while traders describe being robbed on their way to local village markets, without any action from the government.<sup>7</sup>

According to OCHA, some 139,000 refugees remain in neighbouring Burkina Faso, Mauritania, Algeria, Ivory Coast and Niger.<sup>8</sup> Many of these are Tuareg who have lost their cattle, crops or shops in looting and revenge attacks. More recently, around 4,000 Malians fled to Niger because of new inter-ethnic and tribal fighting. As of the end of 2015, 62,000 internally displaced people remain living in host communities or camps.

## Latest developments

Criminal and Jihadi attacks are becoming more and more intensive and widespread all over the country. Inter-ethnic clashes between Tuareg (MNLA supporters) and Fulani (supporters of the *Movement for Oneness and Jihad in West Africa* - MUJAO) communities near Menaka broke out at the end of 2015. Attacks on security and MINUSMA forces by Jihadi groups and local criminals in central and north Mali continue. Parliament has maintained a state of emergency until March 2016 due to the attack on the Radisson Blue Hotel in November 2015 and for fear of other attacks. ○

## Notes and references

- 1 The Tuareg and the Songhai have been in conflict over the caravan trade in Sahara since the 17<sup>th</sup> century. As the Songhai Empire declined, it was overrun by Moroccans and later by Tuareg.
- 2 Azawad is a territory in the northern part of Mali traditionally inhabited by Tuareg.
- 3 The initial goal for the MNLA was an independent, secular, multi-ethnic homeland for the Azawad people. However, the MNLA was composed mostly of local Tuareg, Tuareg coming from Libya and some Berabish Arabs. The other ethnic groups therefore saw the uprising as a Tuareg project. During the rebellion, ethnically-formed militias supported by the Malian government turned against the Tuareg and even supported the Jihadi groups against the MNLA forces. Furthermore, the old conflict between the Imazaghen clans and Imghad clans was used in the divide-and-rule strategy that the government instigated to suppress the rebellion (see *The Indigenous World 2014*).
- 4 Pro-Azawad coalition formed of the HCUA (High Council for Unity of Azawad ), MNLA (National Movement for the Liberation of Azawad), MAA (Arabic Movement for Azawad) and MAA dissidents.
- 5 UNCHR regional update, Mali Situation, September-November 2015.
- 6 OCHA, Humanitarian Bulletin Mali, October –November 2015.
- 7 IRIN report, "Life still hard in northern Mali, despite peace deal", by Katarina Höjje, 4 Sept 2015.
- 8 OCHA, Humanitarian Bulletin Mali, October – November 2015.

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## BURKINA FASO

Burkina Faso has a population of 14,017,262 (4<sup>th</sup> General Census of Population and Housing, December 2006) comprising some 60 different ethnic groups. The indigenous peoples include the pastoralist Peul (also called the *fulbe duroobe egga hoddaabe*, or, more commonly, *duroobe* or *egga hoddaabe*) and the Tuareg. There are no reliable statistics on the exact number of pastoralists in Burkina Faso. They can be found throughout the whole country but are particularly concentrated in the northern regions of Séno, Soum, Baraboulé, Djibo, Liptaako, Yagha and Oudalan. The Peul and the Tuareg most often live in areas which are geographically isolated, dry and economically marginalised and they are often the victims of human rights abuses. Burkinabe nomadic pastoralists, even if innocent of any crime, have thus been subjected to numerous acts of violence: their houses burned, their possessions stolen, their animals killed or disappeared, children and the elderly killed, bodies left to decay and their families forbidden from retrieving them.

Peul pastoralists are gradually becoming sedentarised in some parts of Burkina Faso. There are, however, still many who remain nomadic, following seasonal migrations and travelling hundreds of kilometres into neighbouring countries, particularly Togo, Benin and Ghana. Unlike other populations in Burkina Faso, the nomadic Peul are pastoralists whose whole lives are governed by the activities necessary for the survival of their animals and many of them still reject any activity not related to extensive livestock rearing.

The existence of indigenous peoples is not recognised by the Constitution of Burkina Faso. The Constitution guarantees education and health for all; however, due to lack of resources and proper infrastructure, the nomadic populations can, in practice, only enjoy these rights to a very limited extent. Burkina Faso voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples.



burned and their inhabitants forced to move elsewhere. In 2015, at least 800 Peul pastoralists were forcibly displaced. And yet Burkina Faso has sufficient laws and regulatory texts to protect the human rights of all, including the Peul pastoralists.<sup>2</sup> These laws and regulatory texts do not serve to protect the pastoralists, however. This is because, during community conflicts in Burkina Faso, the need to preserve social peace results in dialogue that is more often than not at the cost of the rights of the victims. These practices, however, don't prevent protagonists to engage in subsequent conflicts.<sup>3</sup>

In Burkina Faso, nomadic pastoralists are often attacked and killed with the full knowledge of the administrative authorities and the forces of law and order. These authorities and forces have always proved incapable of acting in favour of justice in a timely manner. For example, nomadic pastoralists were attacked at Tegsaba, a village in the rural commune of Tougouri (Namentaga province) some 60 km from Boulsa, on Saturday 6 June 2015. It started from the suspicion of some pastoralists stealing the farmers' domestic animals. If witness statements are to be believed, it was an attack on a farmer by a pastoralist, caught in possession of stolen animals, which led to the escalation. In revenge, the farmers returned in force to demand the unconditional departure of the pastoralists from the village. A manhunt ensued. The outcome: two dead and one seriously injured and taken to Kaya Hospital. Homes and grain stores were burned. A total of 113 people were also displaced and two persons died, one of them having been stoned to death.<sup>4</sup> The forces of law and order were there. Despite their determination to save the Peul, at the risk of their own lives, they could do nothing because there were too few of them, and reinforcements arrived too late.

The most revealing case of impunity, however, was that of the hunting of Peul from camps in Kompienga province. On Saturday 17 January 2015, attacks on the Peul camps of Tibadi, Folpodi, Diapienga and Mamanga resulted in one dead, two injured, 520 displaced and the burning of 119 huts, 25 grain stores, one motorbike and one push bike. According to a number of sources, these abuses were committed in revenge for numerous armed attacks on the Gourmantché, the majority population in the area, for which the Peul were allegedly responsible. The most recent had apparently taken place on Monday 12 January 2015 against a Gourmantché who was shot 12 times in the body and received machete wounds to the head.<sup>5</sup> Yet again, however, there is no tangible proof that the perpetrator was a Peul. And the violence took place in the full knowledge of the administration, as in the case of virtually all other clashes.

In April 2015, Peul pastoralists were chased from their camp at Poug-Ziga where they had lived for 107 years. All their possessions were looted, simply because a twelve-year-old Peul boy accused of stealing 10 sheep and a goat had been released by the police.<sup>6</sup> The camp lies some 50 km from Ouagadougou, on the outskirts of Ziniaré, the administrative centre of the Central Plateau Region. The version of the theft no longer seems credible. And yet some unfortunate pastoralists had to find refuge at the Ziniaré gendarmerie in tents.<sup>7</sup> It is finally at the end of January 2016, after 10 months, that the pastoralists left the gendarmerie in search for new land, leaving behind the land of their ancestors. The only fault of these people was to be Peul living at Poug-Ziga.

## Organisation of Peul pastoralists

While there are numerous sub-regional and regional associations and organisations working to promote livestock farming and pastoralism in Burkina Faso and in Africa, none of them seem interested in the violence being suffered by Peul pastoralists in Burkina Faso, despite a legal framework that should protect them.

In conclusion, 2015 was no different to other years in terms of the safety of nomadic pastoralists. Due to increasing awareness of their situation, greater numbers are joining the networks of indigenous populations that are emerging, around pastoralism but also around religious beliefs. And therein lies the crux of the matter, in this part of the African continent, where the emergence of conditions that are ever more favourable to extremism of all kinds can be seen. ○

## Notes and references

- 1 Ministry of Justice, Human Rights and Civic Promotion, *Rapport de l'étude sur l'état des lieux des conflits communautaires au Burkina Faso*, draft, June 2015.
- 2 This includes: Law No. 034-2012 /AN of 16 June 2012 on Agrarian and Land Reorganisation, Law No. 034-2002/AN of 14 November 2002 providing guidance on pastoralism in Burkina Faso, Law No. 034-2009/AN of 16 June 2009 on the rural land regime, Law No. 12-2014/AN of 22 April 2014 providing guidance on the prevention and management of risks, humanitarian crises and disasters, Decree No. 2007-032/PRES/PM/MATD of 22 January 2007 on the organisation and running of village development councils, Decree No. 2012-263/PRES/PM/MATDS/MJ/MAH/MRA/MEDD/MEF of 03 April 2012 governing the roles, composition, organisation and running of the Village Land Reconciliation Commission, Joint Order No. 2000-31/MRA/AGRI/MEE/MEF/MATS/MEM/MIHU of 21 July 2000 on resolving differences between farmers and pastoralists.

- 3 Ministry of Justice, Human Rights and Civic Promotion, *Rapport de l'étude sur l'état des lieux des conflits communautaires au Burkina Faso*, draft, June 2015.
- 4 <http://www.observateur.bf/index.php/societe/item/3980-conflit-agriculteurs-eleveurs-a-tougouri-2-morts-et-de-nombreux-deplaces>
- 5 Burkinabe Information Agency, JML-TAA
- 6 *Les Peulhs, persona non grata, la gendarmerie s'explique*, Sidwaya No. 7907 of 4 May 2015.
- 7 It should be recalled that, according to some sources, the theft of animals was at the origin of the conflict, and the Ziga chief, despite attempts at reconciliation, had been unable to prevent them. An ultimatum, which came into force that day, had been issued to the Peul to leave the area. (Burkinabe Information Agency).

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CENTRAL AFRICA

## CAMEROON

Among Cameroon's more than 22 million inhabitants, some communities self-identify as indigenous. These include the hunter-gatherers ("Pygmies"), the Mbororo pastoralists and the Kirdi mountain communities.

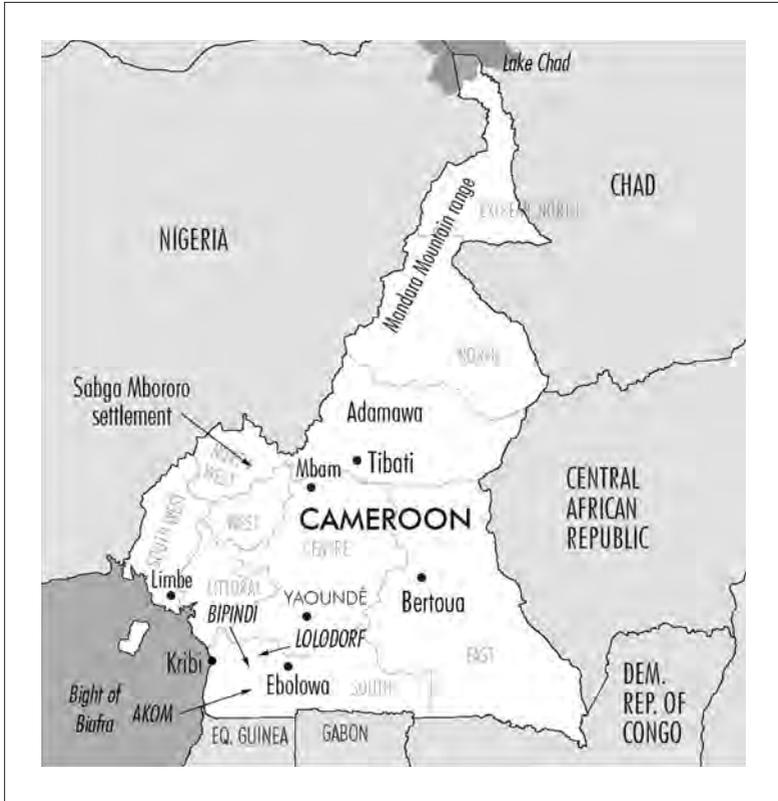
The Constitution of the Republic of Cameroon uses the terms indigenous and minorities in its preamble; however, it is not clear to whom this refers. Nevertheless, with the developments in international law, civil society and the government are increasingly using the term indigenous to refer to the above-mentioned groups.

Together, the "Pygmies" represent around 0.4% of the total population of Cameroon. They can be divided into three groups, namely the Bagyeli or Bakola, who are estimated at about 4,000 people, the Baka - estimated at about 40,000 - and the Bedzan, estimated at about 300 people. The Baka live above all in the eastern and southern regions of Cameroon. The Bakola and Bagyeli live in an area of around 12,000 square kms in the south of Cameroon, particularly in the districts of Akom II, Bipindi, Kribi and Lolodorf. Finally, the Bedzang live in the Centre region, to the north-west of Mbam in the Ngambè Tikar region.

The Mbororo people living in Cameroon are estimated at over 1 million people and they make up approx. 12% of the total population. The Mbororo live primarily along the borders with Nigeria, Chad and the Central African Republic. Three groups of Mbororo are found in Cameroon: the Wodaabe in the North Region; the Jafun, who live primarily in the North-West, West, Adamawa and East Regions; and the Galegi, popularly known as the Aku, who live in the East, Adamawa, West and North-West Regions.

The Kirdi communities live in the Mandara Mountain range, in the north of Cameroon. Their precise number is not known.

Cameroon voted in favour of the UN Declaration on the Rights of Indigenous People in 2007 but has not ratified the ILO Convention No. 169.



## Legislative changes and national policies

No major legislative change regarding indigenous peoples was registered in 2015, and nothing was said or done about the Pastoralist Code which has been awaiting adoption since 2014. However, the appointment in December 2015 of Mr. Jaji Manu Gidado—the National President of the Mbororo Social and Cultural Development Association (MBOSCUA), an organization working for the rights of the Mbororo peoples in Cameroon—as Secretary General of the Ministry of Livestock, Fisheries and Animal Industries brings a lot of expectations among indigenous peoples in Cameroon regarding the adoption of the pastoral code.

The Ministry of Social Affairs held a workshop on the National Solidarity Policy Document in December 2015.<sup>1</sup> The overall objective of this workshop was to

create ownership of the policy document among the different stakeholders. It brought together indigenous peoples, civil society organizations, the Ministry of Social Affairs, parliamentarians, disabled and socially vulnerable peoples. The workshop helped popularizing the national policy and proposed an operationalization of the policy by presenting to all social actors the scope and priority areas of intervention as well as the policy management mechanisms.

The 2015-2019 five-year plan for the promotion and protection of human rights in Cameroon was launched on behalf of the Head of State, by the Prime Minister, Mr Philemon Yang in December 2015. The Head of Government highlighted the commitment of Cameroon to respect human rights in accordance with international and regional conventions. It is important to note however that the action plan doesn't refer specifically to the rights of indigenous peoples.

### **Study on the identification of indigenous peoples in Cameroon**

The second phase of the study on the identification of indigenous peoples in Cameroon was launched in 2015 without informing or involving the stakeholders. This situation is of great concern to indigenous peoples and more specifically to the Mbororo people. According to the report, Mbororo people are not recognized as indigenous peoples due to the fact that they are increasingly well educated and well off. Consequently the report argues that they cannot be categorized as indigenous peoples. A look on the report's list of persons consulted reveals that no Mbororo leader was consulted, no Mbororo locality was visited, no interviews were made of local people on the situation of Mbororo peoples. Mbororo people have called on the Government and denounced the matter but the issue is still pending.

### **“Legitimate Decision Making and Effective Representation of Indigenous Forest People in Cameroon”**

In 2015, the Delegation of the European Union in Cameroon started funding a three year programme entitled “*Legitimate Decision-Making and Effective Representation of Indigenous Forest People in Cameroon*”. The main activities of this project include: the mapping of soils and habitats of the *Baka* and *Bagyéli* peoples in order to secure their land; designating community representatives within vari-

ous sectors such as forestry, agriculture, mining, health, education, economy; support and financing income generating activities; promoting agricultural activities; organizing community meetings to identify basic needs; assisting indigenous peoples facing the multiple land pressures, particularly in the large forests in southern Cameroon; awareness raising and information of indigenous peoples on their rights vis-à-vis the current projects related to land, forestry and mining; assistance and support (financial and material) to the education of indigenous children; training and awareness raising of indigenous peoples so they are able to effectively represent their views in the discussions that affect them.

### **Climate change process**

The elaboration process of the National Strategy on REDD+ is ongoing in Cameroon. The African Indigenous Women Organization-Central African Network (AIWO-CAN) has been responsible for building the capacity of indigenous peoples on REDD+ and it organized in September 2015 a workshop on the free, prior and informed consent (FPIC) guidelines in Abong-Mbang (East Region) to further the understanding of the concept. About 40 indigenous people from all the country took part in the workshop. Visits to the villages of Cyrille and Mayos showed that communities are not aware of the FPIC guidelines and that projects in the field are not implemented in consultation with the communities.

The International Union for Conservation of Nature (IUCN), in partnership with the ministry of Environment, organized a workshop on the restitution and validation of the strategy on the involvement of indigenous peoples in the REDD + process in Cameroon in June 2015. Several indigenous organizations participated and made amendments and contributions to the strategy document. The final editing and publication of the document is pending.

In November 2015, the German cooperation (GIZ) organized a workshop to enhance the understanding of REDD+ project among civil society organizations and indigenous peoples. It focused on strengthening the capacity of indigenous peoples on the national REDD + process, its vision, scope and progress in Cameroon.

## **Regional workshop on the final document of the World Conference on Indigenous peoples**

The African Commission on Human and People's Rights (ACHPR), in collaboration with IWGIA and MBOSCUA, organized the African Regional Workshop on the Final Document of the World Conference on Indigenous Peoples in Yaoundé in December 2015. This workshop had two main objectives, namely: strengthening the national appropriation of the Final Document among key national stakeholders, such as national human rights institutions, parliamentarians, communities / indigenous organizations, heads of governments, civil society, private sector, development partners and universities; and initiating a dialogue between different actors regarding the operationalization of the final document at the national level in African countries. Forty-eight participants took part in this encounter with the presence of the Special Rapporteur on the rights of indigenous peoples, Ms Victoria Tauli-Corpuz. The Conference was presided over by Ms. Soyata Maiga, president of the ACHPR Working Group on Indigenous Populations/Communities. A final declaration<sup>2</sup> sanctioned the work of this workshop and made recommendations on how to follow up on the Outcome Document to the Governments, the ACHPR, the National Human Rights Institutions and civil society organizations, the UN agencies and development partners.

## **International Day of the World's Indigenous Peoples and indigenous cultural festivals**

The International Day of the World's Indigenous Peoples was celebrated on 10 August 2015 under the auspices of the Ministry of Social Affairs (MINAS). The Ministry of Public Health was also present at the ceremony. The theme of the celebration of the day was the "Post 2015 Agenda: Ensuring Health and wellbeing to Indigenous peoples". The Mbororo pastoralists and the Baka communities took part in the celebration. The day was marked by dances, speeches and exhibitions of artifacts, food and traditional medicines. The speeches from the indigenous peoples were read out by two leaders of the respective communities. The speeches underlined the lack of concrete inclusive programs put in

place by the Ministry of Social Affairs over the last decade as well as the lack of effective involvement of indigenous peoples in initiating programs that concern them. For instance, MINAS and an NGO called the Foundation for Development and Environment in Cameroon (FEDEC) signed an agreement during the celebration regarding the funding of activities in the Baka Forest area. It was negotiated between the two institutions without informing or consulting the Baka people.

Thanks to the initiatives of Mbororo pastoralists, the International Day of the World's Indigenous Peoples 2015 was celebrated all over the country. More than 2000 Mbororo people gathered in Tibati (Adamawa Region) and Limbe (South-West Region) for the celebration. The administrative officials took part in the ceremonies and speeches were made on the situation of the Mbororo pastoralists and the problems they are facing. The intention is to continue celebrating the Indigenous Peoples' Day in the regions where Mbororo live and with MBOSCUDA's facilitation.

In October 2015, MBOSCUDA organized the first Mbororo cultural festival in Cameroon in Didango (West Region) in collaboration with the Lamidat (Mbororo traditional chieftaincy). More than 5000 Mbororo pastoralists were gathered and several activities were carried out. Among them, horse races, a Miss/Mister election, folkloric dances, various traditional games, the exhibition of Mbororo art crafts, storytelling, etc. The purpose of the festival was to promote the endangered culture of the Mbororo and create awareness of their ancestral customs and beliefs among the younger generation of Mbororo. The next festival will be held in November 2016 and will take place in the Adamawa Region.

In December 2015, the cultural festival of the forest peoples promoted the Baka music group called "*GbinéBaka*" from Moloundou, East Region. The band toured across the forest area inhabited by the Baka. Baka associations also took the opportunity to inform about regional and international mechanisms protecting the rights of indigenous peoples. Moreover, there were exhibition stands, where Baka handicrafts and medicinal products were presented. This festival also benefited from the presence of local administrative and traditional authorities. ○

## Notes and references

- 1 For more information about this document, see *The Indigenous World 2015*, available at <http://www.iwgia.org>.
- 2 Available at <http://www.achpr.org/press/2015/12/d286/>

**Hawe Hamman Boub**a is the national Vice president of MBOSCUA, Member of the WGIP of the ACHPR, Member of the National Commission of Human Rights and freedoms of Cameroon, with the participation of **Hassoumi Abdoulaye**, Deputy Secretary General of MBOSCUA.

## CENTRAL AFRICAN REPUBLIC (CAR)

There are two groups of indigenous peoples in the Central African Republic (CAR), the Mbororo and the Aka. The Mbororo are essentially nomadic pastoralists in constant search of pastureland. They can be found in the prefectures of Ouaka, in the centre-west region; M'bomou, in the south; Nana-Mambéré in the north-west; and Ombella-Mpoko and Lobaye in the south-west. The 2003 census gave an estimated Mbororo population of 39,299 individuals, or 1% of the total population. A higher proportion of Mbororo live in rural areas than in urban, accounting for 1.4% and only 0.2% of the population respectively. The Aka is also known by the pejorative name of Pygmies. The exact size of the Aka population is not known but it is estimated at several tens of thousands of people. The Aka live primarily (90%) in the forests, which they consider their home and where they are able to carry out their traditional activities of hunting, gathering and fishing. The Aka are found in the following prefectures: Lobaye and Ombella M'poko in the south-west; Sangha Mbaéré in the south-west; and Mambéré Kadie in the west.

The Central African Republic voted in favour of the UN Declaration on the Rights of Indigenous Peoples in September 2007 and ratified ILO Convention 169 on tribal and indigenous peoples in August 2010. It is the first and only African state to have ratified this Convention which, under the terms of the ILO Constitution, entered into force on 11 August 2011. Since then, the country has been in the process of implementing it.

### Implementation of ILO Convention No. 169

The first report on implementation of Convention No. 169 was examined by the Committee of Experts of the International Labour Office (ILO) at its 2014 session. The group of experts recognised the implementation difficulties caused by the conflict in the country but called on the government to put protective meas-

ures in place for indigenous peoples. Unfortunately, this report has not, to date, been shared or disseminated publicly with a view to being able to measure the actual level of Convention implementation and nor has any national mechanism been established to monitor these recommendations.

## **Legal reforms for indigenous peoples**

The CAR adopted a new Constitution via referendum in December 2015. Central African civil society organisations were very active in 2014 and 2015 in the different consultations held on the drafting of the new Constitution. This has resulted in ILO Convention 169 being recognised in the new Constitution and the protection of indigenous peoples' rights being included under Articles 6 and 148.

The National Bangui Forum held in Bangui in June 2015, was one stage in the process of a return to peace and national reconciliation, initiated and organised by the Central African government. The Forum keenly addressed the issue of indigenous peoples and its final report calls for their rights to be protected in a number of areas.

The land reform underway is still at the stage of stakeholder consultation. A draft bill of law is being produced under the auspices of the Ministry for Land Planning, in partnership with the UN Food and Agriculture Organization (FAO), and it includes recognition of indigenous peoples' rights to land.

Civil society is continuing to push for the adoption of a law to promote and protect indigenous peoples in the Central African Republic. In this regard, the High Commission for Human Rights and Good Governance tabled a domestic bill of law on the promotion and protection of indigenous rights in 2007 but has done nothing further since then. Civil society and a number of National Councillors are seeking to submit a draft bill to the National Transition Council, which is the parliamentary body for the transition.

## **Indigenous representation and participation**

The Mbororo used to have an association, known as "Mbouscuda", which represented them and participated in various processes. The Aka likewise had "ADI-BAC". Since the end of the conflict in the CAR, these two associations have had



difficulties in resuming their activities and have not been visible in the different national processes.

The issue of indigenous representation in the political and legislative bodies remains significant for, while legislation is beginning to gain momentum in this regard, the practical reality has not yet caught up. The National Transition Council, legislative body for the transition, has given indigenous peoples a place but their quota for representation and participation remains very low. The current general elections show that only the Mbororo are standing as candidates while the Aka, who are economically poor, are not represented at all.

One major outstanding concern is the census, aimed at ascertaining the number and location of indigenous peoples in the CAR following the conflict, which

resulted not only in displaced persons and refugees but also in deaths and disappearances. A census and a mapping of the sites, encampments and villages of indigenous peoples would highlight the problems they are facing, such as their rights to land, forest and so on. Access to education and information also remain an issue because the vast majority of indigenous people in the CAR have little or no direct involvement in some initiatives precisely because of their lack of access to education and training. ○

**Jean Jacques Urbain Mathamale** is a jurist by training and a human and community rights activist. An expert in forest governance, he has worked on the issue of promoting and protecting indigenous rights in the CAR since 2008, and been involved in key legal processes on these issues. He is coordinator of the Centre for Environmental Information and Sustainable Development (CIEDD), one of the objectives of which is to lobby for projects, programmes and policies for indigenous communities in their own environment. Since 2014, he has been working to get indigenous rights, as set out in ILO Convention 169 and the UN Declaration, incorporated into the CAR's new Constitution.

## REPUBLIC OF CONGO

The Republic of Congo covers an area of some 342,000 km<sup>2</sup>. It has an estimated forest cover of 22,471,271 hectares (or approx. 2/3 of its total area) and a deforestation rate of 0.08%. According to the Second Congolese Household Survey (ECOM)<sup>1</sup> from 2011 the country has an estimated total of 4,085,422 inhabitants. The majority belong to the Bantu ethnic group and indigenous peoples represent a small minority. Official estimates from 2007 stand at around 50,000 individuals, or approx. 1.2% of the total population. However, a 2008 study<sup>2</sup> assess them to represent around 10%. The indigenous people include the Bakola, Tswa or Batwa, Babongo, Baaka, Mbendjele, Mikaya, Bagombe and Babi, and reside mainly in the departments of Lékoumou, Likouala, Niari, Sangha, Pool, Bouenza, Kouilou, Cuvette-ouest and Plateaux. They are also present in increasing numbers in the big cities, such as Brazzaville and Pointe-Noire. The indigenous peoples are traditionally nomadic or semi-nomadic hunter-gatherers, although some of them have now become settled and are employed in farm work, livestock raising, commercial hunting or as trackers, prospectors or workers for logging companies. They are considered to be among the poorest and most marginalised sectors of society.

In 2011, the Republic of Congo became the first country in Africa to promulgate a specific law on indigenous peoples: the Law on the Promotion and Protection of the Rights of Indigenous Populations in the Republic of Congo. This law has remained virtually dead letter, however, due to a lack of implementing regulations. The Republic of Congo has not ratified ILO Convention No.169 but did vote in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007.

## **General political and legislative developments**

### **National elections**

The Republic of Congo experienced tensions throughout 2015 due to President Denis Sassou Nguesso's intention to hold a referendum with a view to revising the Constitution. The opposition criticised his use of this process, which will enable him to run for a third term in office. The election campaign is thus being interspersed with clashes between demonstrators and the forces of law and order. In September and October 2015, for example, a number of violent protests culminated in dozens of deaths and injuries, particularly in Brazzaville and Pointe-Noire. Elections are scheduled for March 2016. During the electoral campaign, there has been no specific interest from the different candidates on indigenous peoples' rights issues. None of the candidates are indigenous and no special measures have been put in place to facilitate their representation.

### **Changes in legislation**

There has been no concrete example so far of the implementation of the law on indigenous peoples' rights. Even if politicians are favourable to indigenous peoples in their official discourse, the implementing regulations that are necessary for the law to take life have not yet been adopted. Moreover, the inter-ministerial committee that was supposed to be constituted under article 45, with the mandate to follow up on the implementation of the law, has not yet been established.

The Constitution that was enacted following the referendum on 25 October 2015 enshrined the constitutional protection of indigenous peoples' rights. Article 16 thus stipulates: "The State provides promotion and protection of indigenous peoples' rights".

In 2015, the Ministry of the Forest Economy and Sustainable Development continued the process of revising the Forest Code, commenced in 2013. Through the Platform for Sustainable Forest Management (PGDF), civil society made its recommendations for improving this legislation, particularly with regard to a guarantee of customary land rights, access to natural resources, benefit sharing, use rights, community forests, the classification and declassification of forests, and local communities' and indigenous peoples' involvement in



forest management. The draft bill of law was re-read by the government before its passage to parliament for adoption. Both civil society and indigenous peoples' representatives are concerned at the slow speed of this process as well as the lack of transparency of this re-reading by the Ministry for Forest Economy and Sustainable Development. They are also worried that some of the priorities taken into account in the initial version of the code following its consultation may be withdrawn from the final document that is passed to parliament for adoption.

## **Policies, programmes, projects and other particular changes or events affecting indigenous peoples**

This relates to government structural adjustments or economic liberalisation programmes, local or national government development programmes, overseas development aid, environmental conservation programmes, educational programmes etc.

In 2015, with the support of the UN Food and Agriculture Organisation (FAO), the Ministry for Forest Economy and Sustainable Development embarked on a process to produce a forest policy. This process did not, however, include any effective consultation of the indigenous populations in the departments. The draft national forest policy is currently awaiting validation by the government.

Implementation of the national action plan to improve indigenous peoples' quality of life, which was drawn up for the 2009-2013 period by the National Network for Congo's Indigenous Populations of the Congo (*Réseau National des Populations Autochtones du Congo/RENAPAC*), with the support of the UN Children's Fund (UNICEF) and under the supervision of the Ministry for Social Affairs, did not commence on time but was postponed to 2014-2017. However, with only one year now to run until the end of the project, it should be noted that no significant activities have yet been implemented despite the fact that funding for this action plan was included in the State budget.

Under the supervision of the Catholic Church, civil society organisations have been implementing for some years now an ORA (Observe, Reflect and Act) specialised programme in literacy for indigenous children. However, in Likouala department some of these specialised schools have had to close for lack of funding.

From February to July 2015, the Human Rights and Development Centre (*Cercle des droits de l'Homme et de développement/CDHD*), an organisation specialising in, among other things, the promotion and protection of indigenous rights, conducted a study on the monitoring of local and indigenous community involvement in the REDD+ process in the Republic of Congo, looking at the case of the Pikounda-Nord project of the CIB/OLAM company in Sangha department.<sup>3</sup> This study concluded that there had been poor participation by the indigenous populations.

## The indigenous movement

Created in 2007, RENAPAC (Réseau National des Peuples Autochtones du Congo) is a platform intended to represent the indigenous voluntary movement. RENAPAC is often involved in many of the processes and policies that affect indigenous peoples. The poor capacity of this structure's facilitators must, however, be noted. Their ability to design, produce and implement projects remains a challenge. Their process of ownership of the law on the promotion and protection of indigenous rights also needs improvement.

As is customary, the Ministry of Justice and Human Rights, through the General Directorate for Human Rights and Fundamental Freedoms, organised the celebrations for Indigenous Peoples' Day on 9 August 2015. The festivities were primarily organised in Ouessou, in Sangha department. Indigenous delegates attended from different departments of the Republic. Cultural and sporting activities were planned along with talks and debates. Unfortunately, the indigenous peoples lamented the poor organisation (transport, accommodation, food) that marred the event. RENAPAC contacted the Ministry of Justice and Human Rights to express its dissatisfaction at these failings.

Despite the provisions of the new Constitution, no action has been taken to guarantee indigenous peoples' political representation in the national institutions. By way of example, a deposit of one million FCFA is required to stand as a candidate in the legislative elections and 25 million in the presidential. This would seem, in practice, to rule out the participation of indigenous candidates.

There are no formal or informal structures specifically working on issues of indigenous women and youth within the Republic of Congo's indigenous movement. So far, only five indigenous students have been enrolled at Marien Ngouabi University. ○

## Notes and references

- 1 Second Congolese Survey of Households (ECOM 2011), Report on the analysis of the Core Welfare Indicators Questionnaire (CWIQ) aspect, October 2011.
- 2 Analysis of the situation of indigenous women and children, UNICEF 2008.
- 3 *Implication des communautés locales et des Populations Autochtones dans le processus REDD+ en République du Congo: cas du projet REDD+ Pikounda Nord de la société CIB/OLAM.*

***Roch Euloge N'ZOBO*** studied law at Marien Ngouabi University in Brazzaville. After obtaining his Master's in private law, he specialised in human and indigenous rights. Since 1998 he has been working within civil society organisations. An expert in forest governance, he was coordinator of the project that enabled civil society to contribute to the enactment of the law on the promotion and protection of indigenous rights in the Republic of Congo.

## THE DEMOCRATIC REPUBLIC OF CONGO

The concept of “indigenous peoples” is accepted and endorsed by the government and civil society organisations in the Democratic Republic of Congo (DRC). The term indigenous peoples in the DRC refers to the Mbuti, Baka and Batwa peoples who consider their generic appellation of “pygmies” as derogative and discriminatory.

The exact number of indigenous peoples in the DRC remains unknown. The government estimates that there are around 600,000 (1% of the Congolese population), while civil society organisations argue that there are up to 2,000,000 (3% of the population). They live in nomadic and semi-nomadic groups in almost all the country’s provinces. The life of indigenous peoples in the DRC is closely linked to the forest and its resources: they live from hunting, gathering, collecting and fishing and they treat their illnesses with the help of their pharmacopoeia and medicinal plants. The forest forms the heart of their culture and their living environment.

The situation of the indigenous peoples in the DRC continues to be of concern. Their ancestral lands and natural resources are facing increasing external pressure; they are being forced to relinquish their traditional economy and live on the margins of society in extreme poverty. Indigenous peoples in the DRC are not represented in decision-making at all levels and their access to basic services, including health and education, remains below the national average.

Unless their rights, as guaranteed under international standards, are duly protected, indigenous peoples’ living space will shrink yet further, depriving them of the resources on which they depend for their survival and resulting in the disappearance of their culture and their traditional knowledge.

There is no law or policy for the promotion and protection of indigenous peoples’ rights in the DRC. However, a draft law on the rights of indigenous peoples was recently developed by civil society organisations, in collaboration with parliamentarians. The DRC endorsed the UN Declaration on the Rights of Indigenous Peoples and its climate change-related programmes refer to indigenous peoples’ rights.

## Positive trends in relation to indigenous peoples in the DRC

### International Festival of Indigenous Peoples

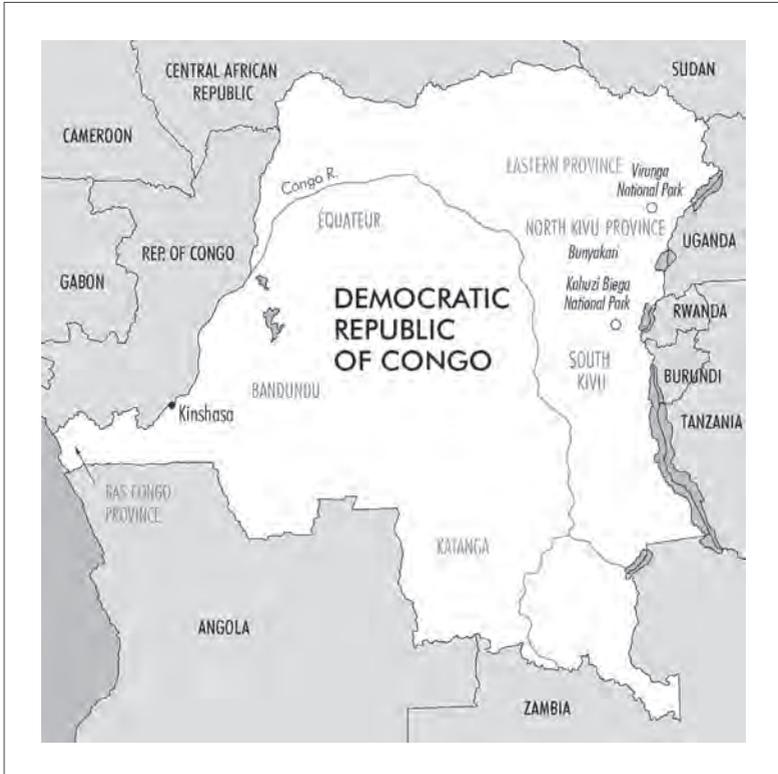
Indigenous peoples' organisations in the DRC, led by the *Dynamique des Groupes des Peuples Autochtones (DGPA)* in collaboration with the Congolese government, successfully organised the second International Festival of Indigenous Peoples in Kinshasa from 27-29 March 2015. This international gathering brought together hundreds of indigenous participants from Asia, Latin America, Europe and across Africa to share their experiences and celebrate indigenous cultures, arts and traditional knowledge. On this occasion, indigenous peoples' groups from various regions took to the stage to showcase their cultures, dances and traditions. The Congolese state participated actively in the festival, through parliamentarians and numerous ministries, including those in charge of environment and sustainable development, social affairs, lands and foreign affairs.

The occasion also enabled Congolese indigenous peoples to voice their concerns to the government and other state institutions with regard to their landlessness and lack of access to basic services, justice, health facilities and education for their children. Indigenous international participants shared their own experiences and good practices, including key legal and policy reforms as well as national programmes developed to address the specific situations of indigenous peoples in their respective countries.

The key recommendations to the DRC that emerged from this second edition of the Festival included the adoption of a law on indigenous peoples' rights, ratification of ILO Convention No. 169 on indigenous peoples and national programmes aimed at addressing the key socio-economic challenges faced by indigenous communities, notably in education, access to health facilities, land ownership and effective participation in decision-making.<sup>1</sup>

### Draft law on indigenous peoples

A process of drafting a specific law on indigenous peoples' rights in the DRC has been ongoing for over three years. This process is being led by an indigenous peoples' umbrella organisation, DGPA, and a coalition of parliamentarians interested in indigenous peoples' issues. Following its formal submission to Parliament in July 2014, the draft law was for the first time put on the parliamentary



agenda in June 2015 but it is yet to be debated and, eventually, adopted. Numerous key political leaders, including government ministers, have thrown their support behind the draft law.

### **DRC Report to the Universal Periodic Review (UPR)**

The latest report of the DRC to the UPR led to several recommendations, including the need for the country to continue and complete the process of adopting a specific law on indigenous peoples, as well as ensure compliance with the United Nations Declaration on the Rights of Indigenous Peoples on the part of the Congolese REDD+ and climate change-related programmes. The representatives of

the DRC accepted all the recommendations on indigenous peoples and indicated that many of them were already being implemented.<sup>2</sup>

## **Persistent discrimination and human rights violations**

### **Continued killing of Batwa in Katanga Province**

The human rights situation of indigenous peoples in the DRC continues to feature serious human rights violations, extreme discrimination and lack of access to justice. This is illustrated by the situation of Batwa indigenous peoples living in Katanga Province, where local militia groups are particularly targeting them. As reported by Human Rights Watch, in one incident, over 30 Batwa women, men and children were killed by local militia in April 2015<sup>3</sup> and thousands of Batwa peoples have been displaced following several waves of killings and burning of their villages. National and international human rights organisations continue to call upon the government and United Nations mission in the Congo to pay particular attention to Batwa indigenous peoples as they are an especially vulnerable social group in a conflict situation. There are numerous underlying causes to the targeting of the Batwa, including competition for lands, structural discrimination against them and negative cultural beliefs. Human Rights Watch indicates that “tensions between Batwa and Luba in Katanga erupted ... after Batwa started demanding respect for their basic rights, including access to land and an end to alleged forced labor or a form of slavery”.<sup>4</sup>

### **Stagnant implementation of the law on community forests**

The implementation of community forests in the DRC is a 14-year-long delayed action. The community forest mechanism is key to securing indigenous peoples’ rights to lands and natural resources because almost all Congolese indigenous peoples live in the forests. It was, indeed, instituted by the 2002 Congolese Forest Law, which required the government to pass two key enabling legislative texts, notably a Prime Ministerial Decree on the allocation of community forest and a ministerial decision on community forest management.

The Prime Ministerial Decree on community forests was finally adopted by the Government of the DRC in August 2014, following a drafting process that lasted more than four years. And, in February 2015 the ministerial decision on

implementing community forests was finally passed. However, in September 2015, the Congolese Minister in charge of forest issues signed Decision No. 050 instituting forest concessions for local governments or decentralised entities, a category of forest titles not provided for by the 2002 Forest Code.

Indigenous peoples' organisations, the wider Congolese civil society and several international organisations have formally questioned the legality of this new ministerial decision and are currently considering its judicial review.<sup>5</sup> Many see in this latest ministerial decision an attempt by the government to deviate from the 2002 Forest Law's intention to ensure indigenous peoples and local communities enjoy enhanced rights over their forests.

### **Delayed and denied justice over land rights**

Several indigenous peoples' communities in the DRC have continued to experience delayed and denied justice over their rights to lands and natural resources. In most cases, indigenous peoples' claims to their ancestral lands are obstructed by old Congolese land laws that consider the state to be the sole owner of all lands, minerals and natural resources. And yet other non-indigenous communities continue to enjoy customary rights over their traditional territories.

The Batwa indigenous peoples of the Kahuzi-Biega National Park are an illustration of this denied and delayed justice over traditional lands. After decades of living as displaced people, following their expulsion from their traditional lands in the 1970s, the Batwa of Kahuzi-Biega decided to seek justice through the domestic courts, the first decision of which, taken in 2011, was unfortunately unfavourable to them. The Batwa then lodged an appeal but once more did not obtain justice through the Appeal Court's decision of December 2013. Following this decision, the Batwa of Kahuzi-Biega decided to go to the Supreme Court but, as of the end of 2015, they have not even had the first hearing of their case. Many legal analysts foresee that the case is likely to take many more years before it is decided upon by the Supreme Court, which in the end might not even decide on the case's merits.<sup>6</sup> The Batwa of Kahuzi-Biega are now considering the option of taking their case to the African Commission on Human and Peoples' Rights.<sup>7</sup> ○

## Notes and references

- 1 See the final report of the Festival on the website of Moabi [http://rdc.moabi.org/rapport-du-festival-international-des-peuples-autochtones-fipa-2015/fr/#6/-1.121/23.258&layers=moabi\\_intactforests,moabi\\_indigenous](http://rdc.moabi.org/rapport-du-festival-international-des-peuples-autochtones-fipa-2015/fr/#6/-1.121/23.258&layers=moabi_intactforests,moabi_indigenous)
- 2 Human Rights Council, 2015, DR Congo: Ethnic militias attack civilians in Katanga: Dozens of 'pygmy' killed in camp following deadly raids on Luba, see documents on DR Congo at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/CDSession19.aspx>
- 3 See *Human Rights Watch* report at <https://www.hrw.org/news/2015/08/11/dr-congo-ethnic-militias-attack-civilians-katanga>
- 4 Ibid
- 5 See a joint petition-letter written by a coalition of national and international non-governmental organisations questioning Congolese Ministerial Decision 050 on community forests [http://loggingoff.info/sites/loggingoff.info/files/NGO%20letter%20on%20DRC%20Arrete%20050\\_5.10.15\\_final.pdf](http://loggingoff.info/sites/loggingoff.info/files/NGO%20letter%20on%20DRC%20Arrete%20050_5.10.15_final.pdf)
- 6 Forest Peoples Programme, 2008, *Land rights and the forest peoples of Africa: Historical, legal and anthropological perspectives*, see at [http://www.rightsandresources.org/documents/files/doc\\_1203.pdf](http://www.rightsandresources.org/documents/files/doc_1203.pdf)
- 7 Minority Rights International (MRG) is working with the Batwa on the alternative of taking their case to the African Commission on Human and Peoples' Rights. See latest report on MRG field visit to Kahuzi-Biega at <http://www.minorityvoices.org/news.php/en/1827/drc-mrgs-head-of-law-visits-batwa-communities>

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EAST AFRICA

## ETHIOPIA

The indigenous peoples of Ethiopia make up a significant proportion of the country's estimated 95 million population. Around 15 percent are pastoralists who live across Ethiopia, particularly in the Ethiopian lowlands, which constitute around 61 percent of the country's total landmass. There are also a number of hunter-gathering communities, including the forest-dwelling Majang (Majengir) who live in the Gambela region. Ethiopia has the largest livestock population in Africa, a significant amount of which is concentrated in pastoralist communities living on land that in recent years has become the subject of high demand from foreign investors. The political and economic situation of indigenous peoples in Ethiopia is a tenuous one. The Ethiopian government's policy of villagization has seen many pastoralist communities moved off of their traditional grazing lands, and indigenous peoples' access to healthcare provision and to primary and secondary education remains highly inadequate. There is no national legislation that protects them, and Ethiopia has neither ratified ILO Convention No. 169, nor was present during the voting on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

### **Anti-terror law: a threat to indigenous peoples' rights**

**T**he situation for indigenous peoples in Ethiopia suffered a significant deterioration in 2015. There was no improvement in national legislation that could offer protection to indigenous peoples, and Ethiopia continues to fail in its obligations under the international human rights mechanisms it has ratified, e.g., the International Convention on the Elimination of All Forms of Racial Discrimination, which calls for special attention to be paid to indigenous peoples, a situation regarding which a number of human rights organizations—including the International Working Group for Indigenous Affairs (IWGIA), Human Rights Watch



(HRW) and Minority Rights Group International (MRGI)—have expressed concern. Moreover, this lack of compliance must also be seen within the context of wider concerns regarding the Ethiopian government’s alleged use of anti-terror laws to curtail freedom of speech. Concerns about the latter intensified in April 2014 with the arrest of six members of the Zone 9 blogging group<sup>1</sup> and three other journalists, while the situation with regard to indigenous peoples’ rights became even more acute in March 2015 with the arrest in Addis Ababa of seven activists heading to a workshop on food security in Nairobi. Although four of them were eventually released, on 7 September 2015, after six months in detention, the remaining three activists, Pastor Omot Agwa, Ashinie Astin, and Jamal Oumar Hojele, were charged under Ethiopia’s counter-terrorism laws, and now face the possibility of extended prison terms if found guilty (Omot faces a sentence of 20 years to life). This has caused widespread concern amongst human rights defenders inside and outside the country, as well as a number of leading human rights organizations.

## Land grabbing and policy of villagization

A key element in the deteriorating situation of indigenous peoples in Ethiopia is the ongoing policy of “land grabbing” where companies lease large tracts of land from the Ethiopian government in return for significant levels of foreign investment. Since 2008, when widespread concern about the possibility of a potentially global food crisis increased demand for agricultural land, the Ethiopian government has leased millions of hectares of land throughout the country to agricultural investors, both foreign and domestic. The Ethiopian government says that such investments are important for guaranteeing food security. The policy is also seen as an important element in Ethiopia’s development strategy because it means that land that is categorized as “under-utilized” can be used productively. However, much of this land is in reality not under-utilized but is used by pastoralists, whose customary rights to the land are being consistently violated. Moreover, the way in which the land is used under the new leasing arrangements arguably does little for food security as there is little food produced. Instead, land is chiefly being used for an array of non-food products such as flowers, or for growing food products destined for the export market. Interestingly, at the very end of 2015, the Ethiopian Agriculture Ministry’s land investment agency notified Karu-turi Global Inc., one of the first and largest external investors, that its lease was being cancelled because of a lack of “development”. Karaturi had used only 1,200 ha of land out of the 100,000 originally allocated to it, and so the Agriculture Ministry has stated that the rest will return to a “land bank” for future investment.

The Ethiopian government continues to highlight the employment opportunities of such investment for those living in lowland areas, but much of the employment in these areas has gone to “highlanders” from the central and northern areas of Ethiopia who have moved there to find work. The latter has also increased the possibilities of ethnic tensions, something that has been seen in the Gambela region and in the lower Omo Valley in particular. In the latter case, the building of the Gibe III Dam, which significantly impacts upon water security in the Omo Valley region, has meant a heightened threat to food security and in turn increased conflict over existing resources. For example, there have been reports that cattle herders have moved their animals into Mago National Park to find grass, and have been met with violence from government soldiers who are protecting the park and its wildlife.<sup>2</sup> Reports from external sources have said that the lives of

those indigenous peoples living in the region have been “fundamentally and irreversibly” changed by the building of the dam. It will make it very difficult for the half a million indigenous people whose lives and livelihoods depend upon the Omo River to continue living in the area and sustaining their traditional livelihoods. According to the Dam’s Public Consultation and Disclosure Plan, only 93 members of four indigenous communities were consulted and this happened only after construction of the dam had already begun.<sup>3</sup>

In addition, part of the Ethiopian government’s policy on land management includes the pursuit of a policy of villagization, which aims to resettle those who live in rural areas—often indigenous peoples—into communities with improved access to basic amenities, such as clean water, medical services and schools. In reality, however, such amenities have not been provided, and many of the communities have too little food for the population that now exists there. Many people find that when they try and return to the land that they have left in order to resume their previous way of life the land has been leased and they no longer have access to it. Indigenous communities thus find themselves displaced and deprived of their traditional livelihoods and of access to their natural environment, including access to water, grazing and fishing grounds, arable lands and forest resources.

The Ethiopian government’s lack of a specific policy or programme to address indigenous peoples’ special needs and status has further aggravated their situation. Ethiopia, is a key political actor in Africa, and the second most populous country on the continent. It is a glaring omission that such a significant political actor has not attempted—in consultation with the country’s indigenous peoples and their representative institutions—to develop policies and programmes that are in accordance with guidelines from the UN and other relevant bodies and which would bridge the social and economic gaps that are currently causing such distress. The Ethiopian government is thus failing to address widely reported concerns regarding the human rights of indigenous people in Gambela, the lower Omo Valley, Benishangul Gumuz, Afar, Somali and Oromia regions—all areas that have been part of the government’s land lease policy and villagization programme. The Oromia region has been the site of significant protests since late 2015 when protests began over plans to expand the capital, Addis Ababa. In what was seen as an attempted “land grab”, Oromo farmers argued that expanding Addis Ababa would lead to their displacement and the loss of arable land. Although plans were subsequently dropped, protests continued, leading to what

activists reported as the deaths of around 200 people so far, and heightened tensions in the area.<sup>4</sup>

Considering the future for indigenous peoples' rights in Ethiopia, it therefore remains important that there be a country-wide, inclusive and participatory movement in the country that would be able to ensure that the concerns of pastoralists and agro-pastoral peoples are taken into account as part of key government policies and programmes. The country's lack of formal mechanisms in which to consider such issues, as well as legal restrictions on freedom of association and speech, appear to preclude this. This is despite the fact that the Ethiopian constitution—though lacking in clear provisions directly related to indigenous peoples—does include a provision for dealing with the development needs of pastoralist communities. However, the overall outlook for a nationwide indigenous peoples' movement is promising. Consensus is underway amongst various groups that—with the support of international organizations and a more positive government view—could enable the country's marginalized communities to face a more positive future. ○

## Notes and references

- 1 Zone 9 is a blogging group, based in Ethiopia and writing in Amharic, that focuses on issues of human rights and social justice.
- 2 <http://voices.nationalgeographic.com/2015/12/02/dam-on-ethiopia-omo-river-causing-hunger-and-conflict/>
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## KENYA

In Kenya, the peoples who identify with the indigenous movement are mainly pastoralists and hunter-gatherers, as well as some fisher peoples and small farming communities. Pastoralists are estimated to comprise 25% of the national population, while the largest individual community of hunter-gatherers numbers approximately 79,000.<sup>1</sup> Pastoralists mostly occupy the arid and semi-arid lands of northern Kenya and towards the border between Kenya and Tanzania in the south. Hunter-gatherers include the Ogiek, Sengwer, Yaaku, Waata, El Molo, Aweri (Boni), Malakote, Wagoshi and Sanye, while pastoralists include the Turkana, Rendille, Borana, Maasai, Samburu, Ilchamus, Somali, Gabra, Pokot, Endorois and others. They all face land and resource tenure insecurity, poor service delivery, poor political representation, discrimination and exclusion. Their situation seems to get worse each year, with increasing competition for resources in their areas.

Kenya's indigenous women are confronted by multifaceted social, cultural, economic and political constraints and challenges. Firstly, by belonging to minority and marginalized peoples nationally; and secondly, through internal social cultural prejudices. These prejudices have continued to deny indigenous women equal opportunities to rise from the morass of high illiteracy and poverty levels. It has also prevented them from having a voice to inform and influence cultural and political governance and development policies and processes, due to unequal power relations at both basic and national levels. These factors have contributed to their limited access to land, natural resources and credit.

Kenya has no specific legislation on indigenous peoples and has yet to adopt the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and ratify International Labour Organization (ILO) Convention No. 169. However, Kenya has ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of Discrimination against Women (CE-

DAW), and the Convention on the Rights of the Child (CRC). Chapter Four of the Kenyan Constitution contains a progressive Bill of Rights that makes international law a key component of the laws of Kenya and guarantees protection of minorities and marginalized groups. Under Articles 33, 34, 35 and 36, freedom of expression, the media, and access to information and association are guaranteed. However, the principle of Free, Prior and Informed Consent (FPIC) remains a pipedream for indigenous peoples in Kenya.<sup>2</sup>

### **The tragedy of natural resource endowment in Turkana**

**T**he 71,598 km Turkana County is tucked away in the north-western tip of Kenya's borders with Ethiopia, Uganda and South Sudan and is the largest administrative area in the country. Turkana County is a harsh arid region inhabited by an estimated 855,399 Turkana indigenous people (2009 National Census) whose main occupation is nomadic pastoralism. The county has suffered decades of neglect at the hands of successive Kenyan administrations and forms one of the poorest and most under-developed regions of the country. Since 2012, Turkana County has been at the centre of Kenya's socio-economic development trajectory following the discovery of an estimated 250 million barrels of crude oil by the British-owned Tullow Oil plc exploration company. Revenue accruing from oil production is nationally viewed as the silver bullet to eradicate poverty, hunger, under-development and despondency among the 123,191 households<sup>3</sup> in Turkana, where nine out of ten people live below the poverty threshold of one USD a day. This oil discovery in southern Turkana, whose extraction is planned for 2017 and 2018, has heightened interests in property in the area and a burgeoning population has ensued due to economic migration. According to the Kenya Petroleum Act 2015, local communities in sub-counties where oil exploration is undertaken will earn 5% of royalties and county governments will be entitled to 25% of the state petroleum income when export of crude oil commences in 2018. This has led to an exacerbation of historical tensions and boundary disputes between Turkana and Pokot indigenous peoples.



In 2015, some 100 lives<sup>4</sup> were lost in Kainuk and Kaputir, along the border of West Pokot and Turkana South, in a territorial boundary conflict between the Turkana and Pokot. According to research and media reports,<sup>5</sup> the oil deposits were discovered in Kalemn' gorokarea, in Turkana South, inhabited by the Turkana people. However, the Pokot have laid a fresh territorial claim to the site, citing colonial maps and other documentation that they say confirm that the oil fields are deep within Pokot Central sub-county and that the Turkana are en-

croachers. Further, in 2015, a planned reconciliation meeting by the president of Kenya was hastily cancelled due to what appeared to be a lack of consensus between the two communities on the venue of the meeting. Turkana County Governor Josphat Nanok and his West Pokot counterpart Simon Kachapin have petitioned the national government to deploy surveyors to mark the boundaries between the two communities in the area of dispute.<sup>6</sup> The Survey of Kenya, the National Land Commission, Parliamentary and Senate Committees on land and natural resources, the National Cohesion and Integration Commission, the parliamentary and senate committees on security and the Office of the Ombudsman are yet to release their consolidated findings either individually or collectively on the boundaries of the area disputed by the two counties as part of the implementation of the Kenya's Petroleum Act 2015. In the Ngamia, Twiga south, Ekale and Etukooil fields, in Turkana County, the resident Turkana indigenous people have continuously raised concerns about their land and natural resource rights, livelihoods, and ecological and economic well-being. Further, there have been questions about fringe benefits such as supply tenders, employment and compensation as part of ensuring food and resource sovereignty. Tullow Oil, for its part, denied that oil was the main cause of the conflicts being witnessed in the area and instead confirmed that it had doubled its social investments budget in Turkana County to Kenya Shillings 340 million (US\$3,400,000) annually and that the company had signed a Kenya Shilling 225 million (US\$2,250,000) contract with 36 companies from Turkana County for supplying vehicles.

Further, on the Eastern shores of Lake Turkana, at Loiyangalani in Marsabit County, the Lake Turkana Power Project (LTPP) is touted as the largest wind power plant in Africa and is expected to inject 310 megawatts of wind energy to the national grid. The wind farm will sit on 40,000 acres and accommodate 365 wind turbines. The US\$700 million project is also said to be the largest single private investment in Kenya's history, with the first 90 megawatts from the wind power project being expected in 2016. The wind power project is a consortium of various actors, including KP&P Africa B.V. and Aldwych International as co-developers, Vestas East Africa Limited (Vestas), the Finnish Fund for Industrial Cooperation Ltd (Finnfund), the Danish Investment Fund for Developing Countries (IFU), Sandpiper Limited and KLP Norfund Investment AS. The Lake Turkana Wind Power consortium is solely responsible for the financing, construction and operation of the wind farm. Vestas will provide the maintenance of the plant under a 15-year service and availability contract. The power produced will be bought at

a fixed price by Kenya Power (KPLC), over a 20-year period in accordance with the signed Power Purchase Agreement (PPA). LTPP is viewed as an opportunity to spur development in a region that has experienced marginalization and under-development since colonial days. However, local indigenous peoples are questioning the process by which the 40,000 acres of communally-owned land was hived off and the subsequent handing over to investors for the establishment of the wind power project. These communities are questioning the process by which community land was privatized without due consultations, and the transfer of ownership or terms of the lease arrangement, if any. Indigenous peoples are therefore concerned that appropriate and proper consideration of the interests of the communities was lacking in the annexation and handover of the large tract of land to private developers. Participation of the peoples, such as those of Loyiangelani, requires that residents have access to all information regarding the intended action, such as the hiving off of their community land, and that they be afforded a forum in which they can adequately examine the proposals and give their opinions and views.

In 2015, the Marsabit residents moved to court and sued the Attorney-General, the Chief Land Registrar, the Marsabit County Government and the National Land Commission citing takeover of their land without proper consultation and compensation.<sup>7</sup> In July 2015, the High Court directed the Lake Turkana Wind Power Ltd to use only 87.5 of the 150 ha of contested land until the matter was heard and concluded. Further, the court asked the community and Lake Turkana Wind Power Ltd to reach an out-of-court agreement. However, as of November 2015, no amicable arrangement had been reached, so the court ruled a site visitation and deferred ruling for four months.

Kenya's indigenous peoples' land, property and livelihood rights continue to face this cocktail of threats through extraction of natural resources and minerals, lack of consultations and inclusion in decision making, burgeoning migrant populations and urban expansion, territorial disputes and climate change, among others. All this could directly affect indigenous peoples by dispossessing them of their lands, resources and territories, negatively impacting on the environment and leading to more armed conflicts. This is even more problematic given that there is a lack of policy and regulatory safeguards for indigenous land tenure systems and resource governance. The biggest concern for indigenous peoples in Turkana County is therefore the apparent politically-instigated

delay in the generation and implementation of the community land law, which would secure indigenous peoples' rights to their lands and territories.<sup>8</sup>

## **The Community Land Bill**

Community land, which is a feature of land ownership among indigenous peoples under Article 63 of the 2010 Constitution of Kenya, remains elusive due to a lack of community land law.<sup>9</sup> Prior to the ascendance to power of the current government in 2013, the previous incumbents had established a taskforce to generate a draft community land law, which was tabled before the Senate in 2015. In addition, another government-sponsored draft community land bill is currently before the National Assembly. The Community Land Bill 2015 is among the laws that should have been enacted within five years of promulgation of the Constitution in August 2010. However, this deadline was not met and parliament has extended it by another 12 months. The interesting aspect of the community land discourse is that the Senate and Parliament draft community land bills prescribe different approaches to the management of community land. The Senate Bill proposes registration of community management committees, community land assemblies, and procedures for their establishment while the Government Bill gives powers to the cabinet secretary (Minister) in charge to make regulations "prescribing the manner and procedures for registration of community land".

Without security of tenure through registration of community lands and issuance of communal title deeds, indigenous peoples are deprived of the right to negotiate with both county and national governments and private companies whenever public projects like the extraction of natural resources, and mega infrastructural projects such as the Lamu Port South Sudan, Ethiopia Transport (LAPSSET) corridor and the Standard Gauge Railway take huge parts of their land. The scenario playing out in Kenya with regard to community land law is worrying indigenous peoples as the lack of clarity in the legal framework for managing community land poses a major threat to the livelihoods, ecologies and security of communal tenure amid ever-growing investments, extractive and infrastructural interests targeting community lands.<sup>10</sup>

## Exclusion of indigenous youth

Under Article 55 of the Constitution of Kenya, the rights of youth to affirmative action, access to training courses, participation and representation in social, economic and political spheres and access to meaningful employment are guaranteed. However, in 2015, Kenya suffered widespread insecurity in which indigenous Kenyan youth were both among the perpetrators and the victims. The marginalization and lack of opportunities for indigenous youth are increasingly threatening Kenya's security. Given the deplorable situation in Kenya's north-eastern regions and minimal economic opportunities for Kenyan youth in general, they have become easy targets for extreme radicalization and home-grown agents of terror and violent conflicts.<sup>11</sup> The marginalization of indigenous youth continues to be a key contributing factor to the insecurity, proliferation of small arms, violent conflicts and cattle rustling in pastoralist counties. In Kenya, 80% of the 2.5 million youth are unemployed and indigenous youth form a large proportion of this sector of Kenyan society.<sup>12</sup> Much has yet to be done to address this urgent difficulty.

There have been no sustainable mechanisms to address the drivers of or mitigate indigenous peoples' armed conflicts in Kenya. Government interventions have mainly focused on disarmament, which has so far proved elusive. The rampant insecurity has interrupted education and poses an obstacle to development.

Moreover, the majority of indigenous youth have not benefited from the quick-impact public works that employ large numbers of youth, through the introduction of "*kazikwavijana*" or "work to the youth" labour-intensive public works schemes that directly engage the services of unskilled youth. There is also no evidence among indigenous youth of their accessing the national small-youth credit funds or more adequate vocational training schemes through the National Youth Service to help them increase their self-employment opportunities. In addition, whereas there exists the Nomadic Education Policy, which seeks to establish mobile schools in pastoralist areas in order to target indigenous youth, the extent to which this has been operationalized remains unclear. Among many indigenous peoples, especially in northern Kenya, the youth are confronted with the problem of a lack of recognition as citizens due to the long-winded bureaucratic process of acquiring national identification documents and election cards to prove their citizenship. This not only denies indigenous youth their constitutional rights to government identification documents but also denies them the opportunity to fulfil

their constitutional obligations, such as participating in elections and accessing employment opportunities.

### **Progressive constitution but still elusive indigenous women's rights in Kenya**

Whereas the 2010 Kenyan constitution protects and promotes the rights of women, implementation at the national, county, sub-county, ward and village levels was still an issue in 2015. Further, community land and resources are still predominantly owned and governed by men, with most group ranch and private land registers bearing men's names. These limitations and constraints continue to deny indigenous women in Kenya the opportunity to achieve optimum production and socio-political development. They have little or no leverage on matters of natural resource ownership, or the utilization and benefits accruing from commercial exploitation of resources such as wildlife, crops, livestock, fish, forests, oil, gas, diatomite, geothermal and so on. In addition, indigenous women are yet to actively participate or be engaged at the county level. The disenfranchisement of indigenous women is further perpetuated by the power of cultural institutions, which are determined by a local social order and traditional beliefs and practices that are purely patriarchal. Indigenous women have little recourse against injustices committed by this traditional system. In theory, they can complain to customary elders but in practice this happens very rarely and there is no recorded cases of women seeking inclusion, involvement or participation in this set-up. The persistence in 2015 of impediments preventing indigenous women from accessing positions of authority at the national level and within the devolved county structures, as well as their continued marginalization from decision making or governance in land and natural resources, is therefore a blatant contravention of the constitution of Kenya.

### **Implementation of the African Commission on Human and Peoples' Rights' ruling on the Endorois Case**

In September 2014, the Kenyan government formed a taskforce to implement the ACHPR's ruling on the Endorois case. The creation of the taskforce was viewed

by indigenous peoples as a possible platform that could propel the implementation process forward and ensure the full participation and inclusion of the Endorois indigenous peoples. In 2015, some of the emerging challenges in the government-led taskforce implementation process, as identified by the Endorois, include the failure to trigger a satisfactory community consultative process, design a participatory and open community registration process or involve Endorois women in the whole scope of implementation of the ruling. ○

## Notes and references

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- 6 Media Reports by Barnabas Bii, Wycliff Kipsang, Stanley Kimuge and Rachel Kibui: *Daily Nation* available at: <http://www.standardmedia.co.ke/article/2000096718>
- 7 More information on the case available at: <http://kenyalaw.org/caselaw/cases/view/116298/>
- 8 The Constitution of Kenya *gives powers of self-governance to the people and enhances their participation in the exercise of the powers of the state and in making decisions affecting them* [article 174 (c)], *recognizes the right of communities to manage their own affairs and to further their development* [article 174 (d)], *protects and promotes the interests of minorities and marginalised communities* [article 174 (e)] and *ensures equitable sharing of national and local resources* [article 174 (g)].
- 9 Ministry of Lands, Housing and Urban Development: Summary of the Draft Community Land Bill 2015.
- 10 See "None-state land actors petition to parliament on draft community land bill", 2015: Available at: <http://www.kenyalandalliance.or.ke/wp-content/uploads/2014/08/Petition-to-National-Assembly-11-12-15-FINAL-002.pdf>
- 11 Anneli Botha, 2013, "Assessing the vulnerability of Kenyan youths to radicalization and extremism". Institute for Security Studies; Issue Paper 245 • April 2013.

- 12 United States President Barack Obama address to the youth during his visit to Kenya in 2015 : available at: <http://www.nation.co.ke/oped/Opinion/GES2015-Barack-Obama-Youth-Unemployment/-/440808/2807454/-/ha66na/-/index.html>

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## UGANDA

Indigenous peoples in Uganda include former hunter/gatherer communities, such as the Benet and the Batwa, also known as Twa. They also include pastoralist groups such as the Ik and the Karamojong, who are not recognized specifically as indigenous peoples by the government.

The Benet, who number around 20,000, live in the north-eastern part of Uganda. The 6,700 or so Batwa, who live primarily in the south-western region, were dispossessed of their ancestral land when Bwindi and Mgahinga forests were gazetted as national parks in 1991.<sup>1</sup> The Ik number about 1,600 and live on the edge of the Karamoja/Turkana region along the Uganda/Kenya border. The Karamojong people live in the north-east and number around 988,429.<sup>2</sup>

All these communities have a common experience of state-induced landlessness and historical injustices caused by the creation of conservation areas in Uganda. They have experienced various human rights violations, including continued forced evictions and/or exclusions from ancestral lands without community consultation, consent, or adequate (or any) compensation; violence and destruction of homes and property, including livestock; denial of their means of subsistence and of their cultural and religious life through their exclusion from ancestral lands and natural resources; and in consequence, their continued impoverishment, social and political exploitation and marginalization.

The 1995 Constitution offers no express protection for indigenous peoples, but Article 32 places a mandatory duty on the state to take affirmative action in favor of groups that have been historically disadvantaged and discriminated against. This provision, while designed or envisaged primarily to deal with the historical disadvantages of children, people with disabilities and women, is the basic legal source of affirmative action in favor of indigenous peoples in Uganda.<sup>3</sup> 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>

Uganda has never ratified ILO Convention No. 169, which guarantees the rights of indigenous and tribal peoples in independent states, and it was absent in the voting on the UN Declaration on the Rights of Indigenous Peoples in 2007.

## Litigation on land rights

In 2013, the Batwa people filed a petition before the Constitutional Court of Uganda in order to gain redress for the violation of their land rights. The petition is still pending; as yet no decision has been taken by the Constitutional Court. Since the petition was filed there has been additional violence, and the human rights situation of the Batwa has not changed. The case has been used by the Uganda Wildlife Authority (UWA) as an excuse to exclude the voice of the Batwa (in the form of the United Organisation for Batwa Development in Uganda, UOB-DU) from a collaborative agreement with the Uganda Wildlife Authority (UWA/UOB-DU), which aims to involve the Batwa in the management of a tourism project taking place on their ancestral lands.

The Benet are still trying to get a court settlement implemented. The settlement was agreed by the High Court of Mbale in a “consent order and decree” approved by a judge and dated 27 October 2005. The settlement stated:

*... that it is hereby declared that the Benet Community in Benet Sub-County, including residents of Yatui Parish and Kabsekek Village of Kween County and of Kwoti Parish of Tingey County, are historical and indigenous inhabitants of the said areas, which were declared a Wildlife Protected Area or National Park; that it is hereby declared that the said Community is entitled to stay in the said areas and to carry out agricultural activities, including developing the same undisturbed; that the respondents take all steps necessary to de-gazette the said area as a Wildlife Protected Area or National Park pursuant to this Consent Judgment, after a physical inspection of the boundary with the Benet Community.<sup>5</sup>*



There have been and continue to be many cases of rape and violence against Benet women, which are alleged to be committed by the authorities. There have also been, and continue to be, numerous allegations of violence – including fatal violence – towards the Benet in general. These incidents have been reported to the authorities, but to date the police, the regional office of the Ugandan Human Rights Commission (UHRC) and the local government have all failed to respond to community complaints. At the moment there is a stalemate. The government proposes to move the community to the plains but the community is not willing to be resettled, because they fear that diseases such as malaria, to which they are not accustomed, could lead to their extermination.<sup>6</sup>

## **National Land Policy**

The National Land Policy of 2013 includes some sound theoretical points on the rights of pastoralists. However, it is not clear how historical injustices will be corrected so that pastoralist communities may regain control of the lands of which they have been dispossessed. It is also still difficult to see what policy will be implemented in the near future, given the cost implications and the various and often conflicting stakeholder interests. In January 2015, there were efforts on the part of the government to popularize the “Voluntary Guidelines on Responsible Governance of Tenure (VGGT) of Land, Fisheries and Forests in the Context of Food Security”.<sup>7</sup> The guidelines “promote responsible governance of tenure of land, fisheries and forests, with respect to all forms of tenure: public, private, communal, indigenous, customary, and informal.” In relation to minorities, including indigenous peoples, they require that “States and other parties should hold good faith consultations with indigenous peoples and other communities before initiating any project that affects the resources to which the communities hold rights”. The Batwa, Benet and pastoralist communities in Uganda are keen to see the National Land Policy implemented, incorporating the favorable clauses contained in the VGGT and other regional and international agreements to which Uganda is party.

## **Lobbying: regional and international human rights mechanisms**

The Mount Elgon Benet Indigenous Ogiek Group (MEBIO), UOBDU, and CO-PACSO prepared an alternative report on Uganda for examination at the 56<sup>th</sup> Session of the African Commission on Human and Peoples’ Rights, which took place in April 2015, and at the 55<sup>th</sup> session of the UN Committee on Economic, Social and Cultural Rights, which took place in June 2015.<sup>8</sup> The report highlighted the fact that currently the Batwa, Benet and pastoralist indigenous peoples face human rights violations including violence (such as rape and the use of force, sometimes fatally); forced eviction and involuntary resettlement; and exclusion from ancestral lands and resources, which compromises their very cultural integrity. Hence the situation requires urgent State attention. The report called upon the government of Uganda to recognize the existence of indigenous peoples in Uganda and implement measures to support their rights as per international and regional interpretations. The

report also asked the government to redress the historical injustices faced by the Batwa and Benet people and pastoralist groups, most especially those caused by the creation of conservation areas during both pre- and post-independence periods. Lastly, the report urged the government to respect court decisions where communities have won cases against them - for example in the case of the Benet, where the government has refused to vacate community land. ○

## Notes and references

- 1 **United Organisation of Batwa Development in Uganda (UOBDU), 2004:** *Report about Batwa data*. August 2004, Uganda, p.3.
- 2 National and Housing and Population Census 2014: <http://library.health.go.ug/publications/leadership-and-governance-monitoring-and-evaluation/population/national-population-and>
- 3 **Minority Rights Group International (MRG), 2001:** Uganda: The marginalization of Minorities (p.9), [www.minorityrights.org/download.php?id=143](http://www.minorityrights.org/download.php?id=143)
- 4 *Land Act (1998)*, Articles 2, 32; and *National Environment Statute (1995)*, Article 46.
- 5 Consent Judgment and Decree, *Uganda Land Alliance, Ltd. v. Uganda Wildlife Auth.*, Miscellaneous Cause No. 0001 of 2004 (High Court of Uganda at Mbale).
- 6 See "Indigenous Peoples in Uganda: A Review of the Human Rights Situation of the Batwa People, the Benet People and Pastoralist Communities" - Alternative report to the Initial report of the Republic of Uganda to be presented at CESCR's 55th session, 1-19 June 2015. At <http://www.forestpeoples.org>
- 7 <http://www.fao.org/nr/tenure/voluntary-guidelines/en/>
- 8 See reference in footnote 6, supra.

**Benjamin Beyeza-Mutambukah** is the coordinator of the *Coalition of Pastoralist Civil Society Organizations (COPACSO)*, which is a coalition of civil society organizations working for the advancement of pastoralists in Uganda. It provides a platform for member organizations to engage in policy formulation and advocacy for recognition of pastoralism and the right of pastoralists to benefit from national and local resources.

**Penninah Zaninka** is coordinator of the *United Organization for Batwa Development in Uganda (UOBDU)*, which aims to support Batwa in Uganda in addressing land issues and other socio-economic problems, and to help them develop sustainable livelihoods.

## RWANDA

The Batwa population lives throughout Rwanda and numbers between 33,000 and 35,000 people out of a total population of approximately 11,000,000, i.e., 0.3% of the population,<sup>1</sup> according to the last available data of 1993. The Batwa<sup>2</sup> (*sing.* Mutwa) are known colloquially by various names, such as hunter-gatherers, forest peoples, Batwa, *Potiers/Potters*, *abasang-wabutaka*,<sup>3</sup> or the more pejorative “Pygmies”, because of their alleged “modest stature”. In 2007, however, the Government of Rwanda opted to “re-categorize” the Batwa as “historically marginalized peoples” or “HMP” on the supposed basis that acknowledging ethnic differences could exacerbate historical conflicts. Batwa communities have a distinct culture, often associated with their folkloric and traditional dance, and their intonation when they speak Kinyarwanda. Prior to 1973, when national parks were created in Rwanda, the Batwa lived mainly from hunting and gathering in the territory’s natural forests. They were expelled from their ancestral lands with no warning, compensation or other means of subsistence and they now constitute the poorest and most marginalized ethnic group in Rwanda.

The Batwa lack representation in governance structures. Article 82, para. 2 of the Rwandan Constitution stipulates that the President of the Republic appoints eight members to the Senate “who shall ensure the representation of historically marginalized communities”; However, at the moment, the Batwa have only one representative in the Senate, and no representatives in the Chamber of Deputies or line ministries. The Rwandan government does not recognise the indigenous or minority identity of the Batwa even though it voted in favour of the UN Declaration on the Rights of Indigenous Peoples. Because of its unwillingness to identify people by ethnic affiliation, moreover, there is no specific law in Rwanda to promote or protect Batwa rights. Rwanda has signed but not ratified the UN Declaration on the Rights of Indigenous Peoples and is not a signatory to Convention ILO No. 169.



The year 2015 saw few signs of progress for the Batwa. The Rwandan government maintains its stance against the use of ethnic identities, leaving the Batwa without official recognition of the discrimination they face, or the means to advance their historical grievances and access minority and Indigenous Peoples' rights mechanisms. Government and non-governmental development programs have largely overlooked the distinct culture, history and livelihood of the Batwa, thus precluding the adoption of sustainable programs that facilitate the integration of Batwa communities into Rwandan society. Moreover, the ineffectiveness of

these programs perpetuates the dependency of the Batwa population on the Rwandan state, fuelling further discrimination, deprivation and social dislocation.

## **Land rights**

### **Ancestral lands**

During the 1970s, legislation outlawing hunting threatened the sustainability of the Batwa way of life and resulted in the forced expulsion of Batwa communities from the Gishwati forest, Nyungwe forest and Volcano National Park, established as a result of national and international conservation efforts. By the 1990s, Batwa communities practising clandestine hunting and gathering activities had been permanently forced out of the national forests. The Batwa who once occupied Gishwati Forest have yet to receive adequate compensation from the Rwandan government or the World Bank for the loss of their land and destruction of their culture and livelihood following a failed World Bank project, as required by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

### **The Girinka program**

The Girinka program, also known as the “one cow per poor family” program, benefits only a few Batwa families, despite its benevolent intentions to provide a dairy cow to poor families to enable self-sufficiency. In order for families to be eligible for the Girinka program, they must own at least 0.25-0.75 hectares of land on which to feed the cow, and have the means to construct a shed. Because of Rwanda’s high population density and limited land availability, programs that require land ownership for eligibility are inherently exclusionary, and confined to the portion of the Rwandan population that has access to land. The vast majority of Batwa do not own land and nor do they have the resources to build a shed for livestock. Most are squatters or tenants on other people’s land. There are some local governments that have leased land to Batwa communities but this appears to be an inconsistent policy across the country. The Rwandan government is urged to make the Girinka program more accessible to Batwa communities and ensure due diligence is carried out to retain transparency in the implementation of the Girinka program at every level of government.

## Political rights

### The “historically marginalized” label

The label “Historically Marginalized People (HMP)”,<sup>4</sup> introduced in 2007, is widely understood to focus specifically on the Batwa, though some government officials have denied this assertion, claiming the term represents “Rwandans disadvantaged throughout history”. The term was adopted without consultation with the Batwa, a decision that is contra to the principles of consent and consultation outlined in UNDRIP. Research conducted in 2015 and to be released in 2016 reveals that the label HMP is not only disparaging for the Batwa but is also shrouded in ambiguity as there is no official government definition. Interviews with individual Mutwa and informal focus groups conducted in Batwa communities reveal considerable confusion about the definitional parameters of the term, as well as its origins and purpose. Use of the HMP label, moreover, precludes Batwa civil society leaders from advocating for the collective rights and special legal protections of their communities. Furthermore, international and national governmental and non-governmental organizations are unable to focus their development efforts specifically on the Batwa. Research conducted between 2014 and 2015 found that many international and domestic organizations interpreted “HMP” as an inclusive category that applies to a number of groups subjected to varying levels of historical marginalization, including the disabled, women and Muslims. This label allows other Rwandans to easily identify the Twa and discriminate against them. The government is, therefore, urged to consult with Batwa communities about the use and purpose of this label. More generally, the government is requested to consult and cooperate with Batwa civil society before any policies directly affecting the livelihood of Batwa communities are enacted. As it stands at the time of this publication, there have been no efforts to sensitize Batwa communities to the origins, meanings and uses of this label.

### Adequate representation

Furthermore, only one Batwa representative has been placed in a government office over the last four years. Zephyrin Kalimba, former President of the Rwandan Community of Potters (COPORWA), one of two civil society organizations advocating for the interests of “HMP” communities, was appointed Senator by the

President of the Republic in 2012. There are no Batwa in the Chamber of Deputies, line ministries or local government administration. This lack of representation is extremely disconcerting, as this continues a historic legacy of discrimination and exclusion of Batwa from decision-making processes. It is necessary that the Rwandan government ensure that the Batwa, as a marginalized group, are included in government decision-making bodies, particularly in communities where they maintain a visible presence.

### **Access to justice**

It was found that two Batwa potters had been violently apprehended for allegedly stealing potatoes by a neighbouring non-Batwa community in Nyaraguru District. One of the two potters, a Mutwa woman around 70 years of age, was beaten by an angry mob in the middle of the night, leaving her badly injured. The other potter, a middle-aged Mutwa man, was taken in the middle of the night by several assailants and killed. According to reports from persons interviewed, the alleged assailants were detained by the police but the families of the victims did not have the resources to bring charges against them. Consequently, the alleged assailants were released. After further enquiries, these types of occurrences, whereby Batwa are violently targeted and financially unable to pursue charges, are relatively commonplace. The Rwandan government is encouraged to work with Batwa communities to remedy this problem and ensure that perpetrators of gross human rights violations are punished accordingly.

### **Housing, health and education issues**

#### **The Bye Bye Nyakatsi program**

The Government of Rwanda launched the *Bye Bye Nyakatsi* program in December 2009 with the aim of eradicating thatch-roofed housing (*Nyakatsi*) by May (and later December) 2012 in pursuit of Vision 2020 objectives. Despite its positive intentions, the program had devastating effects on many Batwa communities, some of which are ongoing, owing its disregard for the traditional lifestyle of the Batwa, and inadequate support for the construction of sustainable, modern homes. The Batwa traditionally built and resided in *nyakatsi* for practical reasons, such as separation of living quarters between family members and supplies stor-

age. Several reports since 2011, however, have indicated that local officials destroyed the *nyakatsi* of hundreds of Batwa families without first providing alternative accommodation or replacement roofing. This left hundreds of families housed in “dreadful temporary conditions”, sometimes six families per home.<sup>5</sup> Furthermore, the tin roofs that have since been provided are insufficient compensation to remedy the shaken livelihoods of dislocated families. Especially in the North province, where average temperatures are lower, tin roofs provide inadequate insulation for families lacking access to blankets and sufficient clothing to keep warm. The lack of education on how to construct tin-roofed houses has also resulted in collapsed housing and subsequent deaths, particularly during the rainy season. Many Batwa also sell the tin roofs for money and live in makeshift housing, often with other Batwa families. It is commonplace for three or four families to share a single home. Overcrowding of Batwa homes reportedly leads to incest, rape, child pregnancies, and increased exposure to disease. It is recommended that the government conduct an impact analysis of the *Bye Bye Nyakatsi* program on Batwa communities and consult with Batwa community leaders on further housing programs.

### **Education and training**

Dropout rates in primary and secondary schools are extraordinarily high, and a mere 40 Batwa living in Rwanda today have graduated from university. High levels of poverty, moreover, mean that few Batwa children can access education. Even though the Government of Rwanda has adopted a policy of a nine-years of basic education, which applies to all Rwandans, many Batwa do not go to school because their parents cannot afford to supply school materials, and children suffer from disproportionately high levels of malnutrition. The Ministry of Local Government started a policy of promoting vocational training for the young generation who did not get the opportunity to continue their education and some Batwa youth have benefited from this vocational training program. However, the majority of Batwa youth remains unemployed due to continued systemic and societal discrimination. ○

### **Notes and references**

- 1 According to a socio-economic survey carried out in 2004 by CAURWA (*Community of Indigenous Rwandans*) now known as COPORWA (*Rwandan Community of Potters*), in collaboration with the Statistics Department of the Ministry of Finance and Economic Planning. The exact

number of Twa today is unknown given the stance of the government against the use of ethnic identities.

- 2 Batwa and Mutwa are the plural and singular forms used in Kinyarwanda to refer to the Twa people, and will be used accordingly in this article.
- 3 *Abasangwabutaka* loosely translates from Kinyarwanda as “those who were on the land first”.
- 4 The term “Historically Marginalized Peoples” was first introduced by the Commission in charge of Social Affairs, Human Rights and Social Issues, in the “Report on the Living Conditions of Some Rwandans Disadvantaged Throughout History”, (July 2007).
- 5 Berry Terreblanche, “Sunshine and Shadow in Rwanda’s Rural Housing Programme”, *Interpress Service News Agency*(2011).

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# TANZANIA

Tanzania is estimated to have a total of 125 – 130 ethnic groups, falling mainly into the four 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 organizing themselves and their struggles around the concept and movement of indigenous peoples. The four groups are the hunter-gatherer Akie and Hadzabe, and the pastoralist Barabaig and Maasai. Although accurate figures are hard to arrive at since ethnic groups are not included in the population census, population estimates<sup>1</sup> put the Maasai in Tanzania at 430,000, the Datoga group to which the Barabaig belong at 87,978, the Hadzabe at 1,000<sup>2</sup> and the Akie at 5,268. While the livelihoods of these groups are diverse, they all share a strong attachment to the land, distinct identities, vulnerability and marginalization. They also experience similar problems in relation to land tenure insecurity, poverty and inadequate political representation.

Tanzania voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007 but does not recognize the existence of any indigenous peoples in the country and there is no specific national policy or legislation on indigenous peoples *per se*. On the contrary, a number of policies, strategies and programmes that do not reflect the interests of the indigenous peoples in terms of access to land and natural resources, basic social services and justice are continuously being developed, resulting in a deteriorating and increasingly hostile political environment for both pastoralists and hunter-gatherers.

## General election

**T**he Tanzania 2015 general election was long awaited by everyone in the country. In terms of voter registration and actual voting, there was a huge turnout compared to the previous 2010 election. An estimated 24 million people

were registered to vote in 2015, compared to 20 million in 2010.<sup>3</sup> Sixty-seven percent (equivalent to 15.5 million) of voters turned up at the polling stations on 25 October 2015<sup>4</sup> compared with 8 million in 2010. This number includes different groups such as indigenous peoples, youth and women. Throughout the country, electoral committee staffs were deployed to register voters, and even the pastoralist and hunter-gatherer communities were reached this time despite the fact that many of them live in very remote areas and do not always have access to the Internet.

Activists from civil society organizations (CSOs) managed to secure seats in parliament. A notable achievement for indigenous peoples was winning a ministerial position in the Ministry of Agriculture, Livestock and Fisheries for William Ole Nasha, an indigenous human rights defender who has been leading the consultation with indigenous peoples around the constitutional review process. There was also a good turnout for indigenous peoples contesting positions as councillors. All of this has been due to numerous training sessions conducted by political parties, the government and CSOs on the right to vote and to run for election.

Although the election passed off peacefully, the process of tallying and announcing the final result lacked transparency. The ruling party (Chama Cha Mapinduzi – CCM) retained power, even though the national election committee acknowledged a mismatch in numbers.<sup>5</sup>

## **Constitutional review process**

The constitutional review process that began in 2011 made no progress in 2015 as the referendum to adopt the new constitution was postponed due to the national election in October 2015. However, Katiba Initiative (KAI), which is a pastoralist and hunter-gatherer coalition working on the constitutional review process, has continued to conduct awareness activities on the draft constitution with indigenous communities, the media and members of parliament. Further, indigenous organizations have used the draft constitution on different occasions to influence decisions at the district level. Members of parliament were also lobbied to support the land chapter incorporated into the draft constitution.



## Land grabbing, land conflicts and human rights violations

There were fewer cases of human rights violations among indigenous peoples in 2015 although there were some significant ones that involved violence, threats of eviction and, at times, actual evictions of indigenous peoples. Among the major issues in 2015 were the Ndarakwai, Sukenya, Vilima Vitatu and Morogoro cases, which are all highlighted below.

The **Ndarakwai** area was originally a Maasai territory. The Maasai in the vicinity call the area *Aroni* in Maa, which means dry season grassing reserve. The

area is now called Ndarakwai Ranch and it is owned by Tanganyika Film and Safaris Outfitters (TAFISO). The area is divided into three farms, adding up to a total of 9,662 acres, even though the Ndarakwai Ranch brochures and website claim that it covers 11,000 acres. The property is located between Mount Kilimanjaro and Meru and is also within a wildlife migratory corridor between Kilimanjaro, Arusha and Amboseli national parks. This fact makes the area ideal for tourism and it is certainly why TAFISO came in. The Maasai claim that when Peter Jones, the English owner of TAFISO, leased and moved into the area in 1995, with the support of the police force, he torched their homes, beat them and even took photos of them naked. The situation got out of hand in September 2014 when the Land Division in both Longido and Siha districts, financed by TAFISO and acting on their behalf, invaded village land and secretly enlarged the size of the area under the guise of re-surveying the area. In September 2014, the Maasai in Roselyn village chased away Siha District Surveyors, Longido District Surveyors, TAFISO staff and two policemen who were arbitrarily planting beacons to demarcate the boundary of the Ndarakwai Ranch. During that event, the Maasai wounded a police officer who abandoned an assault rifle as he fled for his life. Maasai elders surrendered the gun to the police in Longido the next day thus preventing possible violent retaliation on the part of the police force to recover the seized weapon. A series of conflict between indigenous peoples and investors occurred throughout 2015 that led to human rights violations such as riots, the unlawful arrest of more than 20 pastoralists, denial of access to water, shooting by armed forces, burning of homesteads, etc.

In the 1980s, Tanzania Breweries Limited (TBL) acquired 10,000 acres of land within what was then Soitsambu village (now known as **Sukenya**), a Maasai ancestral land in Ngorongoro, with the intention of wheat and barley cultivation. Of the 10,000 acres it acquired, TBL only used about 700 for cultivation for a few years. As such, life continued as normal for the Maasai, who continued to use the land for grazing and watering their livestock. They did so for a period of more than 19 years without any disturbance, leading to a belief that the land belonged to them. However, in 2006, TBL sold the land to Tanzania Conservation Ltd (TCL), a Tanzanian incorporated company run by an American-owned safari company, Thomson Safaris. The community started legal proceedings against TBL and TCL in 2010. The case was later dismissed in 2013 on purely technical grounds. The community then initiated a new suit in the same year, which was concluded in 2015. The court concluded that 10,000 acres had been legally ac-

quired but that TBL had increased the size of the land from 10,000 to 12,617 acres and that the extra 2,617 acres had been illegally acquired. The court therefore ordered the return of the illegally acquired 2,617 acres to the community and awarded 10,000 acres to the TCL. No damages were awarded to the community and the conflict over land and resources remains. The people were seriously shocked by the court ruling but, thus far, no action has been taken by the community to appeal the decision.

**Vilima Vitatu** village is situated some 40 km north of the Babati District Headquarters between Tarangire and Lake Manyara National Parks. The agro-pastoralist Mbugwe and the minority pastoral Barabaig community who inhabit the village have been in conflict for many years. Wildlife conservation agencies, including the African Wildlife Foundation, mobilized villages, including Vilima Vitatu, to create the Burunge Wildlife Management Area (WMA) but the Barabaig pastoralists were not involved in the discussions. Some 12,829 ha out of the 19,800 ha of the village were annexed to the Burunge WMA in 2000. In March 2013, the Court of Appeal ruled in favour of the Barabaig pastoralists of Vilima Vitatu, declaring that they had been annexed to the Burunge WMA without their free, prior and informed consent and that the land should be returned to them. In September 2013, the government tried to evict the Barabaig pastoralists from the village, burning down 44 of their houses and ordering them to leave the area immediately. The Babati District Council and Vilima Vitatu Village Chairman reportedly authorised the evictions, which were carried out by police and private security guards. The state was planning to conduct a second round of evictions of the Barabaig pastoralists from the area in 2015, despite the ruling against this move by the Court of Appeal of Tanzania. The ensuing conflict continued and the government are still refusing to adhere to the decision of the court of appeal.

There is an endless conflict between pastoralists and farmers in the **Morogoro** region of Eastern Tanzania. The long-time clashes have caused the deaths of many people, loss of property as well as increased disunity between the two communities. In recent conflicts that occurred in December 2015 at Dihindi village in Mvomero District there was a serious fight between pastoralists and farmers. Both pastoralists and farmers live in the village but the conflict happened in an area designated for pastoralism. The source of the conflict was that farmers claimed that their farms were being invaded by livestock and, as a result, invaded the pastoralists' area. One person and 71 livestock were cruelly killed by the farmers. Following the conflict, the Minister of Agriculture, Livestock and Fisheries, Mr.

Mwigulu Nchemba, made an unexpected visit to the area. In previous conflicts, the pastoralists alone were accused of being the source of the conflict. On his visit to the site, however, Hon. Nchemba called on all stakeholders to put their heads together and come up with strategic measures to solve the land conflict in order to maintain peace and unity.

## **Engagement in climate change processes**

The country's indigenous peoples were actively engaged in climate change initiatives and different interventions throughout the year. 2015 was a year of climate talks with a view to the Conference of Parties (COP21). Several rounds of discussions were held in different platforms at community, national, regional and international levels. Most recently was the first and only national consultation meeting focusing on a dialogue between indigenous peoples and the Tanzania government on the country's common position paper on climate change needs, which was presented in Paris during COP21. The meeting had drawn together the key ministries responsible such as forestry and natural resources, tourism and livestock as well as Tanzania's chief negotiators at the United Nations Framework Convention on Climate Change (UNFCCC).

It was easy to coordinate and follow up these initiatives at the national, regional and international level through the Tanzania Indigenous Peoples' Taskforce on Climate Change (TIPTCC). The Taskforce was formed in 2015 to coordinate and address all programmes related to indigenous peoples and climate change-related matters at all levels. PINGO's Forum hosts TIPTCC on behalf of seven member organizations.

Further, in December 2015, with the support of IWGIA, indigenous peoples from Tanzania engaged in the UNFCCC process. During the COP21 climate talks in Paris, indigenous peoples' representatives from Tanzania had regular caucus meetings with Tanzania's government delegations (negotiators' team) to discuss their collective effort and engagement in the negotiations processes as a country and get updates and follow up on the negotiations processes. There was also the very active participation of indigenous peoples in the indigenous peoples' pavilion and in presentations at different side events.

## **Hadzabe & carbon credits**

The remaining available forest and natural resources in Tanzania are found in indigenous peoples' territories. Such is the case of the Hadzabe community forest reserves, which involve three villages: Yaeda Chini, Mongo wa mono and Doman-ga. Due to the fact that the Hadzabe have been preserving and protecting their forest for decades, their community is currently benefiting from the carbon credits incentives via a private company known as Tanzania Oxygen, which invested in their forest. The incentives accrued or acquired after selling the carbon credits were spent by the community on paying for school fees, health services and food; employment was also created.

## **Engagement in international advocacy**

Tanzania as a state is to undergo the second round of Universal Periodic Review (UPR) in March 2016. The recommendations that were made by the United Nation Human Rights Council (UNHRC) during the last UPR in 2011 included issues of marginalization and discrimination of pastoralists and hunter-gatherers, unlawful arrests, torture and prosecution of pastoralists and hunter-gatherers, land grabbing and unlawful evictions, delays in justice relating to constitutional and public interest litigation and collective punishment of pastoralists and hunter-gatherers. In 2015, indigenous peoples made a joint submission through a stakeholder report that was sent to the UNHRC in September 2015. The submission reflects the persistence of human rights violations against indigenous peoples in terms of the same issues that were raised in 2011. Indigenous peoples are looking forward to further engaging in the process.

## **Food insecurity**

Food insecurity is another challenge facing both pastoralists and hunter-gatherers in Tanzania. While the pastoralists depend on livestock and their products, hunter-gatherer communities such as the Hadzabe and the Akiye rely on wild animals, wild fruits and roots. Due to the effects of climate change, however, all

natural resources such as pastures, wild fruits and roots have become affected and are rarely to be found, so the pastoralists and hunter-gatherers are becoming food insecure and hence subject to hunger and disease. In 2015, rainfall was minimal and led to food shortages. The most affected communities were the Hadzabe and Akiye who depend entirely on wild resources. These communities have therefore been suffering from hunger and thus a deterioration in community development and access to basic services such as schooling. The government has not yet taken serious steps to provide food support to these communities and although there were no deaths reported as of the end of 2015, there may well be in 2016 if the lack of food continues.

### **Indigenous women in Tanzania**

A positive change in attitude towards female genital mutilation (FGM), something that is deeply embedded in cultural beliefs, was noted within indigenous communities in 2015. This is a result of ongoing national and community awareness events conducted by indigenous peoples' organizations to highlight the health and social risks linked to this practice. Secondary education scholarships for girls have provided a safe haven for likely victims. This year alone, more than 10 girls were rescued and provided scholarships for boarding school facilities by pastoralists' organizations.

It has been noted that empowering women economically brings about a ripple effect on their immediate family and the community at large. The income is often spent on solving existing social challenges, especially in terms of education, food and health. In 2015, the first joint proposal for a Sustainable Women's Economic Empowerment Program was developed by civil society organizations and the private sector, including Oxfam, Pastoralists Indigenous NGOs Forum (PINGO's Forum), Ujamaa Community Resource Team (UCRT) and Pastoralist Livelihood and Community Education Program (PALICEP). The program aims to empower indigenous women to improve the milk and vegetable value chain as well as directly linking women to the private sector for purchase of their products. The program is also meant to expose women to markets and networks across the East African region. The proposal has yet to be approved but it is most likely that this will happen.

Finally, in 2015, efforts were geared towards strengthening traditional leadership structures in Maasai indigenous communities. These efforts have led to traditional leaders driving forward an agenda to change the traditional laws which, for many years, have oppressed women.

## Higher learning scholarship

In consultation with PINGO's Forum, in 2015 the Centre for Climate Change Studies (CCCS) of the University of Dar es Salaam, established a scholarship program with Master's courses in Pastoralism and Climate Change. In the same spirit of collaboration, on behalf of indigenous peoples, PINGO's Forum was given three scholarships for young indigenous men and women. Two female and one male student from pastoralist communities have been selected and they have now embarked on their studies at the university. The two indigenous women scholars were awarded a Master's level scholarship through the Tanzania Indigenous Peoples Climate Change Taskforce. The scholarship is intended to equip them with knowledge, tools and skills that they can use to adapt and mitigate the effects of climate change, which are placing an increasing burden on women due to scarcity of water and food. It is a big achievement that indigenous peoples are now recognized in the university curriculum. ○

## Notes and references

- 1 [www.answers.com/Maasai](http://www.answers.com/Maasai); [www.answers.com/Datoga](http://www.answers.com/Datoga); [www.answers.com/Hadza](http://www.answers.com/Hadza).
- 2 Other sources estimate the Hadzabe at between 1,000 – 1,500 people. See, for instance, Madson, Andrew, 2000, *The Hadzabe of Tanzania. Land and Human Rights for a Hunter-Gatherer Community*. Copenhagen: IWGIA.
- 3 <http://www.mwananchi.co.tz/data/-/2592594/2858226/-/9tqucoz/-/index.html>
- 4 <http://dailynews.co.tz/index.php/home-news/43769-thanks-tanzanians-cheers-judge-lubuva>
- 5 <http://www.thecitizen.co.tz/tanzaniadecides/Observers-query-NEC--ZEC-transparency/-/2926962/2933140/-/ferml91z/-/index.html>

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SOUTHERN AFRICA

## NAMIBIA

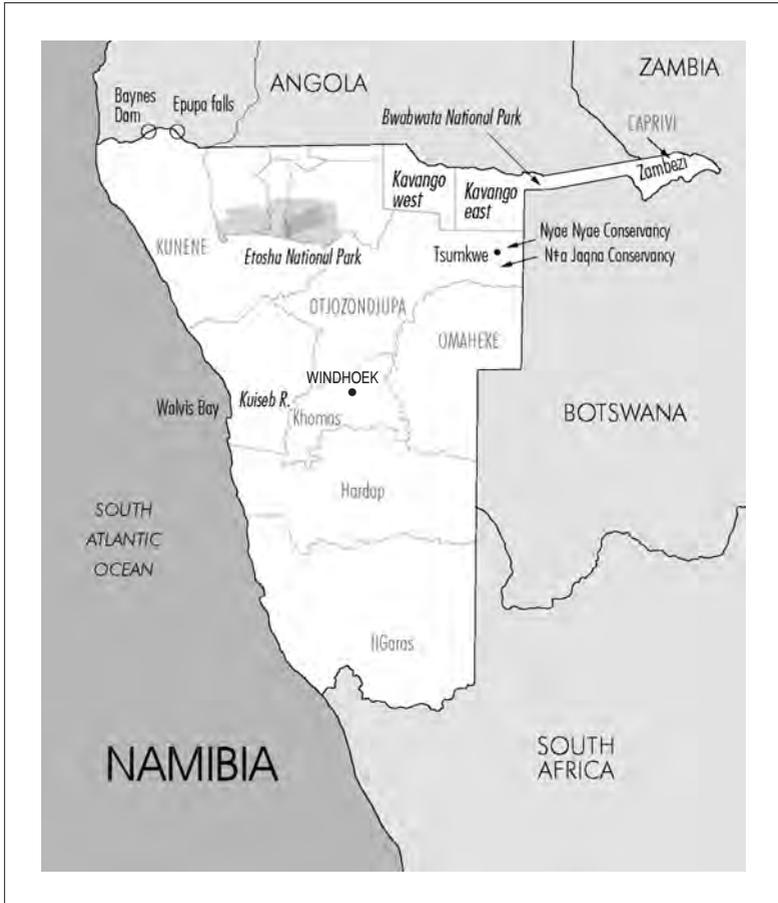
The indigenous peoples of Namibia include the San, the Nama, the Himba, Zemba and Twa. Taken together, the indigenous peoples of Namibia represent some 8% of the total population of the country.

The San (Bushmen) number between 27,000 and 34,000, and represent between 1.3% and 1.6% of the national population.<sup>1</sup> They include the Khwe, the Hai||om, the Ju|'hoansi, the !Xun, the Naro and the !Xoo. Each of the San groups speaks its own language and has distinct customs, traditions and histories. The San were mainly hunter-gatherers in the past but, today, many have diversified livelihoods. Over 80% of the San have been dispossessed of their ancestral lands and resources, and are now some of the poorest and most marginalised peoples in the country.

The Himba number some 25,000. They are pastoral peoples, and reside mainly in the semi-arid north-west (Kunene Region). The Zemba and Twa communities live in close proximity to the Himba in north-western Namibia.<sup>2</sup> The Nama, a Khoe-speaking group, number some 70,000.

The Constitution of Namibia prohibits discrimination on the grounds of ethnic or tribal affiliation but does not specifically recognise the rights of indigenous peoples or minorities. The Namibian government prefers to use the term “marginalised communities”, and there is no national legislation dealing directly with indigenous peoples.<sup>3</sup> Namibia voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) when it was adopted but has not ratified ILO Convention No. 169. Namibia is a signatory to several other binding international agreements that affirm the norms represented in the UNDRIP, such as the African Charter on Human and Peoples' Rights, the Convention on the Rights of the Child (CRC), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the International Covenant on Civil and Political Rights (ICCPR).

In March 2015, the Division of San Development under the Office of the Prime Minister (established in 2009) was renamed the Division for



Marginalised Communities and moved to the Office of the Vice-President. It is mandated to target the San, Himba, Zemba and Twa with the main objective of “integrating marginalised communities into the mainstream of our economy and improving their livelihood”.<sup>4</sup>

## Participation and political representation

General elections were held in Namibia on 28 November 2014 and the new President, Hage Geingob, was sworn in on 21 March 2015. A number of developments initiated by the new government are potentially positive for Namibia's indigenous peoples. The Division of San Development under the Office of the Prime Minister was renamed the Division for Marginalised Communities and moved to the Office of the Vice-President. Most importantly, a San, Hon. Royal / Ui/o/oo, was appointed Deputy Minister for Marginalised Communities.

Although five San traditional authorities (TAs) have been recognised by the government, some of them are still facing serious complaints from their communities on issues including corruption, a lack of transparency, favouritism and nepotism.

Another representative body of the San, the Namibian San Council, was established in 2006 with strong NGO support. This council currently consists of 14 members of various San communities in Namibia and is supported by a number of San students in Windhoek. It has the potential to play an important role for the San in Namibia in terms of representing their interests. During 2015, the members of the San Council participated in three capacity-building workshops and formalised their body as a voluntary organisation. The Namibian San Council was officially launched on 17 November 2015.<sup>5</sup> Whether it can eventually become an important representative organisation both nationally and internationally depends primarily on funding but also on its coordination and management skills.

Efforts initiated by the Indigenous Peoples of Africa Co-ordinating Committee (IPACC) continued in 2015 with the aim of establishing a Namibian Indigenous Peoples Advocacy Platform (NIPAP) comprising Himba, Nama and San representatives. This platform met twice in 2015 to identify focus areas and develop a work plan for the future. At the moment, the lack of a local NGO able to organise the platform's activities seems to be an obstacle to NIPAP becoming a strong and united political voice for indigenous peoples in Namibia.

## Land

In August 2015, Hai||om representatives from various areas launched a court case in the name of their people which they hope will eventually lead to recogni-

tion and enforcement of their ancestral rights to parts of their traditional land. The traditional territory of the Hai||om covered large parts of northern-central Namibia, including the Etosha National Park. In the application, the representatives asked the High Court to allow them to bring a class action lawsuit against Namibia's government and various other parties with interests in the land in question.<sup>6</sup> The government intends to oppose the application. If the application is successful, the people plan to lodge a case that would confirm the Hai||om's ownership of the land that comprises the park and some of its surrounds, and which would therefore allow them to either occupy and use the land, claim financial compensation or be awarded equivalent areas of land. This case has the potential to have an immense impact on Namibia's legal system, both in terms of class actions and claims to ancestral land.<sup>7</sup>

The Division for Marginalised Communities under the Office of the Vice-President continued to address the land dispossession of San communities throughout the year, primarily through the purchase of resettlement farms, employing a group resettlement model. Two San communities in the Omaheke region have been waiting for their promised resettlement, albeit in very remote areas, since 2013. A lack of infrastructure (especially the provision of water) is still hindering the resettlement of these two communities. The lack of substantial post-settlement support, the remoteness of the resettlement farms and difficult access to public services, the lack of secure title and the uncontrolled influx of newcomers in general remain major challenges for the development of sustainable livelihoods for San communities in group resettlement schemes.

Despite strong legal support from NGOs over the years, the San living in the Nꞛa Jaqna Conservancy and the Nyae Nyae Conservancy (Otjozondjupa region) have not yet been able to prevent outsiders from other ethnic groups from grazing their cattle on the land (Nyae Nyae) or erecting illegal fences (Nꞛa Jaqna). In Nꞛa Jaqna, a court decision for the eviction of illegal fencers and grazers was supposed to be taken in February 2015 but the case has been postponed several times and no decision was taken in 2015.

## Education

San communities are the most disadvantaged ethnic groups in the education system and few San complete their secondary education.<sup>8</sup> Primary education has

been free since 2013, and free secondary education is expected to start around 2016. It remains to be seen (if data are available) whether this will have a significant positive impact on the educational levels of indigenous peoples. In 2015, the Division for Marginalised Communities continued to support indigenous learners to enrol at various levels in order to improve their educational qualifications.<sup>9</sup> However, San learners supported by the Division complained at a media event in May 2015 that the amount of the monthly allowances was not enough, that there were several months' delay in payment and that the accommodation conditions were poor.<sup>10</sup>

Against this background, the //Ana-Jeh San Youth Project<sup>11</sup> was started by San students in Windhoek in 2014. The project was formalised as the //Ana-Jeh San Trust at the end of 2015. //Ana-Jeh was primarily established to support San learners in schools and higher education institutions but also intends to address other issues important to San people in Namibia, for example discrimination, the promotion of cultural heritage, strengthening positive San identities through education and raising self-esteem. The //Ana-Jeh San Trust was officially launched in November 2015 together with the Namibian San Council.

## Policy development

The White Paper on the Rights of Indigenous Peoples in Namibia, prepared by the Office of the Ombudsman, was submitted to the Division for San Development (now the Division for Marginalised Communities) in October 2014 for review (see *The Indigenous World 2015*). No significant progress was made in 2015 but the Namibian San Council plans to lobby for the White Paper in 2016, especially with the new Deputy Minister for Marginalised Communities.

Furthermore, two workshops took place in 2015 for the implementation of key interventions in the first National Human Rights Action Plan (NHRAP) 2015-2019, which was launched in December 2014. The NHRAP targets issues in the areas of health, education, housing, land, water and sanitation, justice and discrimination. The NHRAP explicitly mentions indigenous peoples but its implementation will clearly depend on the human and financial resources available within the respective ministries. ○

## Notes and references

- 1 The latest available quantitative data come from the Namibian Population and Housing Census 2011, which suggests that the San constitute 0.8% of the Namibian population (Republic of Namibia, n.d. "Namibia 2011 Population and Housing Census Basic Report". Windhoek: Republic of Namibia: 171). However, since the census only provides data on rough language groups, the number of San in Namibia is certainly much higher (for more information on the challenges of quantitative data in relation to San see Dieckmann, Ute et al. 2014: "Scraping the Pot": San in Namibia Two Decades after Independence. Windhoek: Legal Assistance Centre: P. 13ff.
- 2 The Twa have traditionally been hunters and gatherers in the mountains, while the Himba and Zemba (also written Tjimba) are cattle breeders and small-scale agriculturalists (see <http://www.norad.no/en/tools-and-publications/publications/reviews-from-organisations/publication?key=403144>).
- 3 The government defines "indigenous" by reference to European colonialism.
- 4 It was preceded by the San Development Programme (SDP, established in 2004). In 2007, the SDP's mandate was expanded to cover other marginalised communities as well as the San (the Twa, Zemba and Himba). (<http://www.sanddevelopment.gov.na/>.)
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- 6 A class action allows a large number of people with a common interest in a matter to sue or be sued as a group and aggregates a large number of individualised claims into one representational lawsuit. Class action was hitherto not allowed in Namibia.
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- 9 *New Era*, 21 May 2015: Support for Marginalised Communities (<https://www.newera.com.na/2015/05/21/support-marginalised-communities/>).
- 10 *Namibian Sun*, 25 May 2015: "San students: Government has forgotten us" (<https://www.namibiansun.com/education/san-students-govt-has-forgotten-us.79459>); *The Namibian*, 26 May 2015: Sanchildrenclaimnegligence (<http://www.namibian.com.na/index.php?id=137305&page=archive-read>); *The Namibian*, 27 May 2015: "300 San development volunteers unpaid" (<http://www.namibian.com.na/index.php?id=137325&page=archive-read>).
- 11 //Ana-Jeh is a word in !Kung, one of the San languages in Namibia, and means New Light. The organisation was called //Ana-Jeh because its members feel that the San people are living in darkness and need to see the light of the new day, and thus the project intends to give hope to the San people of Namibia.

*In 2015, **Ute Dieckmann** was research coordinator at the Land Environment and Development Project of the Legal Assistance Centre in Namibia. Her research over the last decade has focused on San and land reform in Namibia. She coordinated the reassessment of the status of San in Namibia (2011-2014), was the chairperson of the San Support Organisations' Association of Namibia (SSOAN) and was assisting with the capacity building of the Namibian San Council and the //Ana-Jeh San Trust.*

## BOTSWANA

The Botswana government does not recognize any specific ethnic groups as indigenous to the country, maintaining instead that all citizens of the country are indigenous. However, 3.3% of the population identifies as belonging to indigenous groups, including the San (known in Botswana as the Basarwa) who, in July 2015, numbered some 62,500. In the south of the country are the Balala, who number some 1,700 and the Nama, a Khoekhoe-speaking people who number 2,100.<sup>1</sup> The majority of the San, Nama and Balala reside in the Kalahari Desert region of Botswana. The San in Botswana were traditionally hunter-gatherers but today the vast majority consists of small-scale agro-pastoralists, cattle post workers, or people with mixed economies who reside both in rural and urban areas. They are sub-divided into a large number of named groups, most of whom speak their own mother tongue in addition to other languages. These groups include the Ju/'hoansi, Bugakhwe, Khwe-||Ani, Ts'ixa, ǀX'ao-||'aen, !Xóǀ, #Hoan, ǀKhomani, Naro, G/ui, G//ana, Tsasi, Deti, Shua, Tshwa, Danisi and /Xaise. The San, Balala, and Nama are among the most underprivileged people in Botswana, with a high percentage living below the poverty line.

Botswana is a signatory to the Conventions on the Elimination of all Forms of Discrimination against Women (CEDAW), on the Rights of the Child (CRC) and on the Elimination of all Forms of Racial Discrimination (CERD). It is also a signatory to the United Nations Declaration on the Rights of Indigenous Peoples but it has not signed the only international human rights convention that deals with indigenous peoples, the *Indigenous and Tribal Peoples Convention No. 169 of 1989* of the International Labour Organization (ILO).

There are no specific laws on indigenous peoples' rights in the country nor is the concept of indigenous peoples included in the Botswana Constitution.

## Political situation

The World Justice Project this year rated Botswana as the best country on the African continent in terms of the rule of law and governance.<sup>2</sup> Botswana's democratic system was also highly ranked in the Varieties of Democracy index.<sup>3</sup> Botswana has been rated a Middle Income Country and lowered poverty levels significantly in 2015, according to the World Bank.<sup>4</sup> Nevertheless, a quarter of the children in the country are poor, and the indigenous peoples of Botswana remain at the bottom of the socioeconomic scale.

Botswana's reputation as a beacon of good governance continued to suffer in 2015 because of its treatment of its indigenous minorities, particularly those in the Central Kalahari Game Reserve (CKGR), who were harassed, intimidated and denied access to water. There were signs, however, that the government's hard-line approach was beginning to change. In the first week of February, Botswana's President Lt. General Seretse Khama Ian Khama met with Roy Sesana of First People of the Kalahari in order to address issues surrounding the CKGR and the needs of its residents.<sup>5</sup>

After this meeting, President Khama decided to have several of his ministers meet with the residents of the Central Kalahari, and this occurred in August in Mothomelo, Metseamonong and Molapo. Present were the Ministers of Foreign Affairs, Health, Local Government and Rural Development, and Environment, Wildlife, and Tourism. Several dozen community members participated in each meeting. The officials promised that they would restore services in the Central Kalahari, including water sources, mobile health visits and support for the establishment of community-based tourism activities. If the government honours its promises, this will mean a major policy shift in the treatment of indigenous peoples in the country.<sup>6</sup>

## Court cases

The San and Bakgalagadi of the CKGR filed four legal cases against the Government of Botswana between 2002 and 2013. The High Court Judge dismissed the last of these in early 2015, which concerned the right of people other than the original applicants in the first CKGR case to enter the reserve.



Another important Botswana High Court case involved Ranyane, a village in southern Ghanzi District where the Naro San residents had resisted resettlement to a!Xóǀ settlement, Bere, and as a result had their water and other services stopped by the Ghanzi District Council. The case was dismissed in October, in a poorly argued judgment<sup>7</sup> which called Ranyane an “unrecognized settlement” in a Wildlife Management Area and said the services that had been provided there were “only temporary”. In fact, the borehole had existed on a trek route between Nojane and the main Ghanzi-Lobatse road for decades and the Ghanzi District Council had provided food, water and diesel for the borehole to Ranyane since the 1970s. The decision not to restore water was in violation of the Court of Appeal’s judgment in the Central Kalahari water case of 2011,<sup>8</sup> Botswana’s own

Water Policy,<sup>9</sup> and was also not in keeping with the United Nations position on the Human Right to Water (HRW). The relocation of the Ranyane people has begun.

## **Drought, climate change and the water crisis**

Botswana was officially declared drought stricken by President Khama in June 2015.<sup>10</sup> The drought has affected agricultural yields, livestock production and water availability. In some of the remote area settlements, such as Xere in Central District and Rooibrak in Ghanzi District, residents had to go as far as 15-20 kilometres to fetch water. Botswana's decision to privatize water, allowing private companies to maintain and repair rural water systems, exacerbated the crisis. Water prices were raised substantially by these companies, while the water supply in many rural communities decreased by half.

Climate change was an important focus of both the government and indigenous peoples in Botswana in 2015.<sup>11</sup> Half a dozen representatives of Botswana San organizations and over two dozen Botswana government officials attended the COP21 Climate Change Conference held in Paris in November. Some of Botswana's indigenous representatives worked with the International Indigenous Peoples' Forum on Climate Change (IIPFCC) to help develop an open letter to the ministers urging them to make specific reference to the rights of indigenous peoples in Article 2 of the Paris Agreement.<sup>12</sup> They were deeply concerned that the Paris Agreement had removed the reference to human rights in the main text of the agreement and placed it in the Preamble, where it remained.

## **Indigenous women**

In addition to facing the problems of poverty and drought that affected all indigenous people, indigenous women continued suffering high levels of discrimination, gender-based violence and rape.<sup>13</sup> Women have less access than men to allocations of arable land and business sites from land boards, and they experience problems in getting cases heard before the customary courts and magistrates' courts. Indigenous women have been arrested for possession of ostrich eggs and ostrich eggshell products because they lack licenses from the Department of Wildlife, as required by the Botswana Ostrich Management Plan Policy. Some

women have been able to obtain ostrich eggshells for craft production from non-government organizations such as Ghanzi Craft and Kuru, which have licenses.<sup>14</sup>

## **Impacts of wildlife-conservation policies**

The hunting ban imposed by President Khama in 2014 (see *The Indigenous World 2015*) has imposed enormous hardship on the San, Bakgalagadi and other communities.<sup>15</sup> Whereas, in the past, the community trusts received lease fees, meat, medicines, and other goods and services from safari companies with which they had joint venture agreements, they now receive few benefits, and poverty levels and hunger are on the increase. This situation was exacerbated by the fact that the government ceased compensating people in many rural areas for losses of livestock due to predation by wild animals.<sup>16</sup> In 2015, some community trusts with San majorities were taken over by private companies which kept the bulk of the funds generated by ecotourism to themselves.<sup>17</sup>

Botswana San have been active in raising their concerns about the deleterious effects of the hunting ban in international meetings. These issues were addressed at the 14<sup>th</sup> annual session of the United Nations Permanent Forum on Indigenous Issues (UNPFII), held in New York City from 20 April to 1 May 2015.

Residents of Botswana and neighbouring countries have been very much alarmed by the government's shoot-to-kill policy as an anti-poaching strategy, saying that innocent people were being killed on the vague suspicion of being poachers.<sup>18</sup> They have lobbied the President, Minister of Environment, Wildlife and Tourism, and Parliament to reverse it. Many believe that poaching can be more effectively deterred by involving community members in local conservation programs while permitting hunting for subsistence.

The President of Botswana has issued a call for greater attention to wildlife protection and conservation.<sup>19</sup> The people of rural Botswana, for their part, appreciate the government's position but want to see greater emphasis on programs that provide employment and income.<sup>20</sup> They also want to see a diversification of the Botswana economy away from diamonds and other minerals to a broader-based development effort, one that promotes agriculture, small businesses, craft production and sale, and cultural as well as nature-based tourism. In particular, they want to see a greater role for women in heritage tourism.<sup>21</sup>

## **Mining issues**

Indigenous residents continued to raise concerns over the expansion of mineral prospecting and hydraulic fracturing (fracking) activities that were ongoing in 2015 in the Okavango World Heritage Site, the Kgalagadi Transfrontier Park, the Central Kalahari Game Reserve, and other areas of Botswana.<sup>22</sup>

Residents of the reserve were concerned about the media stories that another diamond mine was to be opened in the Central Kalahari.<sup>23</sup> In December, the Minister of Environment, Wildlife and Tourism Tshekedi Khama questioned the wisdom of awarding a license to Gem Diamonds' Ghagoo mine, saying that "We cannot have degradation of the land".<sup>24</sup> While a few San and Bakgalagadi were employed at the Ghagoo (Gope) mine, the people of the area continued to press for greater benefits to be provided by Gem Diamonds to the Gope community.

## **Political representation and San leadership**

Botswana's indigenous peoples continued to be concerned about political representation in 2015, pushing for political involvement at all levels of government. While some communities have democratically-elected San headmen/headwomen, numerous remote area settlements with San majorities lack San representational leaders. Jumanda Gakelebone, one of the indigenous protagonists in the CKGR struggle against the Government of Botswana, continues to serve as District Councillor for New Xade in the Ghanzi district.

## **Education for San students**

Botswana's indigenous people living in remote areas continue to have less access to educational opportunities than other children. Drop-out rates of San, Nama and Balala children were high in 2015 due to problems of bullying, intimidation and discrimination in the schools. The Ministry of Education and Basic Skills Development (MOESD) maintained its policy of requiring classes to be taught in Setswana and English instead of allowing the teaching of mother-

tongue languages. Failure to use children’s mother tongues is a factor in the drop-out rate, and some of these languages are considered critically endangered.

Children in remote areas are often transported to and from their schools on trucks. On 12 November, a tragic truck accident occurred near Dutlwe in western Kweneng District involving secondary school students from Matsha College in Kang. Seven students died, and 126 more were injured. Local politicians, members of Parliament, and non-government organizations have called for an investigation into the accident and a ban on the use of trucks for carrying students.<sup>25</sup>

On the positive side, the Botswana government has invested a great deal of money in making sure that some places in remote areas, such as the CKGR resettlement site of Kaudwane, are “oases of technology” where local people can have access to the worldwide web through the expansion of communication technologies.<sup>26</sup> This increased availability of information has contributed to a heightened awareness of their identity both as indigenous people and as citizens of Botswana. ○

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# ZIMBABWE

While the Government of Zimbabwe does not recognize any specific groups as indigenous to the country, two peoples self-identify as indigenous: the Tshwa (Tsoa, Cuaa) San in western Zimbabwe, and the Doma (Vadema) of north-central Zimbabwe. Population estimates indicate there are 2,600 Tshwa and 1,150 Doma, approximately 0.03% of the country's population.

Many of the Tshwa and Doma live below the poverty line, and together they make up some of the poorest people in the country. Available socio-economic data are limited for both groups, though baseline data was collected for the Tshwa in late 2013. While available information on Tshwa communities has increased, information regarding the Doma is still very limited.

Though somewhat improved in recent years, realization of core human rights in Zimbabwe continues to be challenging. Zimbabwe is party to CERD, CRC, CEDAW, ICCPR and ICESCR; reporting on these conventions is largely overdue but there have been recent efforts to meet requirements. Zimbabwe has also signed UNDRIP. In recent years Zimbabwe has participated in the UPR process. Like many African states, Zimbabwe has not ratified ILO Convention No. 169.

There are no specific laws on indigenous peoples' rights in the country. However the "Koisian" language is included in the Zimbabwe Constitution as one of 16 languages that are recognized in the country, and there is some recognition within government of the need for more information and improved approaches to minorities.

## Overview

**T**wo peoples self-identify as indigenous in Zimbabwe. The Tshwa (Tsoa, Cuaa) San, one of the many distinct San groups living in southern Africa, reside in the Tsholotsho District of Matabeleland, North Province, and the Bulilima-Man-



gwe District of Matabeleland, South Province, in western Zimbabwe. The Tshwa share many cultural and linguistic similarities with the Tshwa and Shua peoples in neighboring areas of Botswana, although they appear to be a separate group.

The Doma (Vadema) of Chapoto Ward, Guruve District and Mbire District in Mashonaland Central Province and Karoi District, in Mashonaland West Province reside in the Zambezi Valley of northern Zimbabwe. Both the Tshwa and Doma have histories of foraging and continue to rely to a limited extent on wild plant, animal, and insect resources. Most Tshwa and Doma households tend to have diversified economies, often working for members of other groups in agriculture, pastoralism, tourism, and small-scale business enterprises.

Up-to-date information on the Doma is very limited. Reports suggest that they face similar discrimination, food insecurity, low levels of employment, and lack of access to social services as do the Tshwa.<sup>1</sup> There are more data on the Tshwa, who consider themselves to be ‘the forgotten people’ because of the low levels of development assistance that they receive.<sup>2</sup>

## Policy and legislation

The terms “indigenous”, “indigeneity”, and “indigenization” are used frequently by the Government of Zimbabwe when referring to black Zimbabweans, who are considered to have been disadvantaged before independence. The Indigenization and Economic Empowerment Act stipulates that all foreign-owned companies must have Zimbabweans in a controlling position.

Awareness of minority groups in Zimbabwe has grown in the past several years, though there remain key political and economic barriers to effective engagement and political participation. Issues facing San, Doma or other minorities in Zimbabwe were not taken up during the last Universal Periodic Review of Zimbabwe (2011) nor have they been mentioned in any African Union reports.

The Zimbabwe government took into consideration a draft report and baseline data on the San of Matabeleland, North Province, which was completed and circulated in early 2015, with support from the Ministry of Local Government, Public Works and National Housing and the Ministry of Primary and Secondary Education. The finalized report, funded by IWGIA and OSISA (Open Society Initiative of Southern Africa), will be available in early 2016.<sup>3</sup>

At a meeting of the Southern African Development Community (SADC) in May, President Robert Mugabe stated that he considered that the San resist integration with neighboring communities, rebuff civilization, and shun education, integration and development.<sup>4</sup>

## The Tsoro-o-tso San Development Trust

An important strategy of the Tshwa San was to form their own community-based organization, the Tsoro-o-tso San Development Trust (TSDT). TSDT is the only community-based San organization in the country. The District of Tsholotsho, where most Tshwa live, does not have any Community Share Ownership Trusts (CSOTs) which are common in other districts and are an outgrowth of the implementation of the *Indigenization and Economic Empowerment Act* (IEEA). Zimbabwe, unlike some of the other southern African states with San populations, has no overarching national level organizations that deal with indigenous or minority rights.

The Tshwa have lobbied for greater attention to be paid to Tshwa culture and for more development resources to be made available to them.<sup>5</sup> The Tsholotsho Rural District Council signed a memorandum of agreement (MOU) with the TSDT in March, 2015,<sup>6</sup> despite criticism of the Tshwa by some district government staff for attempting to undermine government development activities. The MOU outlined what the TSDT would do to improve the lives and preserve the language and culture of the Tshwa, and what the district authorities would provide in terms of services and support for these efforts.

TSDT activities continued throughout the year. They included securing national press coverage for several advocacy issues, and a San cultural festival, which was held in October. In August TSDT arranged for Tshwa delegates to take part in a SADC-NGO forum in Botswana, with San from other countries in Southern Africa, in order to present issues to various SADC regional bodies on poverty reduction and intellectual property rights. The latter became more relevant in September with the publicizing of San rock art sites in Tsholotsho.<sup>7</sup>

## Language

There may be less than 50 fluent speakers of the Tjoao (Tjwao, Tshwao) language, all of them elderly. At least one elderly Tjoao speaker who was fluent died during 2015. This means that the language can be classified as “critically endangered”. However, efforts to keep it alive continued in 2015. The University of Zimbabwe and the Tsoro-o-tso San Development Trust made some progress with the documentation of Tjoao (Tshwao) language: the orthography was further developed, and a basic 500-word list now exists, as well as some preliminary teaching materials. A linguist, Anne-Maria Fehn, is in the process of completing an article summarizing the Tjoao grammar, and Lupane State University’s Department of Language and Communication Studies has been carrying out research into Tjoao dialects.<sup>8</sup> In an effort to improve Tjoao learning, the Ministry of Primary and Secondary Education stated in June that it would build a school for the San.<sup>9</sup>

## Food and water security

As in other parts of southern Africa, Zimbabwe was hit hard by drought and hunger in 2015.<sup>10</sup> Crops failed, livestock and wild animals died, and loans were called

back by lenders. Tshwa and their neighbors in western Zimbabwe lined up for food aid distributions, which were insufficient to meet their needs. Some people ate the seeds that they had stored for the November planting season, while others fell back on foraging. The World Food Program estimated that a tenth of Zimbabwe's population of 14,229,541 was totally dependent on food aid.<sup>11</sup>

Government and NGO projects in the Tsholotsho District, including CAMP-FIRE (Communal Areas Management Programme for Indigenous Resources), had some minor impacts on employment and other effects on Tshwa and Doma communities.<sup>12</sup> A World Bank- and GEF-funded CBRNM project which includes part of Tsholotsho District, the Hwange Sanyati Biological Corridor Project (HS-BCP),<sup>13</sup> was launched in March, and may improve livelihood opportunities for the San.

Acute water shortages affected Tsholotsho District during 2015, and drops in water table levels forced many villages to ration water. Additionally, many water facilities that had operated in Tsholotsho and Bulilima-Mangwe as well as in Hwange National Park had to be shut down because of lack of diesel fuel and pump parts. During 2015, 20 new boreholes were planned for the District, but it is not clear whether all of these were established and whether all areas benefited.<sup>14</sup>

After the drought had affected crop production and livestock numbers, unusually heavy rains in November caused flooding and destroyed homesteads,<sup>15</sup> damaged schools and killed large numbers of livestock. Additional flooding occurred in December. A number of NGOs assisted with emergency food relief efforts while measures for increased government support were taken.

## **Resettlement, relocation and judicial issues**

The security situation for the Tshwa was exacerbated by the killing of a collared lion (mis)named Cecil by an American dentist in July 2015, after it was lured out of Hwange National Park by a professional safari guide. A worldwide outcry about the ethics of sport hunting ensued.<sup>16</sup> Some people outside of Zimbabwe said that all hunting should be stopped. There were also those who argued that trophy hunting can help save lions.<sup>17</sup> The debates have worried some Tshwa, who were already feeling the brunt of pressures from the Parks and Wildlife Management Authority and the Zimbabwe state police. They were particularly concerned about the possibility of cessation of hunting, as had occurred in Botswana in 2014, since

some Tshwa and Doma get occasional short-term employment with safari companies and benefit from some of the meat from such hunts.

There were unconfirmed reports that several Tshwa were arrested on suspicion of having played a role in elephant poisonings using cyanide in Hwange in November 2015, although no further action appears to have been taken. Two other villagers and a ranger from Hwange were charged; the latter was one of a number of rangers who were arrested in 2015.<sup>18</sup> An editorial opinion in *Newsday* called for the tightening of security in Zimbabwe's national parks and greater co-operation with local communities.<sup>19</sup>

On 23 December 2015, Zimbabwe's Minister of Environment, Water and Climate, Oppah Chamu Zvipange Muchinguri, announced that the government was going to engage the Joint Operations Command of the Zimbabwe army in anti-poaching efforts in the country. She also said that a kingpin in the crime syndicates involved in ivory trafficking had been arrested,<sup>20</sup> but that Zimbabwe needed international assistance in combating the poaching problem.

Mrs. Muchinguri also said at the COP21 Climate Change meetings held in Paris from 20 November – 1 December 2015 that Zimbabwe was facing a serious "climate-related crisis". Unlike Botswana, Namibia, and South Africa, Zimbabwe did not send any San or Doma to the COP21 meetings, though Tshwa representatives have taken part in local workshops on climate change. ○

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## SOUTH AFRICA

South Africa's total population is around 50 million, of which indigenous groups are estimated to comprise approximately 1%. Collectively, the various First Indigenous Peoples groups in South Africa are known as Khoe-San, comprising the San and the Khoekhoe. The main San groups include the ǀKhomani San who reside mainly in the Kalahari region, and the Khwe and !Xun who reside mainly in Platfontein, Kimberley. The Khoekhoe include the Nama who reside mainly in the Northern Cape Province, the Koranna mainly in the Kimberley and Free State provinces; the Griqua in the Western Cape, Eastern Cape, Northern Cape, Free State and Kwa-Zulu-Natal provinces; and the Cape Khoekhoe in the Western Cape and Eastern Cape, with growing pockets in the Gauteng and Free State provinces. In contemporary South Africa, Khoe-San communities exhibit a range of socio-economic and cultural lifestyles and practices.

The socio-political changes brought about by the current South African regime have created the space for a deconstruction of the racially-determined apartheid social categories such as "coloureds". Many previously "coloured" people are now exercising their right to self-identification and identify as San and Khoekhoe or Khoe-San. First Nations indigenous San and Khoekhoe peoples are not formally recognized in terms of national legislation; however, this is shifting, with the pending National Traditional Affairs Bill 2013, intended to be tabled before parliament in 2015. South Africa has voted in favour of adopting the UN Declaration on the Rights of Indigenous Peoples but has yet to ratify ILO Convention No. 169.

### **Government Study confirms the traditional knowledge associated with the uses of rooibos plant**

**S**outh Africa ratified the Nagoya Protocol of the Convention on Biodiversity in 2013. As part of complying with its obligations in terms of the Protocol, the South African law provides for the sustainable use of indigenous biological re-

sources and the fair and equitable sharing of benefits with indigenous and local communities which arise from bioprospecting that involves indigenous biological resources. South Africa is high in biodiversity and has a long history of indigenous communities, such as the Khoi and the San communities, who used indigenous biological resources for purposes that include food and medicine. The rooibos plant species, for example, is an indigenous resource that is utilized commercially in the development of products such as medicine, food flavorings, cosmetics and other extracts.

During 2015, the South African Government concluded a study on the traditional knowledge associated with rooibos. The major conclusions of the study found, *“there’s no evidence to dispute the communities’ perceptions that the traditional knowledge rests with the Khoi and San people of South Africa. And any individual or organization planning a bioprospecting<sup>1</sup> project involving rooibos must engage with the Khoi and San people.”* This endorsement by the South African government was a historic form of recognition for the Khoi and San.<sup>2</sup> This victory went along with the first bioprospecting permit issued by the South African government to an international company, Nestle, for its commercial utilization of rooibos. Nestle became the first company utilizing rooibos to enter into a benefit sharing agreement with the Khoi and San.

The Khoi and San have been in a three-year-long struggle to bring the South African Rooibos industry to the negotiating table and have them comply with their benefit sharing obligations as prescribed by South African law and the Nagoya Protocol. The Chairperson of the National Khoi and San Councils remains hopeful that the South African rooibos industry will respect the Khoi and San communities’ rights as the traditional knowledge holders associated with the uses of Rooibos. The historical rooibos farming communities from the Cedarburg belt region have also joined the National Khoi and San Council and the South African San Council in their negotiations with the rooibos industry. These deeply impoverished rooibos farming communities will form the main beneficiaries of such a benefit sharing agreement with the rooibos industry.<sup>3</sup>

## **Traditional and Khoi-San Leadership Bill**

The long awaited Traditional and Khoi-San Leadership Bill (“Bill”) was made available to the public in September 2015. On 23 September 2015, Parliament an-



nounced that the Bill had been introduced and was being referred to the Portfolio Committee on Cooperative Governance and Traditional Affairs. The Bill will replace the Traditional Leadership and Governance Framework Act of 2003 that institutionalized the already recognized traditional leaders and its communities, but did not recognize the Khoi and San leadership and communities. Parliament commenced the public participation process at the end of November 2015. This will give the public the opportunity to attend public hearings and send in written recommendations to the Bill. While there are diverse opinions surrounding this piece of legislation, the National Khoi & San Council do however support the enactment of the Bill. This bill will for the first time formally recognize the customary communities and leadership of the Khoi and San after a 17 year struggle.<sup>4</sup> Former President Nelson Mandela initiated this process during 1999 with the National Khoi & San Council,<sup>5</sup> which today culminated in this bill.

## Indigenous Knowledge Systems Bill 2015

The Department of Science and Technology released the Indigenous Knowledge Systems (IKS) Bill in 2015 for public comment. The Bill provides for the protection, promotion and development of indigenous knowledge systems. It aims to protect the indigenous knowledge of communities against misappropriation and illicit use. It establishes a *sui generis* approach to the protection of communities' indigenous knowledge. With the inception of the Indigenous Knowledge Bill, indigenous communities have the option to decide to protect and manage their indigenous knowledge systems through the modes provided for in the Bill. These include the provision for prior and informed consent, benefit sharing agreements and government enforcement that provides indigenous communities with a broad terrain of protective strategies. The Bill is currently in the public participation phase.<sup>6</sup>

## Khoisan hearings, land claims and heritage sites

During December 2015, the South African Human Rights Commission conducted an investigation into the human rights violations and discrimination of the Khoi and San communities during colonialism and apartheid. The ongoing hearings kicked off in the Western Cape Province where various indigenous leaders, heritage and cultural experts as well as government officials participated.

The Land Claims Commissioner testified at the hearings. He is dealing with the historical land claims and heritage sites concerns of the Khoi & San. The Khoi and San have so far not been able to claim their historical lands they lost in the 1700s due to colonialism. He reported the South African government is however making progress through the developing of a policy around the historical land claims and heritage sites of the Khoi & San communities.<sup>7</sup>

The Land Claims Commissioner further testified at the hearings that their focus is on heritage sites and lands which indigenous communities lost prior to 1913. One such heritage site of huge concern is the sacred burial site of the iconic Griqua/Khoisan leader Andrew Abraham Stockenström Le Fleur who died in 1941 in Robberg, Plettenberg Bay. This is where the Griqua peoples meet annually to honor his legacy in the fight for their freedom. The Land Claims Commission is currently in the process of purchasing the land where Robberg is situated

in Plettenberg Bay to return it to the Griqua community in Kranshoek: “To the Griquas, the tombstone which marks the burial place of their great leader and Prophet, Andrew Abraham Stockenstrom Le Fleur the First, is more than a mere grave or a monument to his memory. It is a living symbol of their past and their aspirations as a nation, which they refer to as their “*nasielike bloedsgevoelte*” (feeling of nationality) and their “*geestelike sielsgevoelte*” (religious dedication)”.<sup>8</sup> There is a huge expectation that the South African government will deliver on this promise. ○

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# PART II

INTERNATIONAL  
PROCESSES

## FOLLOW UP OF THE WCIP OUTCOME DOCUMENT BY INDIGENOUS PEOPLES IN 2015

In 2014, the United Nations (UN) General Assembly held a High Level Plenary Session called the World Conference on Indigenous Peoples (World Conference) and adopted by consensus an outcome document. In the three years leading up to the World Conference, Indigenous Peoples had worked collectively to ensure their most pressing priorities were included in the outcome document. However, following the adoption of the outcome document, states took a passive role in ensuring its implementation much to the consternation of Indigenous Peoples. By this time, Indigenous Peoples had disbanded the Global Coordinating Group (GCG) and the follow-up work was left to those who could support their own engagement. By the end of 2015, one international outcome was completed - the UN system-wide action plan - and two other international processes had frameworks in place: the review of the mandate of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) and the strengthening of the participation of indigenous institutions and organizations at the UN.

**T**his article reviews the content of the World Conference on Indigenous Peoples outcome document as well as the follow-up by Indigenous Peoples on the international commitments made in that document—in particular, the review of the mandate of the UN Expert Mechanism on the Rights of Indigenous Peoples and the strengthening of the participation of Indigenous Peoples' representatives and institutions at the United Nations.

### **The World Conference outcome document**

The World Conference outcome document is premised on two principles. The first principle is that regional and caucus outcome documents as well as the Alta out-

come document can be referenced to support the implementation of the outcome document (operative paragraph (OP) 2). The second principle is the reaffirmation of the rights of Indigenous Peoples and the principles of the UN Declaration on the Rights of Indigenous Peoples (the Declaration) (OP 4). Both principles reaffirm the existing normative framework established by the Declaration and provide guidance as to how the World Conference outcome document should be implemented.

The World Conference outcome document can be divided into five parts: legislative and policy; lands, territories and resources; the environment and livelihoods; social measures and international developments.

The first set of commitments on legislation and policy can be found at OPs 3, 6, 7, 8, 10 and 30. OP 3 reiterates article 19 of the Declaration which provides for the free, prior and informed consent of Indigenous Peoples before the adoption and implementation of legislative or administrative measures that may affect them. It could be argued that its inclusion in the outcome document adds nothing new, however given the ongoing challenges faced by Indigenous Peoples in relation to law and policy, it places priority on this right and can be used by Indigenous Peoples to address their lack of participation in such processes as well as challenge potential or existing discriminatory laws and policies. It is also important to note that using text from the Declaration in the World Conference outcome document was an important strategy as it referenced “agreed to language”.

OP 7 focuses on government’s promoting awareness of the Declaration amongst the general public and in particular, amongst politicians, the judiciary and the civil service.

OP 8 focuses on national action plans including their implementation. This is a particularly useful recommendation because it allows Indigenous Peoples to prioritize their national issues and work with their respective governments to draft such a plan and monitor its implementation.

The second set of commitments relates to land, territories and resources and can be found at OPs 20, 21, 23 and 24. OP 20, like OP 3 focusses on free, prior and informed consent but with a particular focus on projects affecting Indigenous Peoples’ lands, territories and other resources. OP 24 references businesses operating with transparency and in a socially and environmentally responsible manner. Coupling free, prior and informed consent with business activities prioritizes the importance of Indigenous Peoples active engagement in such activities that continue to be a major source of conflict for Indigenous Peoples.

The third set of commitments relates to the environment and indigenous livelihoods and can be found at OPs 22, 25 - 27 and 34 - 36. OP 25, which is a realization of article 20 of the Declaration, references the development of policies, programmes and resources to support Indigenous Peoples' occupations, traditional subsistence activities, economies, livelihoods, food security and nutrition. OP 36 links Indigenous Peoples' knowledge and environmental strategies with climate change mitigation and adaptation. Indigenous Peoples have for many years, advocated for the recognition of their environmental knowledge in international and national fora. This recommendation provides further support for such advocacy.

The fourth set of commitments relates to social measures. OP 9 specifically mentions indigenous persons with disabilities specifying that policies and programs must be developed with their input. OP's 15 - 19 reference the empowerment and capacity building of indigenous youth, the recognition of indigenous justice systems as well as the prevention and elimination of all forms of violence and discrimination against indigenous peoples and individuals, in particular women, children, youth, older persons and persons with disabilities. OP's 11 - 14 reference education, health and housing as well as the right of a child to its language and religion.

The last set of commitments relates to international developments and includes a review of the mandate of EMRIP (OP 28), the appointment of a focal point in the UN and the creation of a system-wide action plan (OPs 31 and 32) as well as a commitment to strengthen the participation of indigenous institutions and organizations at the UN (OP 33).

The World Conference outcome document is aligned with many of the priorities set out in the Alta outcome document. The majority of commitments are targeted at the national level meaning that their implementation requires Indigenous Peoples within their respective national contexts to advocate for their realization. Not all priority areas were included; the two major areas that were not addressed being demilitarization and self-determination. There was simply very little, if any, political support by states for the inclusion of demilitarization and the drafters (the co-advisors to the President of the General Assembly (PGA)) decided to exclude self-determination from the very outset so that states did not try to limit or redefine this right through the drafting process.

## **Follow-up to the World Conference outcome document**

Following the adoption of the World Conference outcome document, the international indigenous movement breathed a collective sigh of relief. It had been a monumental task to engage with states during the drafting process coupled with three years of indigenous preparations. The Global Coordinating Group (GCG) held their final meeting in November 2014 to finalize outstanding matters and reflect on the work that had been accomplished. With the World Conference completed, the mandate of the GCG came to an end with all members agreeing to carry out follow-up in accordance with their regional and thematic caucuses priorities.

Given some of the international commitments in the World Conference outcome document had timeframes attached to them, Indigenous Peoples were cognizant of the need to monitor their implementation. There was perhaps a misguided assumption that states would carry out the commitments they had made in the World Conference outcome document and start the necessary processes to make them a reality. In fact, that did not occur and Indigenous Peoples had to regroup and consider what strategies to employ to ensure the World Conference outcome document was implemented.

The exception to this was the appointment in October 2014 of a UN high level official to coordinate the system-wide action plan. Secretary-General Ban Ki-moon designated Wu Hongbo, Under-Secretary-General for Economic and Social Affairs, as the Senior Official of the United Nations system responsible for this task. The drafting of the system-wide action plan was undertaken by the UN Inter-Agency Support Group which is made up of UN officials from a variety of UN bodies and agencies that work on indigenous issues. Input from Indigenous Peoples was sought via an online questionnaire, there was an agenda item dedicated to the issue during the 14th session of the Permanent Forum on Indigenous Issues (Permanent Forum) and the 8th session of EMRIP as well as informal consultations during the Permanent Forum session. The system-wide action plan was finalized in October 2015 and UN chief executives were briefed in November 2015. The system-wide action plan identifies six areas for action: raising awareness of the Declaration, country level implementation of the Declaration, the 2030 Agenda for Sustainable Development, mapping to identify opportunities and gaps, capacity building and strengthening indigenous participation at the UN.

## Review of the mandate of EMRIP

In March 2015, Indigenous Peoples held a brainstorming meeting in Geneva to discuss ways to ensure the implementation of the review of EMRIP's mandate and to strengthen the participation of Indigenous Peoples' representatives and institutions at the UN. The meeting was organized by the Asian Indigenous Peoples Pact, International Indian Treaty Council, National Congress of Australia's First Peoples, and the Sámi Parliament of Norway and was attended by indigenous representatives from the seven geo-political regions including a number of those who had been part of the GCG. The brainstorming meeting adopted a number of recommendations as to how the review of the EMRIP mandate should be undertaken as well as what the strengthening of indigenous participation at the UN could look like.

The brainstorming meeting was followed by informal bilateral meetings with states in Geneva to promote the ideas from the meeting with the objective that a resolution be adopted by the Human Rights Council in June to initiate the review process of EMRIP.

It became clear that the gains made in New York were not automatically being taken up by state representatives in Geneva. The June session of the Human Rights Council did not adopt a resolution on the review of the EMRIP mandate. Instead, the traditional co-sponsors of the resolution on indigenous issues, Guatemala and Mexico, decided to establish a "Group of Friends" in Geneva. This was viewed as a positive development by Indigenous Peoples as the Group of Friends established in New York during the World Conference preparations had been a strategic player in the final outcome of the World Conference.

With no resolution being adopted in June, Indigenous Peoples focused their attention on the September session of the Human Rights Council. A number of indigenous representatives attended that session and worked alongside government representatives to draft a resolution to set out the process by which the EMRIP mandate would be reviewed. A resolution was finally adopted providing for the UN Office of the High Commissioner for Human Rights (OHCHR) to organize a two-day expert workshop to review the mandate and propose recommendations on how EMRIP could more effectively promote respect for the Declaration. The workshop would be open to states and Indigenous Peoples. Following the workshop, the OHCHR would prepare a report to be submitted to the 32nd

session of the HRC (June 2016). States will then determine what follow-up action is required and consider the matter at the 33rd session of the HRC (September 2016).

The expert workshop is a positive step towards ensuring the inclusion and active participation of Indigenous Peoples in the review of EMRIP's mandate. Experts will be drawn from both indigenous and state nominees and the timeframe will allow for a variety of views to be expressed and considered.

### **Strengthening Indigenous Peoples' participation**

Work on the strengthening of indigenous participation at the UN did not progress until the appointment of a new General Assembly President in September. After his election, the new PGA—Ambassador Mogens Lykketoft from Denmark—began to consider which process he would adopt to carry out this work. The PGA informally supported the previous precedent of appointing co-facilitators to assist him with this work, such co-facilitators to include both state and indigenous representatives.

In November 2015, the third committee of the General Assembly adopted a resolution directing the PGA to conduct consultations with states and Indigenous Peoples to enable the participation of Indigenous Peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them. The resolution directed the PGA to carry out consultations with states and Indigenous Peoples on the possible measures necessary to enable the participation of Indigenous Peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them.

This resolution provides the PGA with the opportunity to appoint co-facilitators of his own choosing. The process is however extended beyond 2016, with a final decision on the issue taking place during the 71st session of the General Assembly (September 2016 - September 2017). Despite this, the PGA consultations during the 70th session will establish a sound foundation for the process in 2016-17.

In response to this resolution, a number of indigenous organizations nominated James Anaya as the indigenous co-facilitator to the PGA. Further discussions were also held amongst Indigenous Peoples regarding a possible second indigenous nominee should the PGA decide to appoint two state and two indigenous co-advisers.

## Final reflections

Follow-up on the international commitments of the World Conference outcome document has been slow and at times frustrating. However, the work undertaken during the preparatory process of the World Conference as well as the World Conference outcome document have provided a sound foundation and clear direction as to how these commitments are to be realised. While states may wish to take a passive role in their implementation, Indigenous Peoples have vested far too much energy and effort in the outcomes to simply let them be sidelined. As such, follow-up in 2015 proceeded slowly but surely with the bulk of the substantive work now being set down for 2016. ○

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## 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT GOALS

In 2012, the Rio +20 UN Conference on Sustainable Development decided to establish an inclusive and transparent intergovernmental process that is open to all stakeholders with a view to developing global Sustainable Development Goals (SDGs) that address the challenges and shortcomings of the Millennium Development Goals (MDGs).<sup>1</sup> It is widely agreed that Indigenous Peoples were not granted enough attention in the MDGs. They were excluded from the process and are mentioned in neither the goals nor their indicators. Dealing with issues directly related to Indigenous Peoples, such as ending poverty, ensuring human rights and inclusion for all, ensuring good governance, preventing conflict, ensuring environmental sustainability and protection of biodiversity and climate change, the Post-2015 development framework and the SDGs will set the standards for global sustainable development for the next decade and will directly influence the lives of millions of Indigenous Peoples. The SDGs present a unique opportunity to remedy the historical injustices resulting from racism, discrimination and inequalities long suffered by Indigenous Peoples across the world. In the post-2015 development process, Indigenous Peoples are striving to have the SDG targets and indicators reflect Indigenous Peoples' rights and their relationship to their lands, territories and natural resources and to take their special vulnerabilities and strengths into consideration.

The Rio+ 20 Outcome Document mandated the creation of an intergovernmental Open Working Group (OWG)<sup>2</sup> to discuss and propose goals, targets and indicators for the SDGs. The OWG's working methods included the full involvement of relevant stakeholders and expertise from civil society, the scientific community and the UN system, in order to provide a diversity of perspectives and experience. Thus all nine UN Major Groups, among them the Indigenous Peoples' Major Group, and other stakeholders have been engaged in the OWG sessions in 2013, 2014 and 2015.

On 25 September 2015, Heads of State gathered at a High Level Plenary meeting of the UN General Assembly and adopted a new development framework: “Transforming Our World: the 2030 Agenda for Sustainable Development”. The new development framework is a universal agenda comprising 17 Sustainable Development Goals (SDGs) and 169 corresponding targets, as well as a political declaration, a chapter on means of implementation and a conclusion on follow-up and review. The new Agenda will guide global development efforts on poverty reduction, food security, environmental sustainability, etc., for the next 15 years, setting a precedent for future global sustainability, and will thus have a crucial influence on the lives of millions of Indigenous Peoples.

The 2030 development framework has only a few specific references to Indigenous Peoples. Nevertheless, this will not prevent application of the broader goals and targets to Indigenous Peoples’ specific contexts. In addition, some of the key human rights principles promoted and advocated by Indigenous Peoples in the last years are reflected in the 2030 Agenda and they have now become universal. This may open new opportunities for continuing advances in the promotion and recognition of the rights of Indigenous Peoples.

This article reports on the work and actions undertaken by a number of indigenous organizations working together in the Indigenous Peoples’ Major Group during the period when the Sustainable Development Goals were being formulated, developed and negotiated at the United Nations headquarters in New York.

The Indigenous Peoples’ Major Group (IPMG) is one of the nine Major Groups (youth, women, trade unions, local authorities, science and technology, business and industry, farmers and NGOs) represented at the United Nations with an official voice and the right to intervene during deliberations among member states. Tebtebba Foundation and the International Indian Treaty Council have served as Global Organizing Partners (OPs) for the Indigenous Peoples’ Major Group since the beginning of the process, and both actively participated in the SDG stocktaking and negotiation processes which began in February 2013 and concluded with the Summit in September 2015. The Indigenous Peoples’ Major Group worked closely with other Major Groups and stakeholders and actively engaged with State Parties, especially with Permanent Missions in New York to seek support for Indigenous Peoples’ proposals and major issues.

Main IPMG activities have included: facilitating the participation of key indigenous leaders from the regions as speakers, panelists, and advocates to governments and other Major Groups; active participation and engagement with other

Major Groups and State Parties; plus research, development and delivery of statements and position papers. As a result of IPMG's active engagement, the Agenda 2030 outcome document includes **six** specific references to Indigenous Peoples in its final text, two of them are included in the Goals themselves: in Goal 2 on "agricultural productivity and the income of small-scale food producers" where Indigenous Peoples are mentioned between commas along with women, family farmers, pastoralists and fishers; and in Goal 4 on education, which reads "to ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, Indigenous Peoples, and children in vulnerable situations."

The final two weeks of intergovernmental negotiations from 20- 24 and 27-31 July 2015 were the most important and the culmination of two-and-a-half years of efforts. The IPMG invited Joan Carling of AIPP to New York where, in her capacity as member of the UNPFII, she attended several events organized by civil society networks and secured one-on-one meetings with member states' representatives. During the two weeks, the IPMG met with negotiators from Costa Rica, Bolivia, Ecuador, Brazil, Denmark, Finland, Philippines, Indonesia, Mexico, Norway, India and others.

The IPMG's main request to the member states was to include internationally agreed language pertinent to Indigenous Peoples, as contained in the Rio +20 outcome document "The Future We Want", which recognizes: "the importance of participation of Indigenous Peoples in the achievement of sustainable development",<sup>3</sup> in the UN Declaration on the Rights of Indigenous Peoples, which states: "Indigenous Peoples have the right to determine and develop priorities and strategies for exercising their right to development",<sup>4</sup> and in the WCIP Outcome Document, which is committed to "giv[ing] due consideration to all the rights of Indigenous Peoples in the elaboration of the Post-2015 development agenda".<sup>5</sup>

In particular, the IPMG called for the inclusion of the following sentence in paragraph 8 (9 in subsequent versions) of the draft document: "*A world in which Indigenous Peoples have the right to determine and develop priorities and strategies for the exercise of their right to development based on their security to their lands, territories and resources*". Unfortunately, the recommended language was not included in the final draft despite the very strong support from "friendly states" and the use of the exact text in their statements.

Additionally, the IPMG called for the inclusion of references to Indigenous Peoples throughout the text of the draft as well as the streamlining of the text in

regard to “ethnicity” and “cultural diversity”, as reflected in paragraphs 8, 24, 36 and 74 of the final draft. The sustained effort of the IPMG paid off in the final hours of the negotiations and specific references to Indigenous Peoples were included in paragraphs 23, 25, 51 and 79.

On 25 September 2015 the 193 Members of the United Nations General Assembly formally adopted a new framework, “Transforming Our World: the 2030 Agenda for Sustainable Development”. The Agenda is composed of 17 goals and 169 targets to wipe out poverty, fight inequality and tackle climate change over the next 15 years.<sup>6</sup>

The following are the direct references to Indigenous Peoples in the document adopted by the UN General Assembly.

In the section entitled “*The new Agenda*”

23. “People who are vulnerable must be empowered. Those whose needs are reflected in the Agenda include all children, youth, persons with disabilities (of whom more than 80% live in poverty), people living with HIV/AIDS, older persons, **Indigenous Peoples**, refugees and internally displaced persons and migrants ...”

25. “We commit to providing inclusive and equitable quality education at all levels ... All people, irrespective of sex, age, race, ethnicity, and persons with disabilities, migrants, **Indigenous Peoples**, children and youth, especially those in vulnerable situations, should have access to life-long learning opportunities that help them acquire the knowledge and skills needed to exploit opportunities and to participate fully in society...”

In the section entitled “*A call for action to change our world*”

52. “We the Peoples’ are the celebrated opening words of the UN Charter. It is ‘We the Peoples’ who are embarking today on the road to

2030. Our journey will involve Governments as well as Parliaments, the UN system and other international institutions, local authorities, **Indigenous Peoples**, civil society, business and the private sector, the scientific and academic community – and all people. ...”

In the chapter on *Follow-up and review, section entitled “National Level”*

79. We also encourage member states to conduct regular and inclusive reviews of progress at the national and sub-national levels which are country-led and country-driven. Such reviews should draw on contributions from **Indigenous Peoples**, civil society, the private sector and other stakeholders, in line with national circumstances, policies and priorities. National parliaments as well as other institutions can also support these processes.

Additionally, Indigenous Peoples are mentioned in:

## **Goal 2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture**

2.3 By 2030, double the agricultural productivity and incomes of small-scale food producers, in particular women, **Indigenous Peoples**, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment.

## **Goal 4. Ensure inclusive and equitable quality education and promote life-long learning opportunities for all**

4.5 By 2030, eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, **Indigenous Peoples** and children in vulnerable situations.

Many indigenous leaders around the world see the SDGs as a major improvement to the MDGs and an opportunity to improve the situation of Indigenous Peoples worldwide. There has been a consensus among the organizations participating in the Indigenous Peoples' Major Group that the Agenda's references to human rights, human dignity, the rule of law, justice, equality and non-discrimination, respect for ethnicity and cultural diversity, access to justice, and participatory decision-making are very positive. Among the provisions that were highlighted as potentially useful for Indigenous Peoples are paragraph 4 (a pledge that no one will be left behind; goals and targets to be met for all peoples and all segments of society; endeavor to reach the furthest behind first), paragraph 23 (Indigenous Peoples mentioned among those who are vulnerable and must be empowered), paragraph 35 (need to build peaceful, just and inclusive societies based on respect for human rights; reference to the right of self-determination); and paragraph 79 (progress reviews on the implementation of the Agenda to draw on contributions from Indigenous Peoples). Also highlighted as important for ensuring that Indigenous Peoples are included in the implementation of the Agenda were Goal 10 (on reducing inequalities within countries) and Goal 16 (on promoting peaceful and inclusive societies).

However, there are major disappointments as well. The IPMG had consistently proposed the inclusion of some of the most important issues for Indigenous Peoples such as the right to self-determined development, the right to lands, territories and resources, the recognition of traditional knowledge of Indigenous Peoples, sustainable use and management of biodiversity resources, respect for the Free, Prior and Informed Consent (FPIC) of Indigenous Peoples, etc. Despite Indigenous Peoples' active engagement throughout the process, most of the concerns were not specifically reflected in the document adopted by the UN General Assembly. Indigenous peoples' vision of development was not included and Indigenous Peoples' collective rights were not given sufficient recognition to be consistent with the commitment in the WCIP Outcome Document to give "due consideration to all the rights of Indigenous Peoples in the elaboration of the post-2015 development agenda" (para. 37),<sup>8</sup> as well as the provisions of the UNDRIP affirming Indigenous Peoples' right to self-determined development (Arts. 3, 23, 32).<sup>9</sup>

The SDGs do not affirm the collective rights of Indigenous Peoples to their lands, territories and resources, and there are no specific targets relat-

ing to Indigenous Peoples' security of lands, territories and resources. Other flaws include a lack of commitments by the private sector, potential conflicts between the economic growth goals of the Agenda and its environmental and social goals, insufficient attention to access to information and public participation in decision-making, and a poor definition of extreme poverty in Target 1.1. ("people living on less than US\$1.25 a day"), which does not reflect the situation of Indigenous Peoples and could be detrimental to traditional economies based on the natural environment and self-subsistence.

Following the adoption of the Agenda 2030 at the UN Summit, the UN system has worked to finalize a list of global indicators, which are being negotiated under the guidance of the UN Statistical Commission until April 2016 (possibly to be extended to May 2016). An Inter-Agency Expert Group on SDG Indicators (IAEG-SDGs) has been established under the UN Department of Economic and Social Affairs (UN DESA) to develop a proposed set of indicators. The next meeting of the IAEG-SDGs will take place from 10 March to 1 April in Mexico City. It will be attended by a designated lobbying group of indigenous experts. The IPMG has already noted that the indicators being currently drafted do not reflect the priorities of Indigenous Peoples, and that Indigenous Peoples urgently need to reinforce their advocacy related to the indicators. Advocacy efforts should focus on specific indicators to address collective land rights and data disaggregation, in order to ensure that goals and targets are relevant for Indigenous Peoples.

### **Roundtable Conference to take stock of and strategize on Indigenous Peoples' involvement in the implementation of the 2030 Development Agenda.**

On 8 and 9 October 2015, only two weeks after the UN's adoption of the 2030 Development Agenda, IWGIA and the Norwegian Forum for Development Cooperation organized a roundtable conference in Copenhagen to take stock of and strategize on their involvement in the implementation of the 2030 Development Agenda.

This roundtable conference provided a platform for sharing knowledge and assessing opportunities as well as challenges faced by Indige-

nous Peoples in the context of the future implementation of the new Post-2015 Development Agenda. It was attended by Indigenous Peoples' representatives from all regions, representatives from UN mechanisms dealing with Indigenous Peoples' rights, officials from UN agencies and representatives from the Danish Ministry of Foreign Affairs.

The roundtable conference resulted in a summary report containing the lessons learned from Indigenous Peoples' engagement in the Post-2015 process, an assessment of the outcome document of the United Nations summit for the adoption of the Post-2015 Development Agenda: "Transforming our World: the 2030 Agenda for Sustainable Development", and the way forward including recommendations on how to advance the respect and protection of Indigenous Peoples' rights in the implementation of the new 2030 Development Agenda.<sup>10</sup> ○

## Notes and references

- 1 <http://www.uncsd2012.org/content/documents/727The%20Future%20We%20Want%2019%20June%201230pm.pdf>
- 2 <http://sustainabledevelopment.un.org/owg.html>  
[http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E)
- 3 "The Future We Want", paragraph 49.
- 4 UN Declaration on the Rights of Indigenous Peoples, paragraph 32.
- 5 World Conference on Indigenous Peoples Outcome Document, paragraph 37.
- 6 "Transforming Our World: the 2030 Agenda for Sustainable Development": <https://sustainabledevelopment.un.org/post2015/transformingourworld>
- 8 WCIP Outcome Document.
- 9 UNDRIP.
- 10 The summary report and other relevant documents presented during the conference can be downloaded from IWGIA's webpage: [http://www.iwgia.org/images/stories/sections/envir-and-devel/sust-development/docs/roundtable/postconference/Summary\\_RoundtableConference-nelPsSDGs.pdf](http://www.iwgia.org/images/stories/sections/envir-and-devel/sust-development/docs/roundtable/postconference/Summary_RoundtableConference-nelPsSDGs.pdf)

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## COP21 AND THE PARIS AGREEMENT

The United Nations Framework Convention on Climate Change (UNFCCC) is an international treaty created at the Earth Summit in Rio in 1992 to tackle the growing problem of global warming and the related harmful effects of a changing climate, such as more frequent droughts, storms and hurricanes, melting of ice, rising sea levels, flooding, forest fires, etc. The UNFCCC entered into force on 21 March 1994, and has near universal membership, with 195 countries as ratifying parties. In 1997, the Convention established its Kyoto Protocol, ratified by 184 parties, by which a number of industrialized countries have committed to reducing their greenhouse gas emissions in line with legally-binding targets.

The Convention has two permanent subsidiary bodies, namely the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI).

Indigenous peoples are organized in the International Indigenous Peoples Forum on Climate Change (IIPFCC), which serves as a mechanism to develop the united positions/statements of indigenous peoples and continue effective lobbying and advocacy work in the UNFCCC meetings/sessions. In 2012, the IIPFCC established the Global Steering Committee (GSC) with 2 representatives of each of the 7 indigenous regions and 3 co-chairs. The GSC has a mandate to facilitate better coordination of the indigenous peoples' major group between official meetings.

Indigenous rights and issues cut across almost all areas of negotiation but have been highlighted most significantly within the REDD+ (Reducing Emissions from Deforestation and Forest Degradation, Conservation, Enhancement of Carbon Stocks and Sustainable Management of Forests), one of the mitigation measures negotiated under the AWG-LCA and SBSTA.

The 2015 negotiations under the UNFCCC were marked by the deadline for a new climate agreement, to be adopted by Parties in Paris at COP21 by end of the year. Three intersessional meetings were held in Bonn, Germany, in 2015 to enable the Parties to prepare for the adoption of the Paris agreements. 2015 was hence characterized by intensive negotiations, many challenges and by a strong effort to reach a global agreement on how to tackle the threat of climate change and to commit countries to reducing their emissions. Indigenous peoples were represented at all meetings and had an unusually strong presence. This was possible due to an initiative, funded by Norway, to support indigenous peoples' preparation for and participation in COP21. The *IP Initiative towards COP21* was facilitated by UNDP and included activities at the regional and global levels.

### **Towards a legally-binding agreement – the INDCs**

One of the major elements of the discussions among parties in 2015 was the elaboration of Intended Nationally Determined Contributions (INDCs). Through their INDCs, nations submitted their individual plans / pledges for reducing emissions. These individual plans should then add up to a common global goal of reducing emissions. While developed countries only wanted to focus on mitigation in the INDCs, developing countries insisted on a more comprehensive approach, which should also include the elements of adaptation, technology transfer, capacity building and finance. The Paris Agreement agreed that INDCs would become the Nationally Determined Contribution (NDC) once a country ratifies the agreement. Countries can also submit their NDC or revise their INDC and submit it anew when they ratify the agreement.

Indigenous peoples clearly state in their position paper that they need to fully participate in the elaboration of the INDCs and that there need to be indicators that

*reflect the commitment to recognize and integrate collective rights to territory, autonomy, self-representation, exercise of customary law, non-discrimination and customary Land Use principles. INDCs should also include commitments to respect Indigenous Peoples' rights as well as modalities for reporting on national progress to ensure land titling, concrete measures to control mega drivers, the allocation of public funding to the management of indigenous territories.<sup>1</sup>*

Unfortunately, very few of the INDCs include any reference to indigenous peoples and their rights and contributions. Mexico, for example, included a reference to indigenous peoples under its capacity-building component. Guyana eventually included reference to indigenous peoples and their contribution to sustainable forest use after extensive efforts by the national indigenous organizations. None of the INDCs of Northern states include a reference to indigenous peoples. However, the Paris COP did agree to review the INDC components and so indigenous peoples will have an opportunity to contribute to the NDCs and be recognized as key rights holders and as actors in mitigation and adaptation.

## **Indigenous peoples' preparation for COP21**

Indigenous peoples were well prepared for COP21 due to a number of activities both at national and international level which enabled them to consolidate their positions and strategies.

At the regional level, indigenous peoples met in capacity-building workshops and regional coordination meetings, and also held dialogue meetings with governments. Regional meetings provided for consolidated positions and statements that were brought to the global level by their representatives.

The Global Steering Committee (GSC) was able to meet four times before the official meetings of the UNFCCC to prepare and consolidate the outcomes of the regional processes and, as a result, issue a joint position. Furthermore, two official dialogue meetings with states were co-hosted by the IIPFCC and the governments of Peru and France, which allowed for a discussion on the positions of indigenous peoples. The GSC also prepared for and facilitated indigenous peoples' participation in COP21. It was furthermore able to agree on a joint logo and a website and to prepare the IP Pavilion at COP21.<sup>2</sup>

Through their preparatory processes, indigenous peoples came up with four key demands to the State Parties:

- Respect for human rights, including the rights of indigenous peoples in climate change policies and actions
- Recognize indigenous peoples' traditional knowledge and positive contributions to climate adaptation, mitigation and respect indigenous peoples' traditional livelihoods

- Ensure full and effective participation of indigenous peoples, including women and youth, in climate change-related processes and programs at local, national, regional and international levels
- Ensure direct access to climate finance for indigenous peoples from developed and developing countries.<sup>3</sup>

These four key demands were also adopted by the indigenous peoples' Caucus that met the day before the COP21 started. Around 200 indigenous representatives from all parts of the world gathered at the Grand Auditorium of the National Museum of Natural History in Paris to discuss and define common positions and strategies for COP21. The fact that 200 indigenous representatives from all over the world were able to agree on four key issues significant for them all makes these demands important and unique. This should have gained the full respect and attention of the world community.

## **COP21 and the Paris Agreement**

During COP21, indigenous peoples were present both inside the blue zone, which was the zone where the negotiations were taking place, and the green zone, or the civil society space. In the green zone, the Indigenous Peoples' Pavilion was a space where one could learn about climate change and how it affects indigenous peoples, as well as indigenous peoples' initiatives to address the challenges and how they contribute to adaptation and mitigation measures. The Pavilion was well visited and thus became an interactive space for dialogue, learning and exchange between indigenous peoples and different stakeholders. It was also a celebration of indigenous cultures, art, knowledge and wisdom.

In the blue zone, indigenous peoples worked hard to advocate for the inclusion of their key demands in the Paris Agreement and COP decisions. Although the four key demands already stated were crucial, there was one particular issue that indigenous peoples fought very hard for—that of human rights.

## **Human rights in the Paris Agreement**

The main demand of indigenous peoples to the Parties in Paris was to adopt a language that would include “respect, promote and fulfil human rights, including the

rights of indigenous peoples...” in the operational part of the Paris Agreement. This would have made it mandatory for Parties and institutions to fully respect indigenous peoples’ rights in any new climate regime and in any mitigation and adaptation actions being implemented on the ground. After two weeks of battle, the language on human rights and indigenous peoples’ rights was only included in the preamble to the agreement.

There is thus an intention to consider human rights aspects but no direct obligation on states in the Paris Agreement to fully respect the human rights of indigenous peoples as part of the new global regime. Of course, states are called on to respect the rights of indigenous peoples under other international agreements, not least through the UN Declaration on the Rights of Indigenous Peoples. However, the link to climate change mitigation and adaptation actions would have secured additional instruments to prevent human rights violations in climate change programs and projects, which indigenous peoples are already suffering. These include, for example, violations of indigenous peoples’ rights to lands, territories and natural resources affected by protected areas and through large-scale plantations for carbon sequestration, as well as renewable energy projects (hydroelectric dams, geothermal plants, etc.). Furthermore, it would have been a positive incentive for indigenous peoples’ direct contributions to such actions. In our view, this is a missed opportunity for the Parties to prevent possible human rights violations and show solidarity and partnership with the peoples and communities who have efficiently preserved key ecosystems and who have contributed the least to climate change but are at the same time those who have been most affected by its consequences.

### **Other relevant elements of the Paris Agreement and the COP21 decisions**

Having agreed on a more ambitious target by declaring a 1.5 degree temperature rise as the optimum goal, the Paris Agreement has made some progress, at least on paper. The reality is that, according to the INDCs presented prior to Paris, such a goal will be hard to achieve. Indigenous peoples have repeatedly called for the goal of temperature increase to be kept to below 1.5 degrees, given the life-threatening consequences for indigenous peoples in dry areas of Africa and the enormous impacts on the ecosystems in the most affected regions in the Arctic and the Pacific.

The Paris Agreement's section on adaptation recognizes the importance of indigenous peoples' knowledge, as well as local knowledge systems, for adaptation actions. The importance of indigenous peoples' livelihoods and knowledge systems had already been recognized by the Intergovernmental Panel on Climate Change (IPCC) report AR5 in 2014 and hence its recognition in the Paris Agreement was a logical consequence. In a situation where indigenous peoples' lands and livelihoods are threatened by increasing temperatures, as well as by mitigation actions that can lead to displacement, this reference is important.

Section V on "Non-Party Stakeholders" of the Conference of the Parties' (COP) Decision 1/CP.21 regarding the adoption of the Paris Agreement, also recognizes the need to strengthen the practices and efforts of local communities and indigenous peoples in relation to addressing and responding to climate change and to share the experiences with a variety of stakeholders.<sup>4</sup> Indigenous peoples proposed the establishment of an indigenous peoples' experts and knowledge holders advisory body, elected by indigenous peoples' themselves and advisory to the subsidiary bodies under the UNFCCC (SBI and SBSTA). This suggestion may still be considered by Parties when elaborating the implementation of the Paris Agreement. Furthermore, the Paris Agreement recognizes the role of forests in mitigating climate change and also the importance of ecosystems and multiple uses of forests. It should be noted here that a risk exists in terms of pursuing "false solutions" based on large-scale biomass plantations. It should also be noted that the COP gave a strong mandate to the Green Climate Fund as one of the two financing windows of the Convention to accelerate funding for REDD+ results-based payments. In the absence of a strong indigenous peoples' policy and safeguards at the GCF, such a move may pose additional threats to indigenous peoples' rights and needs to be closely scrutinized.

## Conclusion

There are many interpretations of the outcome of the Paris Agreement and how it can be implemented. The coming sessions of the UNFCCC will discuss ways of putting the Paris Agreement into practice, to come into effect in 2020. The next years will show whether the reference to indigenous peoples' rights in the preamble is only lip service or is meant to concretely acknowledge the link between indigenous peoples' rights and climate change in accordance with what has been

agreed in the UN Human Rights Council. This will indeed be an uphill battle for indigenous peoples and support organization, since states are still far from fully acknowledging the intrinsic connection between indigenous peoples and climate change, as regards both their potential impacts and their positive contributions. Indigenous peoples made an enormous effort throughout 2015 to bring their voices to Paris. They were able to reach a common position and show tremendous solidarity in their lobbying work and their coordination. This is a major achievement and cannot be ignored. Indigenous peoples' voices are loud and clear – and their positions and concerns well documented. It is time for the world to start listening if real solutions to climate change are to be found. ○

## Notes and references

- 1 International Indigenous Peoples' Dialogue with States on the UNFCCC Negotiations. October 2015. Key Demands; [http://www.iwgia.org/images/stories/int-processes-eng/UNFCCC/Final\\_political\\_position\\_paperOct2015.pdf](http://www.iwgia.org/images/stories/int-processes-eng/UNFCCC/Final_political_position_paperOct2015.pdf)
- 2 <http://www.iipfcc.org/>
- 3 The demands in a more detailed version can be found at: <http://www.iwgia.org/environment-and-development/climate-change>
- 4 See section V on Non-Party Stakeholders (p. 19) <http://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf>, page 19.

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## THE WORK OF THE TREATY BODIES IN 2015

The treaty bodies are the Committees of independent experts in charge of monitoring the implementation by States parties of the rights protected in international human rights treaties such as the Convention on the Elimination of All Forms of Racial Discrimination, the Covenant on Civil and Political Rights or the Covenant on Economic, Social and Cultural Rights.<sup>1</sup> In 2014, the outcome document of the World Conference Indigenous Peoples called upon the treaty bodies to consider the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in accordance with their respective mandates.<sup>2</sup> The main functions of the treaty bodies are to examine State parties' periodic reports, adopt concluding observations and examine individual complaints.<sup>3</sup> Concluding observations contain a review of both positive and negative aspects of a State's implementation of the treaty and recommendations for improvement. Treaty bodies also adopt general comments which are interpretations of the provisions of the treaties. So far, the Committee on the Elimination of Racial Discrimination (CERD) and the Committee on the Rights of the Child (CRC) have adopted general comments specifically addressing indigenous rights..

**T**his article contains a summary of the developments which took place in 2015, in relation to the recognition and protection of indigenous rights in the concluding observations and general comments adopted by the Treaty Bodies.

### **The Treaty Bodies and indigenous peoples' rights**

Over the years, the treaty bodies have contributed to the progressive development of a comprehensive body of jurisprudence on indigenous rights. During 2015, indigenous peoples' rights and concerns continued to gain prominence in particular in the concluding observations adopted by CERD, the Committee on

Economic, Social and Cultural Rights (CESCR) and CRC. On their part, the Human Rights Committee (CCPR) and the Committee on the Elimination of Discrimination against Women (CEDAW) continued to make limited reference to indigenous peoples' rights and concerns. Most treaty bodies continued to address indigenous peoples' rights under specific sections. However, CERD and CESCR continued to refer or use the provisions of UNDRIP and ILO Convention No. 169,<sup>4</sup> in particular in relation to the rights of indigenous peoples to consultation, participation, free and prior informed consent, lands, territories and natural resources, self-identification or access to justice.

### **Committee on the Elimination of Racial Discrimination (CERD)**

Drawing on its general recommendation XXIII on the rights of indigenous peoples, CERD continued to make extensive reference to indigenous related rights and issues. The Committee expressed concerns about the multiple violations and forms of discrimination faced by indigenous peoples in relation to self-identification and recognition (Denmark,<sup>5</sup> France<sup>6</sup>), protection of lands, territories and collective rights (Costa Rica,<sup>7</sup> France, Guatemala,<sup>8</sup> Suriname<sup>9</sup>), free and prior informed consent and consultation (Costa Rica, France, Guatemala, Norway,<sup>10</sup> Suriname), participation, representation as well as access to education and justice.

The Committee continued to call upon state parties notably Costa Rica to guarantee indigenous peoples' right to land tenure, Norway to give full effect of the legal recognition of the Sámi rights to their lands and resources as well as France and Suriname to recognize and legally acknowledge the collective rights of indigenous peoples to their lands. It further recommended the creation of a legal framework recognizing the right of indigenous peoples to lands and territories in Guatemala.

CERD called upon Suriname to obtain the free and prior informed consent of indigenous peoples prior to the approval of any project affecting their lands, Mongolia<sup>11</sup> and France to ensure consultation prior to decisions and approval of projects and Niger<sup>12</sup> to engage in a consultation with a view to securing the consent of communities. The Committee further recommended Norway to review all mechanisms that allow for extractive activities to guarantee consultation and respect of the right to free, prior and informed consent, Costa Rica to establish mechanisms for upholding indigenous peoples' right to free, prior and informed

consultation and Guatemala to adopt a national legal framework to govern the right to consultation.

For the first time, CERD referred a State Party to the Akwé: Kon voluntary guidelines<sup>13</sup> and recommended Suriname to conduct adequate cultural, environmental and social impact assessment prior to the granting of concessions. The Committee also called upon Niger to declare a moratorium on projects for which independent studies on the human rights impact have not yet been commissioned or completed.

Drawing on the Guiding Principles on Business and Human Rights,<sup>14</sup> CERD recommended Norway to take legislative measures to prevent companies registered in the State Party from carrying out activities that negatively affect the enjoyment of human rights of indigenous peoples outside Norway, and hold such companies accountable.

In relation to access to education, CERD recommended extending the scope of bilingual education in Costa Rica and Guatemala, promote and preserve the Sámi languages in Norway, introduce the study of native languages in Suriname, strengthen mobile schools in Niger and ensure that Kanak children have access to education in their local languages in New Caledonia.

A number of recommendations were also adopted regarding access to justice, participation and representation. Suriname was urged to recognize the collective legal personality of indigenous peoples. Costa Rica was invited to respect the methods traditionally used by indigenous peoples to punish offences committed by their members and Guatemala to develop a legal framework for coordinating indigenous jurisdiction with the ordinary system of justice. Guatemala and Suriname were requested to take special measures to increase the number of indigenous representatives within political bodies. The Committee recommended that the future Surinamese law on traditional authorities reflects indigenous peoples' right to determine the structures and to select the membership of their institutions. Costa Rica was requested to ensure that indigenous peoples' authorities and representative institutions be recognized in a manner consistent with their right to self-determination in matters relating to their internal and local affairs.

During its highly mediated review of the Holy See,<sup>15</sup> CERD welcomed the apology made by Pope Francis for the actions of the Catholic Church in the context of colonialism against indigenous peoples in the Americas and noted the concerns expressed by indigenous peoples regarding the current legacy and effects of the Doctrine of Discovery endorsed in the *Inter Caetera* from 1493 and its related papal

bulls. CERD further recommended to the Holy See to engage in meaningful dialogue with indigenous peoples with the aim of effectively addressing their concerns.

Under its Urgent Action Early Warning procedure,<sup>16</sup> CERD considered the situations of the Aru indigenous peoples (Indonesia<sup>17</sup>) in relation to the granting of a permit for sugar cane plantations and of the indigenous Shor people (Russian Federation<sup>18</sup>) in relation to the destruction of the village of Kazas and possible destruction of the village of Chuvashka by mining activities.

## **Human Rights Committee (CCPR)**

CCPR continued to express concerns about violence faced by indigenous peoples (Canada,<sup>19</sup> Russian Federation,<sup>20</sup> Venezuela<sup>21</sup>) and the lack of sufficient consultation with respect to issues affecting indigenous peoples' lands and collective rights (Canada, Cambodia,<sup>22</sup> Suriname,<sup>23</sup> Russian Federation).

The Committee called upon Venezuela to provide protection for indigenous peoples against all acts of violence and to punish perpetrators and Canada to ensure the investigation of allegations of ill-treatment and excessive use of force by the police in the context of indigenous land-related protests. Canada was also urged to conduct an inquiry on the issue of murdered and missing indigenous women and girls and fully implement the recommendations of the Truth and Reconciliation Commission with regard to the Indian Residential Schools. The Committee further recommended to the Russian Federation to respect and ensure that the rights of Crimean Tatars in the Autonomous Republic of Crimea are not subject to discrimination and harassment.

CCPR made a limited number of recommendations regarding rights to lands, consultation and free prior and informed consent. The Committee notably called upon Canada to establish indigenous peoples' titles over their lands with respect to their treaty rights, Venezuela to complete the demarcation of indigenous lands and the Russian Federation to ensure legal protection for indigenous peoples' rights to their lands. The Committee also recommended Cambodia and Suriname to ensure meaningful consultation with indigenous peoples in decision-making processes as well as Canada, Venezuela and the Russian Federation to ensure that consultations are held with indigenous peoples to seek or with the view of obtaining their free, prior and informed consent in relation to projects and legislation having an impact on their rights.

## **Committee on Economic, Social and Cultural Rights (CESCR)**

CESCR continued to express concerns about violations related to self-identification (Thailand,<sup>24</sup> Uganda<sup>25</sup>), rights to lands and territories, consultation, free and prior informed consent (Chile,<sup>26</sup> Venezuela,<sup>27</sup> Paraguay,<sup>28</sup> Mongolia,<sup>29</sup> Uganda, Guyana<sup>30</sup>), adequate housing (Burundi,<sup>31</sup> Thailand, Morocco<sup>32</sup>) and adequate standards of living (Chile, Burundi, Uganda, Morocco, Guyana and Paraguay).

CESCR called upon Thailand to give legal and political recognition to indigenous peoples based on self-identification and Uganda to include the recognition of indigenous peoples in its Constitution in line with UNDRIP.

The Committee called upon Uganda and Guyana to recognize indigenous peoples' rights to their ancestral lands, territories and natural resources, Thailand to guarantee indigenous peoples' right to own, use, control and develop their lands and Burundi to launch a reform of the land tenure system aimed at eliminating discriminatory practices against the Batwa. It also recommended Chile and Paraguay to guarantee the right of indigenous peoples to dispose of their lands, territories and natural resources. The Committee recommended adopting measures to complete the demarcation and titling of indigenous lands in Venezuela and establishing a legal mechanism allowing for land claims in Paraguay.

In line with its general comment N° 21 on the right of everyone to take part in cultural life,<sup>33</sup> the Committee recommended Uganda, Guyana, Chile, Venezuela and Paraguay to ensure that free, prior and informed consent is obtained from indigenous peoples in relation to decisions that may affect the exercise of their rights and Thailand to establish participatory mechanisms to ensure that no decision is made without consulting the communities concerned, with a view to seeking their free, prior and informed consent. Mongolia was requested to ensure that effective and meaningful consultation is being carried out with herders prior to granting mining licences. In line with its general comment No. 7 on forced evictions,<sup>34</sup> the Committee also called upon Paraguay to take measures to prevent the forced displacement of indigenous peoples from their lands.

CESCR continued its practise to adopt recommendations related to the obligations of States Parties with regard to transnational corporations. It notably recommended Chile to draw up clear regulations to assess the potential social and environmental impact of projects intended to exploit natural resources within indigenous territories, ensure that licensing agreements provide for compensation

and that companies are legally accountable with regard to violations perpetrated abroad. It further called upon Mongolia to carry out human rights and environmental impact assessment processes before granting licences, guarantee compensation as well as access to grievance mechanisms.

CESCR also made a number of recommendations addressing adequate standards of living and notably invited Chile, Paraguay, Guyana and Morocco to intensify their efforts to combat poverty. The Committee called upon Burundi to eliminate the forced labour of Batwa and Paraguay to eradicate forced labour of indigenous workers in farms and ranches in the Chaco.

### **Committee on the Elimination of Discrimination against Women (CEDAW)**

CEDAW generally made limited reference to indigenous women. The Committee continued to acknowledge intersectional discrimination faced by indigenous women with regard to access to traditional lands (Russian Federation,<sup>35</sup> Gabon<sup>36</sup>), right to consultation and free and prior informed consent (Bolivia,<sup>37</sup> Ecuador<sup>38</sup>), representation and participation (Russian Federation, Ecuador) and access to basic services.

CEDAW called upon the Russian Federation and Gabon to guarantee that indigenous women enjoy unobstructed access to their lands and resources as well as Bolivia and Ecuador to seek the free, prior and informed consent of indigenous women in decision-making processes related to large-scale projects and to ensure compensation.

The Committee further recommended adopting measures to ensure that indigenous women are represented in decision-making bodies and processes in the Russian Federation and to increase the participation of indigenous women in public life in Ecuador. In relation to access to education, the Committee called upon Ecuador to ensure adequate opportunities for indigenous women and girls to receive instruction in their own languages and Gabon to ensure that indigenous women, have non-discriminatory access to education. Gabon was also requested to put an end to sexual violence against indigenous women and to the practice of enslaving indigenous people.

A number of other recommendations relevant to indigenous women were also made in relation to minority and rural women in Vietnam,<sup>39</sup> Namibia,<sup>40</sup> Saint Vincent and the Grenadines.

## Committee on the Rights of the Child (CRC)

Drawing on its general comment No. 11 on indigenous children,<sup>41</sup> CRC continued to make extensive references to indigenous children. CRC notably expressed concerns about violence faced by indigenous children (Bangladesh,<sup>42</sup> Chile,<sup>43</sup> Colombia,<sup>44</sup> Mexico,<sup>45</sup> Brazil<sup>46</sup>), poverty (Chile, Brazil, Honduras,<sup>47</sup> Mexico) and discrimination with regards to access to basic services (Bangladesh, Chile, Colombia, Mexico). The Committee also underlined the negative impact of environmental contamination on the health of indigenous children in Mexico, Guatemala, and Brazil and notably the water-related disease outbreaks caused by the construction of the Belo Monte dam in Brazil.

Bangladesh, Colombia and Mexico were urged to take immediate measures to protect indigenous children and their families from violence while Brazil was invited to provide special units of protection personnel especially trained in order to prevent killings and raids by local ranchers or illegal loggers. Chile was also urged to take immediate steps to stop all violence by the police against indigenous children and their families.

CRC recommended reducing the poverty of indigenous children in Brazil, Honduras and Chile and taking affirmative measures to ensure that indigenous children, enjoy their rights in practice, in particular in the area of health and education in Chile, Mexico, Colombia and Bangladesh.

CRC further recommended Brazil and Mexico to assess the impact of air, water and soil pollution on children's health and use it as a basis for develop a strategy to remedy the situation. The Committee expressed concerns about the activities of some Dutch businesses abroad—in particular about companies involved in palm oil and soy production, oil extraction in Nigeria, and Barro Blanco Dam construction in Panama—violating the rights of indigenous children. Drawing on its general comment N° 16 on the impact of the business sector on children's rights,<sup>48</sup> CRC experts recommended the Netherlands to ensure effective implementation by companies of international and national environmental and health standards.

## Other Treaty Bodies

The Committee Against Torture (CAT) made minor references to indigenous peoples in its review of Colombia.<sup>49</sup> Some recommendations were also addressed to New Zealand<sup>50</sup> in relation to the overrepresentation of indigenous people in prisons and to China<sup>51</sup> in relation to the investigation of custodial deaths, disappearances, allegations of torture and ill-treatment in the Autonomous Regions of Tibet and of Xinjiang Uyghur. The Committee on the Rights of Persons with Disabilities (CRPD) made a few references to indigenous peoples with disabilities in its review of Brazil,<sup>52</sup> Kenya<sup>53</sup> and Gabon,<sup>54</sup> notably calling upon Brazil to implement legislation, policies and programmes to address the multiple forms of discrimination against indigenous people with disabilities.

## General Comments

The Committees continued to draft and adopt a number of general comments.<sup>55</sup> CEDAW issued its general recommendation No. 33 on women's access to justice<sup>56</sup> which contains a number of references to indigenous women. It notably acknowledges "plural justice systems" and the existence within states of customary and indigenous laws and practices as well as informal alternative dispute resolution processes including non-formal indigenous courts and chieftancy-based alternative dispute resolution, where chiefs and other community leaders resolve interpersonal disputes, including divorce, child custody and land disputes. CRDP adopted a draft general comment on Article 6 on women with disabilities<sup>57</sup> which includes a few references to indigenous women. It notably underlines that education programmes must cater for the training needs of those girls and women with disabilities who are at greatest risk of exclusion such as those those belonging to indigenous populations.

## Collaboration with other indigenous related mechanisms

Throughout the year, the UNPFII (Permanent Forum on Indigenous Issues), SRIP (Special Rapporteur on the Rights of Indigenous Peoples) and Treaty Bodies

continued to discuss means of collaboration. Following the experience of inviting CERD's Chairperson to attend the UNPFII 2014 session, a member of CDESCR, Rodrigo Uprimny Yepes, was invited to the UNPFII 2015 session where he contributed to the agenda item on economic, social and cultural rights. The CEDAW members held a discussion with Megan Davis, Chairperson of the UNPFII on 23 July while CDESCR members met with the Special Rapporteur on the rights of indigenous peoples on 12 June to discuss means to increase collaboration. ○

## Notes and references

- 1 The 9 international human rights treaties are the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED) and the Convention on the Rights of Persons with Disabilities (CRPD).
- 2 A/RES/69/2, paragraph 29
- 3 In 2015, the Treaty Bodies reviewed a total of 173 State Party reports and 160 individual complaints.
- 4 CERD and CDESCR also continued to consistently call upon State parties who have not done so to adopt and ratify the ILO Convention No. 169.
- 5 CERD /C/DNK/CO/20-21
- 6 CERD/C/FRA/CO/20-21
- 7 CERD /C/CRI/CO/19-22
- 8 CERD /C/GTM/CO/14-15
- 9 CERD /C/GTM/CO/14-15
- 10 CERD /C/NOR/CO/21-22
- 11 CERD /C/MNG/CO/19-22
- 12 CERD/C/NER/CO/15-21
- 13 The Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments Regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities were developed pursuant to task 9 of the programme of work on Article 8(j) and related provisions adopted by the Conference of the Parties of the Convention on Biological Diversity at its fifth meeting, in May 2000.
- 14 The Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" were developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (A/HRC/17/31).
- 15 CERD /C/VAT/CO/16-23.

- 16 In 1994, CERD decided to establish early warning and urgent procedures as part of its regular agenda. Early warning measures are to be directed at preventing existing problems from escalating into conflicts and urgent procedures to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention.
- 17 <http://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Indonesia28092015.pdf>
- 18 <http://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Letters/RussianFederation-15May2015.pdf>
- 19 CCPR/C/CAN/CO/6
- 20 CCPR/C/RUS/CO/7
- 21 CCPR/C/VEN/CO/R.4
- 22 CCPR/C/KHM/CO/2
- 23 CCPR/C/SUR/CO/3
- 24 E/C.12/THA/CO/1-2
- 25 E/C.12/UGA/CO/1
- 26 E/C.12/CHL/CO/4
- 27 E/C.12/VEN/CO/3
- 28 E/C.12/PRY/CO/4
- 29 E/C.12/MNG/CO/4
- 30 E/C.12/GUY/CO/2-4
- 31 E/C.12/BDI/CO/1
- 32 E/C.12/MAR/CO/4
- 33 E/C.12/GC/21
- 34 E/1998/22
- 35 CEDAW/C/RUS/CO/8
- 36 CEDAW/C/GAB/CO/6
- 37 CEDAW/C/BOL/CO/5-6
- 38 CEDAW/C/ECU/CO/8-9
- 39 CEDAW/C/VNM/CO/7-8
- 40 CEDAW/C/NAM/CO/4-5
- 41 CRC/C/GC/11
- 42 CRC/C/BGD/CO/5
- 43 CRC/C/CHL/CO/4-5
- 44 CRC/C/COL/CO/4-5
- 45 CRC/C/MEX/CO/4-5
- 46 CRC/C/BRA/CO/2-4
- 47 CRC/C/HND/CO/4-5
- 48 CRC/C/GC/16
- 49 CAT/C/COL/CO/5
- 50 CAT/C/NZL/CO/6
- 51 CAT/C/CHN/CO/5
- 52 CRPD /C/BRA/CO/1
- 53 CRPD/C/KEN/CO/1
- 54 CRPD/C/GAB/CO/1
- 55 CCPR continued to work on the preparation for a General Comment on Article 6 (Right to Life) of the International Covenant on Civil and Political Rights. CESCR continued to work on the Draft General Comment on Article 7: Right to just and favourable conditions of work and made significant progress on its draft General Comment on article 12: Right to sexual and reproductive

health. CRC worked on two draft General Comments on the Rights of Adolescents and on Public Spending and the Rights of the Child. CRC and CMW decided to develop a Joint General Comment on the human rights of children in the context of international migration. CRDP prepared of draft General Comment no. 4 on the right to inclusive education, article 24.

56 CEDAW/C/GC/33

57 CRPD/C/14/R.1

*This report has been compiled by **IWGIA secretariat** on the basis of UN Documents and reports from various experts*

## THE PERMANENT FORUM ON INDIGENOUS ISSUES

Established in 2000, the UN Permanent Forum on Indigenous Issues (UNPFII) is an advisory body to the UN Economic and Social Council (ECOSOC). It is composed of 16 independent experts functioning in their personal capacity, who serve for a term of three years as Members and may be re-elected or re-appointed for one additional term. Eight are nominated by governments and eight by Indigenous peoples. The UNPFII addresses Indigenous issues in the areas of economic and social development, environment, health, human rights, culture and education. In 2008, the UNPFII expanded its mandate to include the responsibility to “promote respect for and full application of the Declaration and to follow up the effectiveness of the Declaration”. According to its mandate, the UNPFII provides expert advice to ECOSOC and to UN programmes, funds and agencies; raises awareness about Indigenous issues; and promotes the integration and coordination of activities relating to Indigenous issues within the UN system.

The annual session of the UNPFII is held in April or May, at the UN Headquarters (or any other venue decided by the UNPFII) for two weeks. The UNPFII has a biannual working method that is comprised of one year devoted to a theme and one year devoted to reviewing the recommendations made by the UNPFII.

At its public session, the UNPFII provides the opportunity for Indigenous peoples from around the world to have direct dialogue and communication with the UNPFII expert members, the UN specialized agencies, the Special Rapporteur on the Rights of Indigenous Peoples as well as other Human Rights Special Rapporteurs, other expert bodies, and UN member states

## International Expert Group Meeting on an Optional Protocol to the UN Declaration

On 28 and 29 January 2015, the Permanent Forum convened an expert meeting on the theme “Dialogue on an Optional Protocol to the UN Declaration on the Rights of Indigenous Peoples”. The meeting was based on “*The study on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples*” (E/C.19/2014/7) prepared by members of the Permanent Forum. Following the study, the expert group meeting intended to solicit the views of indigenous experts, Member States, academics and others regarding the potential utility of an optional protocol and oversight mechanism to the UN Declaration, including analysing the legal and practical considerations, the potential models and the next steps for the creation of a voluntary optional protocol.

The Expert Group Meeting was organized around the following themes: Why is an optional protocol required in relation to the UN Declaration on the Rights of Indigenous Peoples? What are the limitations of the current international human rights law system in regard to monitoring of indigenous peoples’ rights? Does it encourage ‘rights ritualism’? What are some of the problems with the implementation of the UN Declaration pertaining to lands, territories and resources? What are the lessons that can be learned from other mechanisms? What would be the features of an oversight mechanism? Who would be subject to review and what would the admissibility requirements be? Is there an existing UN body that could be adapted to do the work of an oversight body?

The meeting conclusions highlighted different ways to address the implementation gap with regards to the realization of the human rights affirmed by the United Nations Declaration on the Rights of Indigenous Peoples. The conclusions discussed the establishment of a new supervisory mechanism, review of the mandate of the Expert Mechanism on the Rights of Indigenous Peoples, and other institutional arrangements such as a robust programme of awareness-raising on indigenous peoples and a well-resourced programme of technical advisory services to assist governments and indigenous peoples to implement the rights of indigenous peoples.

Experts from the socio-cultural regions made presentations during the meeting, and the report was presented to the Fourteenth Session of the Permanent Forum on Indigenous Issues.<sup>1</sup>

### **Intersessional meeting (Russian Federation)**

At the invitation of the Government of the Russian Federation, the members of the Permanent Forum met from 25 to 27 February 2015 in Salekhard, the administrative center of Yamalo-Nenets Autonomous Okrug. At the meeting, the Permanent Forum members discussed their methods of work as well as made preparations for the fourteenth annual session.

While in Salekhard, the Permanent Forum members met with the Governor of the Yamal-Nenets Autonomous district, the Director of the Department of Interethnic Relations of the Russian Federation Ministry of Culture, the Chairperson of the Yamal-Nenets Legislative Assembly, and the President of RAIPON. The Forum members also met with representatives of indigenous peoples' organizations to hear about their concerns and issues. The visit also included cultural programmes and a trip to a reindeer farm of the Yamal-Nenets, an indigenous group who sustain themselves through reindeer herding and fishing.

### **Fourteenth Session of UNPFII (20 April - 1 May 2015)**

The Permanent Forum held its Fourteenth session from 20 April to 1 May 2015 at the United Nations Headquarters in New York. Being a review year, the focus of the session was on the follow-up of the recommendations of the Permanent Forum, especially related to the World Conference on Indigenous Peoples, the 2030 Sustainable Development Agenda and youth, self-harm and suicide. The session also dedicated time to reviewing the methods of work of the Permanent Forum.

The discussion on human rights focused on economic, social and cultural rights. The session included a dialogue with members of the UN Committee on Economic, Social and Cultural Rights, as well as with the Special Rapporteur on the rights of indigenous peoples and the Expert Mechanism on the Rights of Indigenous Peoples. The regional focus of the session of the Permanent Forum was on the Pacific, which included a discussion between Permanent Forum members, indigenous peoples' organizations, States and UN agencies on specific issues related to indigenous peoples in the Pacific region, with climate change emerging as a key issue of concern.

A large number of representatives of indigenous peoples and organizations, States, the UN system and others participated in the session. Participants held numerous side events on a wide range of topics. Throughout the session, participants took the floor to make statements on their issues of concern.

The main discussions during the Fourteenth Session related to the commitments made during the World Conference on Indigenous Peoples in 2014, including next steps for implementation at national level and the development of a system-wide action plan to ensure a coherent approach within the United Nations to achieving the ends of the UN Declaration. Moreover, the discussions focused at the 2030 Agenda and how to ensure indigenous peoples' priorities in the framework, including developing key indicators to measure the particular circumstances of indigenous peoples related within the new Sustainable Development Agenda. During the thematic discussion on self-harm and suicide among children and young people, it was noted that indigenous communities frequently see significantly higher youth suicide rates than among the general population. The session furthermore had a half-day discussion on the situation of indigenous peoples in the Pacific region, a comprehensive dialogue with United Nations agencies and an updated discussion on human rights issues of indigenous peoples. Under future work, the Permanent Forum decided to look more into the development of an indigenous peoples' development index. The report of the Fourteenth Session includes the Permanent Forum's recommendations to UN agencies, Member States and others on the above issues.<sup>2</sup>

## **Indigenous peoples and the 2030 Agenda**

A major priority for the Permanent Forum throughout 2015 has been to ensure that indigenous peoples' rights and development priorities are strongly reflected in the 2030 Agenda. The Permanent Forum has been engaged in the processes leading up to the adoption of the 2030 Agenda resolution (A/RES/70/1) as well as the subsequent discussions on implementation and follow-up.

In April 2015, Permanent Forum members met with one of the co-chairs of the process towards formulating the 2030 Agenda. Following this, a letter was sent to the co-chairs highlighting the issues that are of central importance to indigenous peoples in the new development framework, including commitments for protection of indigenous peoples' rights to land, territories and natural resources; for strengthening their self-determination, autonomy and self-governance, as well as for their participation in

national decision-making processes concerning development. The Permanent Forum also provided specific proposals for language on indigenous peoples to be included in the agenda's political declaration, as well as made recommendations on the development of indicators to measure progress of implementation for indigenous peoples.

During the final inter-governmental negotiations on the 2030 Agenda (20-24 July 2015), Permanent Forum's Vice Chair, Joan Carling, attended and met with numerous representatives of Member States to discuss the priorities of indigenous peoples. When the 2030 Agenda for Sustainable Development was adopted by the UN General Assembly on 25 September 2015, the Permanent Forum welcomed the adoption and applauded the six specific references to indigenous peoples in the Agenda. They noted that "[t]hese constitute a step up from the Millennium Development Goals, which had no references to indigenous peoples", but emphasized that "States and the UN system must be ambitious, and go beyond the points mentioned in this text to bring indigenous peoples into the achievement of goals and targets for the 2030 Agenda to be truly inclusive".

To better position the UN Department of Economic and Social Affairs' support on indigenous issues in light of the new Development Agenda, the Secretariat of the Permanent Forum organized a workshop on "The way forward: Indigenous Peoples and Agenda 2030". The purpose was to develop strategic guidance and action-oriented recommendations to mobilize support and map possible entry points to include indigenous issues in the implementation of the 2030 Agenda – given the fact that indigenous peoples often are amongst the most vulnerable and marginalized groups in any given society.

After the adoption of the 2030 Agenda, Vice-Chair Joan Carling has been participating in the meetings of the Inter-Agency and Expert Group on the Sustainable Development Goals which is deliberating upon a set of global indicators to measure progress in implementation of the 2030 Agenda. In November, the Permanent Forum Chair and Vice Chair sent a letter to States in the Inter-Agency and Expert Group to request support to ensure that the global framework includes an indicator on land tenure security with specific proposals for that.

## **System-wide action plan on indigenous issues**

The Permanent Forum played a central role in providing guidance and inputs to the development of a system-wide action plan to ensure a coherent approach

within the United Nations to achieving the ends of the UN Declaration on the Rights of Indigenous Peoples. The system-wide action plan was mandated by States in the Outcome Document of the World Conference on Indigenous Peoples which took place in September 2014. The plan was developed over ten months by the United Nations Inter Agency Support Group on Indigenous Issues, under the leadership of the Under-Secretary-General for Economic and Social Affairs. It was based on inputs and consultations with indigenous peoples' organisations, governments, UN agencies and other stakeholders including during the sessions of the Forum and of the Expert Mechanism. The system-wide action plan was agreed at the Inter Agency Support Group annual meeting in New York in October 2015. It was presented by the UN Secretary-General, Ban Ki-moon to the principals from UN agencies at the Chief Executive Board meeting in November.

The Permanent Forum will be engaged in the follow-up and guidance to the United Nations in the implementation of the system-wide action plan.

### **Other activities of the Permanent Forum**

The Permanent Forum or the Chair on behalf of the Permanent Forum made a series of speeches, public statements and other comments relevant to the Forum's mandate including amongst others speaking at the event of the International Day of the World's Indigenous Peoples (9 August); commemorating the anniversary of the adoption of the UN Declaration on the Rights of Indigenous Peoples (13 September); issuing a statement on the International Day of Rural Women (15 October); and writing observations to the World Bank in the context of its review of its Environmental and Social Policy and associated Environmental and Social Standards, especially the proposed safeguards for indigenous peoples (6 February 2015). Moreover, members of the Permanent Forum including the Chair participated at various international meetings to draw attention to indigenous peoples. This includes the Permanent Forum Chair's speech at the annual ECOSOC session on the Forum's report, the Chair's statement at the annual meeting of the Expert Mechanism on the Rights of Indigenous Peoples and the participation in the thirty-ninth session of the World Heritage Committee where Vice Chair, Oliver Loode, made a statement related the proposed new policy for integrating a sustainable development perspective into the World Heritage con-

vention and recommended that specific operational procedures that require States Parties to comply with international standards regarding the rights of indigenous peoples are developed.

These are in addition to the numerous activities carried out by individual members of the Permanent Forum, especially at the regional and national levels. ○

## Notes and references

- 1 The report is available in the six official UN languages and can be found at [www.un.org/indigenous](http://www.un.org/indigenous)
- 2 The report and other documents from the Fourteenth session are available at [/www.un.org/development/desa/indigenouspeoples/unUNPFII-sessions-2/fourteenth-session.html](http://www.un.org/development/desa/indigenouspeoples/unUNPFII-sessions-2/fourteenth-session.html)

*The Secretariat of the Permanent Forum has contributed this article.*

## UNITED NATIONS SPECIAL RAPPORTEUR ON THE RIGHTS OF INDIGENOUS PEOPLES

The Special Rapporteur on the rights of indigenous peoples is one of numerous “special procedures” of the UN Human Rights Council. The special procedures are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. The Special Rapporteur on the rights of indigenous peoples (SRRIP) has a mandate to gather information and communications from all relevant sources on violations of the human rights of indigenous peoples; to formulate recommendations and proposals on measures and activities to prevent and remedy violations of the rights of indigenous peoples; and to work in coordination with other special procedures and subsidiary organs of the Human Rights Council, relevant UN bodies and regional human rights organizations.

In accordance with this mandate, the Special Rapporteur can receive and investigate complaints from indigenous individuals, groups or communities, undertake country visits and make recommendations to governments on the steps needed to remedy possible violations or to prevent future violations. The work of the Special Rapporteur has tended to concentrate on four principal areas: promotion of good practices; responding to specific cases of alleged human rights violations; country assessments; and thematic studies. The Special Rapporteur also works in collaboration with other UN mechanisms dealing with indigenous peoples.

In 2014, Ms Victoria Tauli-Corpuz from the Philippines was appointed the new Special Rapporteur by the Human Rights Council and she assumed her position in June 2014. She is the first woman and the first person from the Asia region to assume the position.

**T**he Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, continued to carry out work within her four principal areas. These are

the promotion of good practices, responding to specific cases of alleged human rights violations, country assessments, and thematic studies.

## **Thematic studies**

In 2015, the Special Rapporteur presented two reports, to the Human Rights Council and the UN General Assembly. The report to the Human Rights Council focused on the rights of indigenous women and girls, while her report to the General Assembly provided her first approach to the issue of international investments and free trade agreements and their impact on the fulfilment of the human rights of indigenous peoples.

Ms Tauli-Corpuz submitted her report to the Human Rights Council on 20 September 2015.<sup>1</sup> The report examines the situation of the human rights of indigenous women and girls globally, following the call in her mandate to pay special attention to the human rights and fundamental freedoms of indigenous children and women. According to the Special Rapporteur, “indigenous women experience a broad, multifaceted and complex spectrum of mutually reinforcing human rights abuses” stemming from different sources of discrimination and marginalization. In her view, insufficient attention has been given to the nexus between collective and individual rights when addressing this issue. The Special Rapporteur examines how the violation of the rights to self-determination, rights over lands and resources and other human rights affect indigenous women and girls, as well as the multiple forms of violence they suffer, including domestic violence, trafficking, violence in the context of conflicts, sexual violence or violence based on tradition. The Special Rapporteur identifies some key challenges and also some promising practices in relation to the respect and protection of the rights of indigenous women and offers several recommendations to states and the United Nations to reverse the current situation.

On 20 October, the Special Rapporteur submitted her report to the Third Committee of the UN General Assembly.<sup>2</sup> The thematic section of the report is dedicated to an analysis of international investment agreements and investments clauses of free trade regimes and their impacts on the rights of indigenous peoples. The Special Rapporteur announced that she would devote more attention to this particular issue in the course of her future work

## Country visits

In August 2015, the Special Rapporteur attended a conference organized by the Sámi Parliamentary Council in Hemavan, Sweden, which offered her the opportunity to assess key issues affecting Sámi people across the Sápmi region, as well as to explore progress in the implementation of the recommendations made by her predecessor, James Anaya, after his visit to Sápmi in 2010. The Special Rapporteur held meetings with representatives of the Sámi people, including the Sámi parliaments, and with the governments of Norway, Sweden and Finland. She will submit her report on the visit to the Human Rights Council in 2016.<sup>3</sup>

From 2 to 10 November 2015, the Special Rapporteur visited Honduras. During the nine days of the mission, she met with national, departmental and municipal government authorities, indigenous peoples, civil society organizations and the private sector in several parts of the country. She also held meetings with representatives, communities and organizations of the Lenca, Maya Chorti, Nahua, Tolupan, Garifuna, Pech, Tawahka and Miskito peoples. In her end-of-mission statement, the Special Rapporteur warned of the critical situation faced by indigenous peoples in Honduras in terms of their rights to lands and natural resources, as well as their lack of access to justice. She also expressed concern at the general environment of violence and impunity affecting many indigenous communities. She drew attention to the demand by indigenous communities for the title clearing (*saneamiento*) of their collective lands and to the violations of the human rights of indigenous peoples opposing development projects within their territories, including killings, threats and intimidation. The lack of a domestic legal framework that adequately reflects indigenous peoples' rights and the lack of implementation of ILO Convention No.169 were also pointed out. The report will be submitted to the HRC in September 2016.<sup>4</sup>

## Communications

Throughout 2015, the Special Rapporteur continued to examine cases of alleged violations of the human rights of indigenous peoples and has addressed the concerned countries through the communications procedure, either independently or jointly with other special procedures. Cases addressed are included in the 2015 communications reports.<sup>5</sup>

During 2015, the Special Rapporteur also issued several press releases on cases of immediate concern. In July, she called on the Government of Belize to ensure respect for the rights of the Maya people of Toledo District to non-discrimination, indigenous justice and traditional property, after the arrest of 12 Maya, including local leaders, for their actions to remove a non-Maya from their community lands. In August, she requested urgent action by the Government of Brazil to prevent the eviction of Guarani and Kaiowa peoples from their traditional lands and to address the gross human rights violations they are suffering in Mato Grosso do Sul. She also expressed her concern at the violence related to the public demonstrations in Ecuador in August, and urged the government to establish a genuine dialogue with indigenous peoples to ensure their rights are fully respected. In September, together with the Special Rapporteur on Human Rights Defenders, she called on the Philippines government to launch a full and independent investigation into the killing of three indigenous rights defenders in Surigao del Sur, Mindanao. In December, she urged the Government of Nicaragua to implement an effective title clearing process and to take the necessary steps to end the violence affecting the Miskito in the North Atlantic Autonomous Region. She also expressed her concern at the lack of consultation and the reduced protection of the Sámi indigenous people in the current draft law on the Finnish Forest and Parks Service (*Metsähallitus*) that regulates the management of state-owned lands.

### **Collaboration with other specialized UN bodies and regional HR bodies**

In line with her mandate, the Special Rapporteur has collaborated with the UN Permanent Forum on Indigenous Peoples (UNPFII) and the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). She participated in the annual sessions of both bodies, and was also invited to the Expert Group Meetings organized in 2015. She participated in the Expert Group Meeting convened by the UNPFII in January on an optional protocol to the UNDRIP, and she took part in the Expert Group Meeting of the EMRIP on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage (Rovaniemi, Finland).

During the sessions of both bodies, the Special Rapporteur pursued the established practice of holding meetings with indigenous representatives attending

the sessions to hear about allegations of violations of their human rights, and with interested governments to discuss issues within the scope of her mandate.

In February, the Special Rapporteur accepted an invitation to participate as an expert witness in the case of the Kaliña and Lokono peoples of Suriname versus the Government under the Inter-American Court of Human Rights. In December, she participated in a regional workshop organized by the African Commission on Human and Peoples' Rights, through its Working Group on Indigenous Populations/Communities in Africa, on the Outcome Document of the 2014 World Conference on Indigenous Peoples (WCIP). The Special Rapporteur has expressed her hope to increase cooperative dialogue with all the regional human rights bodies.

## **Other activities**

The mandate of the Special Rapporteur instructs her to pay special attention to relevant recommendations of the world conferences and other UN meetings. In this sense, the Special Rapporteur has taken into consideration in her work during this year the Outcome Document of the 2014 WCIP, providing her views and advice in the discussions on its implementation, including during the panel held during the 8<sup>th</sup> session of the EMRIP.<sup>6</sup>

With a view to promoting good practices and implementation of the UNDRIP, the Special Rapporteur has attended several international meetings to contribute to the discussions surrounding the post-2015 sustainable development agenda. She also delivered the opening remarks in the first session of the Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights<sup>7</sup> of the Human Rights Council, and participated in the third session of the UN Forum on Business and Human Rights which took place in Geneva in December. The Special Rapporteur was also invited by the World Bank to participate in a global consultation with indigenous peoples on the review of their social and environmental safeguard policies in April, and held meetings with Senior Management, the Executive Board Members and the President of the institution in relation to respect for and promotion of the rights of indigenous peoples within the context of their work.

The Special Rapporteur has paid particular attention to the multilateral negotiations on climate change in order to promote full respect of the rights of indige-

nous peoples within the agreements under discussion. In March, she delivered a statement at a Panel on Human Rights and Climate Change organized by the Human Rights Council, and she participated in the COP21 of the UNFCCC in Paris, together with John Knox, Special Rapporteur on Human Rights and the Environment, and members of the OHCHR, to advocate for the integration of human rights considerations into the new legally-binding agreement, including the rights of indigenous peoples.<sup>8</sup>

The SR has established a website where her reports, statements and other activities can be accessed: [www.unsr.vtaulicorpuz.org](http://www.unsr.vtaulicorpuz.org). ○

## Notes and references

- 1 A/HRC/30/41 Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, 6 August 2015. The Special Rapporteur also submitted the report on her mission to Paraguay, which took place in 2014 (A/HRC/30/41/Add.1), to the Council.
- 2 A/70/301 Rights of indigenous peoples, 7 August 2015.
- 3 <http://unsr.vtaulicorpuz.org/site/index.php/es/declaraciones-comunicados/82-statement-sapmi-visit>
- 4 <http://unsr.vtaulicorpuz.org/site/index.php/en/statements/102-declaration-honduras>
- 5 As per January 2016, these reports are: A/HRC/28/85; A/HRC/29/50; A/HRC/30/27.
- 6 <http://unsr.vtaulicorpuz.org/site/index.php/es/declaraciones-comunicados/74-emrip-2015-follow-wcip>
- 7 <http://unsr.vtaulicorpuz.org/site/index.php/en/statements/70-igwg-2015>
- 8 <http://unsr.vtaulicorpuz.org/site/index.php/en/press-releases/107-hrdyacop212015>

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## UN EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES

The United Nations Expert Mechanism on the Rights of Indigenous Peoples was established in 2007 by the Human Rights Council under resolution 6/36 as a subsidiary body. The mandate of the Expert Mechanism is to provide the Human Rights Council with thematic expertise, mainly in the form of studies and research, on the rights of indigenous peoples as directed by the Council. The Expert Mechanism may also make proposals to the Council for its consideration and approval. It comprises five experts on the rights of indigenous peoples, one from each of the world's five geopolitical regions, with indigenous origin a relevant factor in their appointment. They are appointed by the Human Rights Council for terms of three years, and may be re-elected for one additional period.

The Expert Mechanism meets in a plenary session once a year for five days and these sessions are open to representatives of indigenous peoples, States, NGOs, UN entities, national human rights institutions and academics. The sessions of the Expert Mechanism provide a unique space for focused multilateral discussions on the scope and content of the rights of indigenous peoples under international law, and how the implementation of these rights can be advanced. The Office of the United Nations High Commissioner for Human Rights (OHCHR) services the Expert Mechanism and also provides technical and financial support.

### **New Membership**

In March 2015, the Human Rights Council appointed Mr. Albert Barume (Democratic Republic of the Congo) to a 3-year term, in replacement of Mr. Danfred Titus (South Africa).

## **International Expert Seminar**

On 26 and 27 February 2015, the University of Lapland hosted an Expert Seminar on the Promotion and Protection of the Rights of Indigenous Peoples with Respect to their Cultural Heritage. The objective of the seminar was to support the Expert Mechanism in the preparation of its 2015 study on this theme.

The event was organized by the University of Lapland and the Office of the High Commissioner for Human Rights, in cooperation with the Expert Mechanism. Panellists and participants addressed issues including the concepts of tangible and intangible cultural heritage as they pertain to indigenous peoples, indigenous peoples' participation in the protection of their cultural heritage, links between lands and territories and cultural heritage, and redress and restitution in cases where rights related to cultural heritage have been violated.

## **Eighth Session of the Expert Mechanism**

The annual session of the Expert Mechanism took place in Geneva from 20 to 24 July 2015. In addition to the five members of the Expert Mechanism, participants included representatives of States, indigenous peoples, United Nations entities, non-governmental organizations, national human rights institutions, and academic institutions. The session was opened by the High Commissioner for Human Rights and the President of the Human Rights Council. Mr. Alexey Tsykarev was elected Chair-Rapporteur for the session. Also in attendance were Ms. Victoria Tauli-Corpuz, Special Rapporteur on the rights of indigenous peoples; Ms. Megan Davis, Chairperson of the UN Permanent Forum on Indigenous Issues; and Mr. Lenny Montiel, United Nations Assistant Secretary-General for Economic Development.

The Expert Mechanism held a panel discussion on indigenous peoples' human rights in relation to business enterprises. The 8th session also provided an opportunity to discuss follow-up to the World Conference on Indigenous Peoples, including the proposed review of the mandate of the Expert Mechanism.

The Expert Mechanism presented for discussion its study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage, which was adopted and submitted to the Human Rights Council at its 30<sup>th</sup> session. The 8th session also included a discussion of the United Nations

Declaration on the Rights of Indigenous Peoples, and of the Post-2015 development agenda and its implications for the rights of indigenous peoples.

### **Proposals**

At its 8<sup>th</sup> session, the Expert Mechanism made proposals to the Human Rights Council, including the following:<sup>1</sup>

#### ***Theme of the Expert Mechanism's new study***

The Expert Mechanism proposed the following three themes to the Human Rights Council for its next study:

- Discrimination facing indigenous peoples in business and access to financial services, with specific reference to indigenous women entrepreneurs;
- The right of indigenous peoples to health, with a focus on children and youth;
- The role of indigenous peoples' organizations and civil society, including human rights defenders, in the promotion and protection on the rights of indigenous peoples.<sup>2</sup>

#### ***Half-day panel discussion at the thirty-third session of the Human Rights Council***

The Expert Mechanism proposed that the Human Rights Council:

- Organize at its thirty-third session a half-day panel discussion on violence against indigenous women and girls, bearing in mind the importance attached to that theme in the outcome document of the World Conference on Indigenous Peoples.

#### ***Follow-up to the World Conference on Indigenous Peoples***

The Expert Mechanism proposed that the Human Rights Council:

- Urge Member States to cooperate with indigenous peoples to develop and implement national action plans, strategies or other measures, where relevant, to achieve the ends of the Declaration, as indicated in paragraph 7 of the outcome document of the World Conference on Indigenous Peoples;

- Encourage States to follow up on paragraph 10 of the outcome document of the World Conference on Indigenous Peoples, in which they committed themselves to working with indigenous peoples to disaggregate data, as appropriate, or conduct surveys and to utilizing holistic indicators of indigenous peoples' well-being to address the situation and needs of indigenous peoples and individuals, in particular older persons, women, youth, children and persons with disabilities.

### ***Post-2015 Development Agenda***

The Expert Mechanism proposed that the Human Rights Council:

- Urge States to address the concerns of indigenous peoples in the post-2015 development agenda and to take measures to ensure the participation of indigenous peoples, in particular indigenous youth, in national processes for the implementation of the new development goals.

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

The Expert Mechanism proposed that the Human Rights Council:

- Urge States and indigenous peoples to report on the measures taken to implement the rights enshrined in the Declaration, by reporting to the Expert Mechanism on actions they have taken to implement the commitments listed in the outcome document of the World Conference on Indigenous Peoples, in particular those referred to in paragraph 8, in which Member States commit themselves to cooperating with indigenous peoples to develop and implement national action plans, strategies or other measures to achieve the ends of the Declaration;
- Urge States to contribute to the United Nations Voluntary Fund for Indigenous Peoples and acknowledge the work the Fund has achieved in the 30 years since its establishment.

### **Adoption of studies and reports**

During its 8<sup>th</sup> session, the Expert Mechanism adopted its study and advice on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage,<sup>3</sup> as well as the report on responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible

appropriate measures and implementation strategies to attain the goals of the Declaration.<sup>4</sup>

### **30<sup>th</sup> session of the Human Rights Council**

The Expert Mechanism conducted its interactive dialogue with the Human Rights Council during its September session, jointly with the Special Rapporteur on the rights of indigenous peoples. Mr. Alexey Tsykarev, Chair-Rapporteur of the Expert Mechanism, presented the work of the Expert Mechanism. He introduced the study and advice on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage and briefed the Council on some of the Expert Mechanism's inter-sessional activities, including its participation in the World Conference on Indigenous Peoples and the first inter-sessional meeting of the Expert Mechanism (Winnipeg, Canada, 9-10 March 2015). Mr. Tsykarev also welcomed the review of the mandate of the Expert Mechanism<sup>5</sup> and urged the Council to provide the financial resources necessary to facilitate the Expert Mechanism's inter-sessional activities, including the annual expert seminar.

The interactive dialogue was followed by the annual half-day discussion on indigenous peoples, which was devoted to the theme of follow-up to the World Conference on Indigenous Peoples. The half-day discussion included statements by Mr. Albert Barume (member of EMRIP), Ms. Myrna Cunningham (former adviser to the President of the General Assembly for the World Conference on Indigenous Peoples), Mr. Alejandro González Cravioto (Director for International Affairs of the National Commission for the Development of Indigenous Peoples of Mexico), and Ms. Jannie Lasimbang (Secretariat Director of Jaringan Orang Asal SeMalaysia). Ms. Victoria Tauli-Corpuz, the Special Rapporteur on the Rights of Indigenous Peoples, moderated the panel. During the ensuing discussion, statements from the floor were made by a number of States, as well as civil society organizations. The panel addressed several aspects of the World Conference's outcome document, including violence against indigenous women, national action plans to achieve the ends of the Declaration, indigenous peoples' participation in UN processes, the role of national human rights institutions, and the review of EMRIP's mandate.

## Review of the Mandate of the Expert Mechanism

In the outcome document of the World Conference on Indigenous Peoples, the General Assembly invited the Human Rights Council to “review the mandates of its existing mechanisms, in particular the Expert Mechanism on the Rights of Indigenous Peoples ... with a view to modifying and improving the Expert Mechanism so that it can more effectively promote respect for the Declaration, including by better assisting Member States to monitor, evaluate and improve the achievement of the ends of the Declaration” (paragraph 28).

The Human Rights Council adopted resolution 30/11 in September 2015, which requested the Office of the High Commissioner for Human Rights to convene a two-day expert workshop to review the mandate of the Expert Mechanism on the Rights of Indigenous Peoples and to propose recommendations on how it can more effectively promote respect for the Declaration, including by better assisting Member States to monitor, evaluate and improve the achievement of the ends of the Declaration. The resolution also requested OHCHR to prepare a report on the workshop, including the recommendations made, to be submitted to the Human Rights Council at its thirty-second session.

The workshop is scheduled to take place in Geneva on 4 and 5 April and will be open to the participation of States, indigenous peoples, national human rights institutions, NGOs, and other stakeholders. The workshop’s objectives will be:

- To propose recommendations on how the Expert Mechanism on the Rights of Indigenous Peoples can more effectively promote respect for the UN Declaration on the Rights of Indigenous Peoples, including by better assisting Member States to monitor, evaluate and improve the achievement of the ends of the Declaration.
- To assess the work of the Expert Mechanism since its establishment, including good practices, challenges, gaps and lessons learned.
- To collect, discuss and propose recommendations by various stakeholders regarding the review of the mandate of the Expert Mechanism.<sup>6</sup> ○

## Notes and References

- 1 For further information on the 8<sup>th</sup> session, including the complete set of proposals, please refer to the report of the Expert Mechanism on its 8<sup>th</sup> session, UN document A/HRC/30/52. The report from the 8<sup>th</sup> session can be found at:  
<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/185/66/PDF/G1518566.pdf?OpenElement>
- 2 In resolution 30/4 (September 2015), the Human Rights Council requested the Expert Mechanism to prepare a study on the right to health and indigenous peoples, with a focus on children and youth.
- 3 UN document A/HRC/30/53. See also the section on the World Heritage Committee, this volume, where the study is discussed.
- 4 UN document A/HRC/30/54
- 5 See paragraph 28 of the Outcome Document of the World Conference (GA resolution 69/2)
- 6 The Secretary-General's report on progress made in the implementation of the outcome document of the World Conference on Indigenous Peoples (UN document A/70/84) summarizes some of the proposals received from States and indigenous peoples so far regarding the mandate review (paragraphs 23-30).

*This article has been written by the **Secretariat of the Indigenous Peoples and Minorities Section** at the Office of the United Nations High Commissioner for Human Rights.*

## INDIGENOUS WOMEN IN INTERNATIONAL PROCESSES

Over half of the world's indigenous peoples are women, living in over 90 countries. For the last 20 years, indigenous women have increasingly participated in international processes to assert the rights of indigenous peoples and in particular of indigenous women. In 1995, during the United Nations 4th Conference on Women in Beijing, indigenous women approved and signed the **Beijing Declaration of Indigenous Women** setting the basis of indigenous women's claims as indigenous peoples and as women. The conference was the first time that indigenous women had the chance to collectively highlight their diverse cultures at the international level. Since the Beijing landmark, indigenous women have been advocating and gaining more space within the women's movement and the indigenous peoples' movement.

In 2015, indigenous women were actively engaged in several international fora, advocating and lobbying for their rights worldwide.

### The 59<sup>th</sup> session of CWS

More than 30 indigenous women took part in the 59<sup>th</sup> Session of the Commission on the Status of Women (CSW), also known as Beijing+20. Their participation included the organization of side events, elaboration and presentation of political statements, marching, lobbying and participating actively in the Regional Women Caucuses.

Indigenous women have for the past years actively participated in CSW's annual sessions at the UN, and the "Indigenous women: beyond the ten-year review of the Beijing Declaration and Platform for Action", have advocated for, and achieved the adoption of two resolutions on indigenous women. One which urges the adoption of measures that ensure the full and effective participation of indig-

enous women in all aspects of society;<sup>1</sup> and another, entitled “Indigenous women: key actors in poverty and hunger eradication”,<sup>2</sup> which urges States and agencies of the United Nations system to adopt measures aimed at promoting the empowerment of indigenous women and the realization of their rights. Both resolutions have helped set an agenda and put a stronger focus on indigenous women’s particular situation. During the 2015 session, FIMI/IIWI—The International Indigenous Women’s Forum—led a delegation of indigenous women from different countries including Argentina, Cameroon, Nepal, Philippines, Sudan, Costa Rica, Ecuador, Guatemala, Kenya, Mexico and Peru. Every day, this delegation convened coordination meetings in the UN lobby to exchange experiences and organize the daily activities and debates. Much effort was also taken to reaffirm the advancements achieved during the past twenty years in terms of political advocacy at the international level, and to demand more actions to be taken in order to ensure the full exercise of indigenous women’s rights.

In an interview by UN WOMEN, Ms. Aminatou Samirato Gambo, from Cameroon, shared her perspective on gender equality: “I think that to achieve gender equality we need to take proactive measures to train and place women in positions of political power while meeting their various needs and sensitizing the entire community about women’s rights and gender equality. To do so, we need to focus on the social transformations required to eradicate poverty and employ the most marginalized and excluded peoples, such as the indigenous and local communities by removing all barriers to women’s empowerment”.<sup>3</sup>

During CSW 59, indigenous women therefore strongly advocated for the removal of such barriers and the empowerment of indigenous women in general.<sup>4</sup> They had various meetings with governments and decided to coordinate their advocacy efforts to demand that the empowerment of indigenous women be considered as an emerging theme at CSW 61st Session in 2017 on the occasion of the tenth anniversary of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples. To this end, they prepared a position document that was presented as part of an advocacy roadmap that has been developed throughout the year.

## UNPFII

The Fourteenth Session of the United Nations Permanent Forum on Indigenous Issues (**UNPFII**) provided another occasion for furthering this roadmap. One

week before the UNPFII Session, 24 indigenous women leaders participated in FIMI's Indigenous Women's Global Leadership School's Program on Human Rights and International Advocacy Skills. During an intensive week, these women engaged in a series of learning activities, from keynote-speaker sessions at the United Nations to seminars given by the Institute for the Study of Human Rights at Columbia University. On the day before the opening of the session, over 52 indigenous women gathered to share their concerns and organize advocacy strategies for the following weeks, including side events and preparing statements to be presented at UNPFII. During the UNPFII session indigenous women identified a number of priority themes, such as violence against indigenous women and girls, the participation in the various levels of forging the Sustainable Development Goals and the Post 2015 Development Agenda, the inclusion of relevant indicators and the allocation of resources to indigenous women and their organizations and the same recommendation was made to UNPFII by young indigenous women within the frame of the UNPFII 14th Session's Agenda Item 5, "Dialogue on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples".

### **Other events and future challenges**

In September 2015 the United Nations adopted a new set of 17 Sustainable Development Goals. These will drive the development actions for the next 15 years. Several mentions are made of indigenous peoples and the inclusion of Mother Earth and other references that are relevant to indigenous peoples represent a step forward compared to the Millennium Development Goals.<sup>5</sup>

In early November, on the occasion of the celebration of the 20th anniversary of the Continental Network of Indigenous Women of the Americas, nearly 300 indigenous women, youth and ancestral authorities of various peoples from 22 countries of the Americas gathered in Guatemala to reaffirm their commitment to the struggle for a full life for indigenous women and peoples, and the protection, defense and healing of Mother Earth.

Finally, in December 2015, world governments gathered in Paris, France for the United Nations Framework Convention on Climate Change (UNFCCC). Here too, indigenous women participated in actively through constituencies such as WECAN- Women's Earth & Climate Action Network.

Throughout the world, indigenous women are the stewards of their ancestral lands, forests, rivers and territories, as well as of their traditional knowledge. Unfortunately, the Paris Agreement, while an historic document, does not fully include indigenous peoples and gender equality. COP21 has been a step forward but both women and indigenous peoples have a lot of work to do to ensure the inclusion of a gender equality perspective, and the acknowledgement of the key role played by indigenous peoples in combatting climate change.

The international processes that took place this year show the increased participation of indigenous women, and their improved coordination. Many challenges of course remain and need to be addressed one by one. Our accomplishments step by step, year by year, help us continue our road with more strength and confidence, so that indigenous women's rights will be ensured and fully exercised one day at the local, national, regional and global levels. ○

## Notes and references

- 1 Resolution E/2005/27.
- 2 Resolution E/CN.6/2012/L.6.
- 3 <http://www.unwomen.org/en/news/in-focus/csw/participant-voices#sthash.RFdn3SHK.dpuf>
- 4 A/RES/69/2, 19.
- 5 <http://www.un.org/esa/socdev/egms/docs/2015/sd-agenda2030/Elsaworkingpaper.pdf>

**FIMI/IIWF** (*The International Indigenous Women's Forum*) is a global network of indigenous women leaders and organizations from Asia, Africa, the Arctic, the Pacific and the Americas. FIMI promotes the empowerment of indigenous women, and brings together indigenous women leaders and human rights activists from different parts of the world to coordinate agendas, capacity-build, and to develop leadership roles.

## THE 39TH SESSION OF THE WORLD HERITAGE COMMITTEE

The Convention concerning the Protection of the World Cultural and Natural Heritage (“World Heritage Convention”) was adopted by UNESCO’s General Conference in 1972. With 191 States Parties, it is today one of the most widely ratified multilateral treaties. Its main purpose is the identification and collective protection of cultural and natural heritage sites of “outstanding universal value” (OUV). The Convention embodies the idea that some places are so special and important that their protection is not only the responsibility of the states in which they are located but also a duty of the international community as a whole.

The implementation of the Convention is governed by the World Heritage Committee (WHC), an intergovernmental committee consisting of 21 States Parties. The WHC keeps a list of the sites it considers to be of outstanding universal value (“World Heritage List”), and monitors the conservation of these sites to ensure that they are adequately protected and safeguarded for future generations. Sites can only be listed following a formal nomination by the State Party in whose territory they are situated, and are classified as either “natural”, “cultural” or “mixed” World Heritage sites. Although a large number of World Heritage sites are fully or partially located in indigenous peoples’ territories, there is a lack of regulations and appropriate mechanisms to ensure the meaningful participation of indigenous peoples in Convention processes and decisions affecting them.

The WHC is supported by a secretariat (the UNESCO World Heritage Centre) and three advisory bodies. The International Union for Conservation of Nature (IUCN) and the International Council on Monuments and Sites (ICOMOS) provide technical evaluations of World Heritage nominations and help in monitoring the state of conservation of World Heritage sites; the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) provides advice and training related to cultural sites. An indigenous proposal to establish a “World Herit-

age Indigenous Peoples Council of Experts” (WHIPCOE) as an additional advisory body was rejected by the WHC in 2001.

## Important developments

The 39<sup>th</sup> session of the WHC in Bonn, June/July 2015, was attended by several indigenous representatives as well as a member of the UN Permanent Forum on Indigenous Issues (UNPFII). Several important developments regarding indigenous peoples occurred at the session. Most significantly, as a first result of the lobbying efforts of indigenous organizations over the last few years (see *The Indigenous World 2012, 2013, 2014, 2015*), the WHC for the first time introduced references to indigenous peoples into the World Heritage Convention’s Operational Guidelines. The Guidelines now mention indigenous peoples among a list of potential “partners in the protection and conservation of World Heritage”, and encourage States to obtain their free, prior and informed consent (FPIC) when nominating sites for World Heritage listing.<sup>1</sup>

The WHC intends to re-examine issues related to indigenous peoples “following the results of the discussions to be held by the [UNESCO] Executive Board on the UNESCO policy on indigenous peoples” that the organization is currently developing.<sup>2</sup>

The new provisions on indigenous peoples in the Operational Guidelines are a positive step towards enhancing respect for the rights of indigenous peoples in the implementation of the World Heritage Convention, in particular the preparation of nominations. At the same time, it is evident that the adopted text is inadequate, as involving affected indigenous peoples in the nomination process and obtaining their FPIC is still not obligatory for States but merely recommended practice. UNPFII representative Oliver Loode remarked in a statement to the WHC:

*UNPFII welcomes... the introduction of provisions on FPIC into the Operational Guidelines. However, the language [in paragraph 123] is insufficient, primarily because it fails to create obligations for States... What is needed is a robust procedure ensuring that 1) indigenous peoples’ rights under interna-*

*tional law are respected, 2) that indigenous peoples are fully and effectively involved in nomination processes, and 3) that their FPIC is obtained before sites on their lands are inscribed on the World Heritage List. Similar mechanisms are needed for management of already inscribed sites.*<sup>3</sup>

From the discussions at the WHC's 39<sup>th</sup> session it is clear, however, that there is significant resistance within the WHC against acknowledging indigenous peoples as rights-holders and adopting regulations that would make their effective involvement in decision-making processes a mandatory requirement for States Parties. During the discussions, several States even contested the very concept of "indigenous peoples", including some States that have endorsed the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), such as France, Mali or Senegal.<sup>4</sup>

Moreover, the WHC explicitly rejected a proposal that all World Heritage nomination documents be made publicly accessible once UNESCO receives them.<sup>5</sup> Unless States Parties publish the nomination documents voluntarily, which they often do not, the nominations are not accessible to affected communities or the public at large before sites are listed. Indigenous peoples have repeatedly criticized this lack of transparency as incompatible with their right to FPIC, as well as with States' obligations to facilitate public participation in environmental decision-making.<sup>6</sup>

The WHC's decision not to publish the nominations stands in contrast to and is inconsistent with the WHC's endorsement, also at the 39<sup>th</sup> session, of a draft policy for the integration of a sustainable development perspective into the processes of the World Heritage Convention (prepared by the World Heritage Centre at the request of the WHC). The draft policy underlines, among other things, that "[r]ecognising rights and fully involving indigenous peoples and local communities, in line with international standards, is at the heart of sustainable development" and that States Parties should ensure, "as a pre-requisite for effectively achieving sustainable development... that the full cycle of World Heritage processes from nomination to management is compatible with and supportive of human rights".<sup>7</sup> The WHC requested the World Heritage Centre to finalize the draft policy by incorporating comments received from States Parties, and then to transmit it to the 20<sup>th</sup> General Assembly of States Parties in November 2015 for discussion and adoption.<sup>8</sup>

### **Noteworthy decisions on specific sites**

In a decision on the state of conservation of the “Kenya Lake System”, a natural World Heritage site in **Kenya** that includes the **Lake Bogoria National Reserve**, the WHC noted a letter received from the Endorois Welfare Council raising concern about Kenya’s lack of implementation of the African Commission on Human and Peoples’ Rights’ (ACHPR) 2010 Endorois ruling. The WHC “strongly urge[d] the State Party to fully implement the [ACHPR’s] Endorois decision and Resolution 197 without delay to ensure the full and effective participation of the Endorois in the management and decision-making of Lake Bogoria”.<sup>9</sup>

Two Endorois representatives attended the WHC session in Bonn and were able to present a short statement. They noted that the process by which Lake Bogoria National Reserve was inscribed on the World Heritage List had completely ignored the Endorois community and that the FPIC of the Endorois had not been sought. Now that the Reserve was a World Heritage site, Kenya was trying to use the World Heritage designation as a pretext for denying restitution of the Reserve to the Endorois as demanded by the ruling of the ACHPR. “We want to assure the Committee that the Endorois people will always safeguard the World Heritage property and the government should not use the inscription to deny us our communal rights”, the statement emphasized.<sup>10</sup>

Also noteworthy is the WHC’s decision on the nomination of the **Kaeng Krachan Forest Complex (KKFC) in Thailand** as a natural World Heritage site. The Karen communities living in the nominated area have been subjected to repeated violations of their human rights in recent years, including violent forced evictions, burning of Karen houses and rice barns, arbitrary arrests, intimidation and coercion (see *The Indigenous World 2012, 2013, 2014, 2015*). Two Karen human rights defenders from the area have been killed or gone missing since 2011. In 2012, the UN Committee on the Elimination of Racial Discrimination (CERD) examined the situation under its early warning and urgent action procedure and requested Thailand to urgently take measures to improve the situation of the Karen in the KKFC.<sup>11</sup> CERD also urged Thailand “to review the relevant forestry laws in order to ensure respect for ethnic groups’ way of living, livelihood and culture, and their right to free and prior informed consent in decisions affecting them, while protecting the environment”.<sup>12</sup> This did not stop Thailand from nominating the KKFC for World Heritage listing in 2013 without having conducted

any significant consultations with the Karen communities and without having sought their FPIC.

In 2014, indigenous organizations from Thailand sent letters to UNESCO and IUCN stressing that all conflicts between conservation authorities and the Karen should be resolved before inscription of the KKFC on the World Heritage List, and calling for a number of measures to be taken to ensure respect for the rights of the Karen in the proposed site.<sup>13</sup> A similar communication was sent to UNESCO by the Bangkok Office of the UN High Commissioner for Human Rights (OHCHR),<sup>14</sup>

As a result of these communications, the WHC at its 39<sup>th</sup> session, following the advice provided by IUCN, referred the nomination back to the State Party, in order to allow it to:

*Address in full the concerns that have been raised by the OHCHR concerning Karen communities within the Kaeng Krachan National Park including the implementation of a participatory process to resolve rights and livelihoods concerns and to reach the widest possible support of local communities, governmental, non-governmental and private organizations and other stakeholders for the nomination.*<sup>15</sup>

However, the WHC voted against adopting a provision proposed by IUCN that would have required Thailand to ensure the FPIC of the Karen communities.<sup>16</sup>

In another notable decision, the WHC requested **Canada** to invite a UNESCO-IUCN Reactive Monitoring mission to **Wood Buffalo National Park** in response to concerns expressed by the Mikisew Cree First Nation over environmental impacts from hydro-electric dams, oil sands development and mining. The decision also expresses concern about Canada's lack of engagement with indigenous communities in monitoring activities, as well as insufficient consideration of traditional ecological knowledge.<sup>17</sup>

In a decision on **La Amistad National Park** in **Panama**, the WHC expressed concern about the potential impacts of a new hydropower project on the Changuinola River (Chan II) and urged Panama not to proceed with the project until it has been subject to an independent Environmental Impact Assessment and "due process has been ensured to achieve FPIC by indigenous communities having territorial rights in the affected lands".<sup>18</sup>

In relation to the **Tasmanian Wilderness**, a “mixed” site in **Australia**, the WHC urged the State Party to ensure that commercial logging and mining are not permitted within the site and that strict criteria are established for new tourism development. This reflects concerns over a proposed new management plan that would create potential for such developments at the expense of natural and cultural heritage protection. The WHC also reiterated a request for Australia to work with the Tasmanian Aboriginal community to produce a comprehensive report on the Aboriginal cultural values of the whole area.<sup>19</sup>

### **Access issues**

Indigenous peoples and civil society organizations have for many years criticized the WHC’s procedural rules, which make it virtually impossible for them to participate meaningfully in the plenary meetings of the WHC. Voices from community groups and NGOs have no official place in World Heritage processes and may only be heard at the discretion of the WHC’s chairperson.<sup>20</sup> Although NGOs are occasionally invited to deliver short statements, they are normally only given the floor after the States Parties have exhausted a topic and already reached a conclusion. At the session in Bonn, the effective participation of civil society was further hindered by the fact that NGO representatives had to sit on the balcony and were prohibited from entering the plenary room, preventing an engagement with government representatives during the sessions. Even the representative of the UNPFII had to deliver his statement from the NGO microphone on the balcony.

## **Eighth session of EMRIP, Geneva, July 2015**

### **Study on cultural heritage**

The UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) in July 2015 adopted a study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage, prepared at the request of the Human Rights Council. A substantial part of the study is dedicated to a discussion of the World Heritage Convention. The study contains several recommendations to the WHC, UNESCO and States aimed at ensuring that the protection of World Heritage sites “does not undermine indigenous peoples’ relationship with their traditional lands, territories and resources, their livelihoods and their rights to pro-

tect, exercise and develop their cultural heritage and expressions”. It calls on the WHC to review the Operational Guidelines to ensure that the implementation of the World Heritage Convention is consistent with the UNDRIP, and to develop mechanisms to ensure that indigenous peoples can effectively participate in all Convention processes affecting them. EMRIP further recommends that the WHC “adopt changes to the criteria and regulations for the assessment of OUV so as to ensure that the values assigned to World Heritage sites by indigenous peoples are fully and consistently recognized as part of their OUV”.

### **Side event on UNESCO’s draft policy on indigenous peoples**

At a side event during the EMRIP session, UNESCO presented an update on its efforts to draft a UNESCO policy on engaging with indigenous peoples. This initiative was launched by UNESCO’s Director-General Irina Bokova in 2011 but progress on the development of the policy has been slow and drafting of the policy only began in 2014. The current draft policy is based on eight overarching policy principles, which were presented at the side event in Geneva. The actual draft text of the policy was not made available. The plan is for a final draft to be submitted to UNESCO’s Executive Board in 2016, and then possibly to UNESCO’s 39th General Conference in 2017.

### **20th General Assembly of States Parties to the Convention, Paris, November 2015**

An important step towards enhancing the role of indigenous peoples in the implementation of the World Heritage Convention was taken in November 2015 when the General Assembly of States Parties adopted a comprehensive policy for the integration of a sustainable development perspective into the processes of the Convention. Influenced by the UN General Assembly’s 2030 Agenda for Sustainable Development, the new policy revolves around three dimensions of sustainable development, namely environmental sustainability, inclusive social development and inclusive economic development, complemented by the fostering of peace and security. The policy states that States Parties should “review and reinforce governance frameworks within management systems of World Heritage properties in order to achieve the appropriate balance, integration and harmoni-

zation between the protection of OUV and the pursuit of sustainable development objectives”, and explicitly notes that this “will include the full respect and participation of all stakeholders and rights holders, including indigenous peoples and local communities”.

Among the objectives outlined in the new policy are “Respecting, protecting and promoting human rights” (in particular environmental, social, economic, and cultural rights) and “Respecting, consulting and involving indigenous peoples and local communities”. To fulfill these objectives, States Parties should, among other things, “[a]dopt a rights-based approach, which promotes World Heritage properties as exemplary places for the application of the highest standards for the respect and realization of human rights”, and “[e]nsure adequate consultations, the free, prior and informed consent and equitable and effective participation of indigenous peoples where World Heritage nomination, management and policy measures affect their territories, lands, resources and ways of life”. States Parties are also supposed to “[a]ctively promote indigenous and local initiatives to develop equitable governance arrangements, collaborative management systems and, when appropriate, redress mechanisms”.

Over the next few years, the World Heritage Centre and the Advisory Bodies will develop proposals for specific changes to the Operational Guidelines to translate the principles of the policy into actual operational procedures. The UNPFII has called on the World Heritage Centre to ensure the full and effective participation of indigenous peoples in this process, in order to ensure that the revised Operational Guidelines are in line with UNDRIP. UNPFII underlined that the effectiveness of the new sustainable development policy “will depend on the introduction of specific operational procedures that not only encourage but actually require States Parties to comply with international standards regarding the rights of indigenous peoples”. ○

## Notes and references

- 1 Doc. WHC.15/01 (July 2015), paras. 40 and 123.
- 2 Decision 39 COM 11, para. 10.
- 3 The statement is available at [http://www.iwgia.org/news/search-news?news\\_id=1234](http://www.iwgia.org/news/search-news?news_id=1234).
- 4 See the joint statement by Endorois Welfare Council, Sámi Council and IWGIA at the eighth session of EMRIP, 22 July 2015 (agenda item 7), available at [http://www.iwgia.org/news/search-news?news\\_id=1234](http://www.iwgia.org/news/search-news?news_id=1234). For the French position, also see Doc. WHC-15/20.GA/13, pp. 8-9.

- 5 For details, see *ibid.* (joint statement), endnote 6. The proposal had been put forward by an intersessional ad-hoc working group of the WHC attended by 13 Member States (see Doc. WHC-15/39.COM/13A, p. 6).
- 6 On the obligation of States to facilitate public participation in environmental decision-making, see John Knox, 2015, “Human rights, environmental protection, and the sustainable development goals”, *Washington International Law Journal*, Vol. 24 No. 3, p. 521. Also see the 2013 mapping report of the UN independent expert on human rights and the environment, Doc. A/HRC/25/53, paras. 29-43.
- 7 Doc. WHC-15/39.COM/5D, Annex, paras. 19-20.
- 8 Decision 39 COM 5D, paras. 5-8.
- 9 Decision 39 COM 7B.5, para. 5.
- 10 See <http://whc.unesco.org/en/sessions/39com/records/> (1 July 2015 - 9:30 AM, at 1:41:00).
- 11 CERD, Letter to Thailand, 9 March 2012 (Early-Warning Procedure), [http://www2.ohchr.org/english/bodies/cerd/docs/CERD\\_Thailand.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/CERD_Thailand.pdf).
- 12 CERD, Concluding Observations: Thailand (2012), Doc. CERD/C/THA/CO/1-3, para. 16.
- 13 See *The Indigenous World* 2015, p. 283.
- 14 See IUCN’s technical evaluation of the nomination of the KKFC, Doc. WHC-15/39.COM/INF.8B2, p. 48.
- 15 Decision 39 COM 8B.5.
- 16 See the summary records of the session, Doc. WHC-15/39.COM/INF.19, pp. 141-142. The provision on FPIC was contained in IUCN’s draft decision, but deleted at the request of Vietnam (supported by Finland among others). Vietnam’s delegate stated that “we are here at a prestigious committee of culture and heritage, we are not in Geneva on the Human Rights Council”. Only one WHC member (Portugal) spoke up against this notion. See <http://whc.unesco.org/en/sessions/39COM/records/> (3 July 2015 - 9:30 AM, at 2:24:58).
- 17 Decision 39 COM 7B.18.
- 18 Decision 39 COM 7B.28.
- 19 Decision 39 COM 7B.35.
- 20 Christina Cameron and Mechtild Rössler, 2013, *Many Voices, One Vision: The Early Years of the World Heritage Convention*, Farnham: Ashgate, p. 217.

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## UN WORKING GROUP AND FORUM ON BUSINESS AND HUMAN RIGHTS

In June 2011, the Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (hereafter: the UNGP). That was the first time a UN intergovernmental body had endorsed a normative document on the very divisive issue of how the human rights responsibility of transnational and other enterprises can be framed in international law. The Council’s endorsement effectively established the Guiding Principles as the authoritative global standard for preventing and addressing adverse impacts on human rights arising from business-related activity.

The Council also decided to establish a Working Group on the issue of human rights and transnational corporations and other business enterprises (the Working Group) with a mandate, *inter alia*, to promote the effective and comprehensive dissemination and implementation of the Guiding Principles worldwide. At its 18th session in September 2011, the Council appointed five independent experts, of balanced geographical representation, for a period of three years, as members of the Working Group. The Working Group started its work in January 2012. The Working Group meets three times a year in closed sessions, within which it can organise stakeholder consultations. Furthermore, it is responsible for organising a yearly Forum on Business and Human Rights. One of its members is Russian veteran indigenous rights activist Pavel Sulyandziga.

### Business and Indigenous Peoples’ Rights Training

**A**t previous sessions of the Business and Human Rights Forum indigenous representatives had suggested that an introductory training on the Guiding Principles (UNGP) and how they relate to efforts to assert and defend the rights of indig-

enous peoples would enable them to make more effective use of the Guiding Principles. On the 13 and 14 December 2015 a training seminar was hosted by the European Network on Indigenous Peoples (ENIP) at the John Knox Centre in Geneva for 40 representatives of indigenous peoples from across the world. It focused on two main clusters of corporate activity identified by the participants as being of particular interest: the expansion of agri-businesses into indigenous territories; and the continued growth in extractive sector, particularly oil, gas and mining, in indigenous lands.

The training provided an overview of the background of the UNGP, their content and relationship with the indigenous human rights framework, and consisted of breakout groups addressing the potential for the Guiding Principles to be used by indigenous peoples in the context of asserting their rights when faced with agri-business, mining and oil and gas projects in their territories.

The current, status, process and prospects for an international treaty on business and human rights were also presented and discussed, as was the political context and the developments in the Human Rights Council (HRC) in relation to the treaty process. In accordance with resolution (A/HRC/RES/26/9) adopted by the HRC in June 2014, the first meeting of the intergovernmental working group on human rights, transnational corporations and other business enterprises was held in July 2015 in Geneva addressing the “scope of application of the [treaty]; the obligations of states and businesses; standards for legal liability and building mechanisms for access to remedy”.<sup>1</sup>

## **Indigenous Peoples’ Caucus**

The annual pre-forum indigenous peoples’ caucus took place on the 15 December. The caucus served to inform indigenous representatives of how the Forum would be organized and provided a space to discuss issues that were of key concern to indigenous peoples in relation to corporate respect for their rights. A consensus caucus statement was developed drawing attention to the fact that no progress had been made in relation to concerns expressed in previous sessions by indigenous delegates.<sup>2</sup> Six key themes were identified, namely 1) Efforts to track performance and progress in the implementation of the UNGP, in particular in relation to free prior and informed consent (FPIC) implementation; 2) Policy coherence in global governance framework in relation to investment and trade

and the implementation of the Sustainable Development Goals, 3) Policy and practice: coherence at the national level focusing on National Action Plans (NAPs) 4) Corporate respect for human rights in practice and home States' responsibility 5) Groups at risk in particular indigenous peoples in voluntary isolation and indigenous rights defenders; and 6) Access to effective remedy.

## **Indigenous participation on the Forum Panels**

The UN Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, was a panellist in the opening high-level plenary entitled "Panel conversations - Leadership views on business and human rights".<sup>3</sup> In her speech the Special Rapporteur outlined her work in relation to the impact of investment treaties and free trade agreements on indigenous peoples' rights. She highlighted the negative implications that overly broad protections for investor rights have for the realization of the rights of indigenous peoples, and provided examples of cases where restitution of land taken from indigenous peoples without their FPIC could be classified as expropriation by international arbitration tribunals, leading to multi-million dollar awards against States. The absence of recognition of the requirement for prior consultation in investment agreements was leading to intractable conflicts in which all parties stood to lose. It is noteworthy that in his report on the 2014 Forum the Chair had noted that "[t]he impact of trade and investment agreements on indigenous peoples was flagged as an area where the Working Group could complement the work of the Special Rapporteur on the rights of indigenous peoples".<sup>4</sup>

The Special Rapporteur also spoke on a panel entitled "Utilizing the Guiding Principles in the context of extractive industries - benefits and challenges".<sup>5</sup> She noted that despite developments in human rights law in relation to indigenous peoples' rights, the reality around the world was that serious violations of indigenous peoples' rights continued unabated. Interestingly, in the discussion that ensued around FPIC, the Chevron representative stated that while FPIC was not required in their public policy, it was required under the company's internal documentation. A general sense emerging from the discussion was that the huge imbalances in power between corporate actors and communities continue to pose major challenges for the implementation of the Guiding Principles.

## **Session on indigenous peoples**

One session entitled “Recognizing indigenous peoples’ rights to land, territories and resources, and challenges in their access to mechanisms for redress”,<sup>6</sup> was dedicated to indigenous peoples’ issues. It included speakers from Bolivia, Colombia, the Philippines, and the United States.<sup>7</sup> Issues raised included the killings of indigenous leaders in the Philippines in the context of extractive industries and the displacement of over 4000 indigenous people as a result of military and paramilitary attacks.<sup>8</sup> Even though FPIC is required under the Philippines Indigenous Peoples’ Rights Act (1997), economic policies promoting the entry of extractive industries in resource-rich ancestral lands have forced indigenous peoples to accept streamlined permitting processes that are inconsistent with FPIC. Similar themes emerged in the Colombian context, where indigenous leaders are threatened and some assassinated when attempting to defend their peoples’ right. It was also noted that corporations avoid having to obtain FPIC and that the Colombian State is complicit in this. In the United States, the Apache Nation are suffering from the implications of the 2015 National Defense Authorization Act, which is facilitating the taking for mining of lands they traditionally used for ceremonial purposes.<sup>9</sup>

Attention was also drawn to the gender dimension of abuses in the context of extractive industry projects in Latin America. Women’s agendas disappear from the debates and consultations in relation to extractive industry projects, even though extractive projects serve to significantly exacerbate women’s poverty, are often associated with gender-based violence and have negative impacts on women’s health and reproductive rights.<sup>10</sup> Similar issues of double discrimination and barriers to justice faced by indigenous women were addressed in the session entitled “Identifying the specific challenges that women human rights defenders face and understanding their valuable role”.<sup>11</sup>

## **Session on Company commitments and community-led initiatives**

The session “Company commitments and community-led initiatives: making meaningful community engagement a best practice”<sup>12</sup> addressed experiences of indigenous peoples attempting to assert their rights in the context of extractive industry projects. Pavel Sulyandziga, the indigenous member of the UN Working

Group on Business and Human Rights, noted that to-date few examples of good practice engagement with indigenous peoples exist. A particularly insightful presentation at this session was provided by Aurelio Chino Dahua, an Apu (leader) of FEDIQUEP, the Quechua Federation of the Upper Pastaza, in the Peruvian Amazon. He discussed the experiences of the Quechua people with oil exploitation over the course of 45 years, first with Occidental Petroleum and subsequently with Pluspetrol. In light of the State's failure to ensure adequate environmental monitoring the communities decided to establish their own community monitoring. This involved training their young people to use GPS and cameras to document the extensive environmental contamination.<sup>13</sup> The evidence they gathered eventually resulted in the declaration of a series of environmental emergencies by the State. Pluspetrol initially resisted the role of the community monitors until forced to accept them as a result of community mobilizations. Its contract expired in August 2015 and it abandoned the area without remediating the harms for which it was responsible. The Apu called on the company owners to comply with their responsibilities to remediate the harms and compensate the communities and stated that Peru's claims in international fora to have good practices in the area of prior consultation were misleading, as in their case the government had conducted a seriously flawed process which failed to protect their rights.

AIPP and ENIP also co-organized a side panel entitled "National action plans on business and human rights: global perspectives, lessons learned and next steps".<sup>14</sup> Prabindra Shakya of AIPP highlighted the scant level of indigenous participation in the development of NAPs in Asia and Latin America, and the implications which the indigenous rights framework, including its consultation and consent requirements, should have for their preparation and content.

### **Work of the Working Group on Business and Human Rights in relation to indigenous peoples**

Indigenous peoples' rights were only briefly addressed by the Working Group in its 2015 reports. Its April 2015 report to the Human Rights Council<sup>15</sup> noted that an assessment of impacts on indigenous peoples' rights of "international institutions, private rule-setting bodies and international and national development finance institutions" was encouraged in the zero draft document for the Third International Conference on Financing for Development.<sup>16</sup> The Working Group also not-

ed that the UNDP Extractive Industries for Sustainable Development initiative, within the context of the Post 2015 Development Framework, facilitated dialogues with indigenous peoples, the private sector and government.<sup>17</sup> In this regard, it suggested that the Guiding Principles could be used to help “provide clarity on the roles and responsibilities of duty bearers in line with international standards and clear benchmarks for expected action by States and businesses”.<sup>18</sup> The Working Group also pointed to the initiatives of the Global Compact in relation to building understanding of corporate actors in relation to indigenous peoples’ rights, which include the production and dissemination of the Business Reference Guide on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>19</sup>

The only explicit reference to indigenous peoples in the Working Group’s Report on the First African Regional Forum on Business and Human Rights was that “human rights defenders working on issues related to ... indigenous peoples ... frequently experienced serious attacks and harassment”.<sup>20</sup> The report nevertheless addressed the issue of extractive industry impacts, an issue of major concern to indigenous peoples throughout the continent, expressing concern in relation to the “negative impacts on the human rights of communities affected by extractive projects and land investments”.<sup>21</sup>

The Working Group’s 2015 annual report to the General Assembly also only made one reference to indigenous peoples noting that little attention is paid to impacts on indigenous communities and human rights defenders by companies and the State.<sup>22</sup> Only one passing reference is made to indigenous peoples in the Working Group’s 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> session reports,<sup>23</sup> which addresses its priorities and projects for 2015 and plans for the 2016 Forum.<sup>24</sup>

## **The UN Working Group on Business and Human Rights visit to Brazil**

The Working Group’s 10 day visit to Brazil was its first to a Latin American country.<sup>25</sup> The visit involved meetings with a number of Brazil’s 240 indigenous peoples, who represent 0.4% percent of the population or approximately 900,000 people.<sup>26</sup> Among the concerns raised were the inadequate extent to which lands of indigenous communities had been demarcated and congressional proposals to transfer of demarcation responsibility away from FUNAI, the

State agency with responsibility for indigenous peoples' rights. A matter of particular concern was the extent of the violent social conflict in the country, with 138 murders of members of indigenous peoples registered, one third of which occurred in Mato Grosso do Sul. Forced displacement of indigenous peoples caused by expansion of agribusiness and other large-scale development projects in their territories, and violations of indigenous peoples' rights arising due to the extremely limited Governmental presence and oversight, were also matters of significant concern.

The Working Group visited Altamira where the Belo Monte hydropower plant is being constructed. It expressed concern that, despite the recommendations of FUNAI and the Federal Public Ministry, measures necessary to mitigate adverse social and environmental impacts, which include displacement of entire villages, had not been put in place. In addition, Norte Energia, the company constructing the dam, lacks the necessary mechanisms to conduct human rights due diligence and had failed to consult with the impacted peoples prior to designing mitigation projects. This was indicative of a wider trend of "significant shortcomings in the way projects to mitigate adverse social impacts were being implemented, resulting in tensions and protests".

Addressing the issue of displacement and relocation, the Working Group highlighted the importance of obtaining the FPIC of indigenous peoples in accordance with ILO Convention No. 169 and the UNDRIP. It also emphasized the need to take these international standards into account in all such projects "in order to prevent the total disruption to the life of indigenous communities", something which was evident in many "large-scale construction sites, [where] the sudden growth of the population has been accompanied by a steep increase in cases of violence, trafficking, sexual exploitation of women and girls, and alcohol addiction".<sup>27</sup>

Finally, the Working Group signalled its concern in relation to a legislative initiative which seeks to "fast track" licencing processes for infrastructure works and mining projects.<sup>28</sup> This was compounded by proposed revisions to the Mining Code eliminating environmental protections and failing to protect water for human use. Another concern was the use by courts of the "safety suspension" (*suspensão de segurança*) which prevents injunctions against development projects on the basis of the "public interest".

## **General observations on the Forum and Working Group on Business and Human Rights**

During the Forum, a number of indigenous representatives met with the Forum Chairperson to discuss their perspectives, which included a concern about the lack of visibility of indigenous peoples and their issues at the 2015 Forum.

Viewed from the perspective of indigenous participation in the 2012 and 2013 Forum sessions,<sup>29</sup> and to a certain extent in the 2014 Forum,<sup>30</sup> this concern is understandable. As the Forum has grown in size, competition for space has increased, and indigenous issues, which had been accorded considerable attention in the first two sessions, have increasingly shifted from the centre stage to the peripheries.<sup>31</sup> In this regard the Forum could be regarded as a victim of its own success.

Similarly, the 2015 reports of the Working Group, with the exception of the Brazil report tended to accord little attention to indigenous peoples.<sup>32</sup>

That said, within the constraints in which they operate, and allowing for certain growing pains, the Forum and the Working Group and the intergovernmental working group on human rights, transnational corporations and other business enterprises have all in the past demonstrated their willingness to shine a spotlight on indigenous peoples' issues. This is important as sustained and concerted action is required by the international community in the context of indigenous peoples where significant business related human rights concerns have historically been ignored. This is particularly the case in the context of powerful industry sectors, such as agribusiness, mining, oil and gas, hydroelectric and infrastructure, whose track records are notorious for human rights violations which impact disproportionately on indigenous peoples.

It is hoped that these human rights bodies and spaces will remain cognizant of the fact that the manner in which indigenous peoples' issues are addressed constitutes a key litmus test for the broader business and human rights agenda. As has been highlighted by Pavel Sulyandziga, unless the voices of the most vulnerable and disempowered rights holders are heard and genuinely serve to influence international processes, such processes run the risk of rendering themselves irrelevant to the real struggles on the ground. ○

## Notes and references

- 1 For an account of the meeting see [http://www.southcentre.int/wp-content/uploads/2015/11/SB87-88\\_EN.pdf](http://www.southcentre.int/wp-content/uploads/2015/11/SB87-88_EN.pdf)
- 2 [http://www.ohchr.org/Documents/Issues/Business/ForumSession4/IndigenousCaucus\\_sp.pdf](http://www.ohchr.org/Documents/Issues/Business/ForumSession4/IndigenousCaucus_sp.pdf)
- 3 <http://www.ohchr.org/Documents/Issues/Business/ForumSession4/OpeningPlenarySession-Note.pdf>
- 4 “Summary of discussions of the Forum on Business and Human Rights, prepared by the Chair, Mo Ibrahim” UN Doc A/HRC/FBHR/2014/3 (February 2015) para 67.
- 5 For additional background on the panel see [http://www.ohchr.org/Documents/Issues/Business/ForumSession4/FES\\_ZELA\\_BHR\\_Joint\\_session\\_proposal.pdf](http://www.ohchr.org/Documents/Issues/Business/ForumSession4/FES_ZELA_BHR_Joint_session_proposal.pdf) and [http://www.fes-globalization.org/new\\_york/wp-content/uploads/2015/12/Report\\_Forum-BHR-2015-Peaceweek-2015.pdf](http://www.fes-globalization.org/new_york/wp-content/uploads/2015/12/Report_Forum-BHR-2015-Peaceweek-2015.pdf)
- 6 For more details on the panel see [http://www.ohchr.org/Documents/Issues/Business/ForumSession4/16\\_Nov\\_1140\\_IPsRights.pdf](http://www.ohchr.org/Documents/Issues/Business/ForumSession4/16_Nov_1140_IPsRights.pdf)
- 7 Arnold Alamon, of the Mindanao Interfaith Institute on Lumad Studies (Philippines), Carlos Gualtero, of the Consejo Regional Indígena del Tolima (Colombia), Leilah Gordon-Bates of Latin American Mining Monitoring Program (UK), Lorena Terrazas Arnez, Red Pazinde (Bolivia) and Michael Hill of the Apache Nation.
- 8 <http://www.waccglobal.org/articles/un-session-discusses-land-rights-of-indigenous-peoples#sthash.QWFBiqX9.dpuf>
- 9 <http://readersupportednews.org/news-section2/318-66/27395-2015-national-defense-authorization-act-gives-apache-land-to-foreign-mining-corporation>
- 10 For further discussion see <http://lammp.org/wp-content/uploads/2009/11/LAMMP-report-2015-UN-Forum.pdf>
- 11 Participants were Lina Solano Ortiz, Frente de Mujeres Defensoras de la Pachamama and María Isabel Jimenez Salinas, Asamblea Popular del Pueblo Juchiteco de Oaxaca.
- 12 <http://www.ohchr.org/Documents/Issues/Business/ForumSession4/ConceptNoteCommunityLedInitiatives12oct.pdf>
- 13 The Apu’s presentation was followed by a presentation by Wendy Pineda, of AIDSESP, the Interethnic Association for the Development of the Peruvian Rainforest, which provided more technical details on the community-based social & environmental monitoring.
- 14 [http://www.ohchr.org/Documents/Issues/Business/ForumSession4/17\\_Nov\\_1640\\_NationalActionPlans.pdf](http://www.ohchr.org/Documents/Issues/Business/ForumSession4/17_Nov_1640_NationalActionPlans.pdf)
- 15 Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises UN doc A/HRC/29/28 28 April 2015.
- 16 *Ibid*, para 66.
- 17 *Ibid*, para 71.
- 18 *Ibid*, para 71.
- 19 *Ibid*, para 84.
- 20 Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises Report on the First African Regional Forum on Business and Human Rights A/HRC/29/28/Add.2 para 68.
- 21 *Ibid*, para 107(f).
- 22 Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises UN Doc A/70/216 (30 July 2015) para 51.

- 23 The reference is in the context of the Working Group's multi-stakeholder engagement approach see UN Doc A/HRC/WG.12/10/1 para 12.
- 24 Outcome of the twelfth and eleventh sessions of the Working Group on the issue of human rights and transnational corporations and other business enterprises UN Docs A/HRC/WG.12/11/1 (8 June 2015) and A/HRC/WG.12/12/1 (3 November 2015).
- 25 Statement at the end of visit to Brazil by the United Nations Working Group on Business and Human Rights, Brasilia, 16 December 2015.  
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16891&LangID=E>
- 26 The statement also addressed issues faced by the indigenous peoples and Quilombo (descendant from escaped African slaves) communities.
- 27 The risks posed to communities of inadequately designed and poorly maintained mining tailing dams was also raised in light of the collapse of the Vale / BHP Billiton controlled Fundão tailing dam which resulted in the deaths of 19 persons. The Working Group also noted the influential role which the Brazilian Development Bank (BNDES) plays as a source of funding for large-scale development both in Brazil and abroad, highlighting the need for "explicit reference to the requirement that projects include safeguards against adverse human rights impacts".
- 28 Projeto de Lei do Senado, number 654 of 2015.
- 29 Doyle, C., "Indigenous Peoples' Issues & Participation at the UN Forum on Business and Human Rights: Progress to date and Potential for the Future (ENIP, 2014) available at <http://www.enip.eu/web/wp-content/uploads/2014/06/Doyle-C-Indigenous-Peoples-Issues-Participation-at-the-UN-Forum-on-Business-Human-Rights-ENIP-2014.pdf>
- 30 Indigenous issues were addressed to a certain extent in the 2014 Forum, including through the opportunity to read out the caucus statement. However, participation was to a lesser extent than in 2013. See IWGIA Indigenous World 2014 page 563-4 and "Summary of discussions of the Forum on Business and Human Rights, prepared by the Chair, Mo Ibrahim" UN Doc A/HRC/FBHR/2014/3 (February 2015) para 6, 26, 67, 77 and 86.
- 31 With the exception of the involvement of the UN Special Rapporteur in the opening high level panel.
- 32 For example the 2015 Report of the Working Group to the Human Rights Council A/HRC/29/28 did not address indigenous issues. Neither did the report entitled "Identifying emerging approaches and lessons learned in corporate respect for human rights: reflections from discussions held at the 2014 Forum on Business and Human Rights". The Report First African Regional Forum on Business and Human Rights only includes a signal reference to indigenous peoples.

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## AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights (African Commission) was officially inaugurated on 2 November 1987 and is the main human rights body of the African Union (AU). In 2001, the African Commission established its Working Group on Indigenous Populations / Communities in Africa (WGIP), which was a remarkable step forward in promoting and protecting 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 African Commission as its official conceptualization of the rights of indigenous peoples.

The human rights situation of indigenous peoples has, since 2001, been on the agenda of the African Commission and has since then been a topic of debate between the African Commission, states, national human rights institutions, NGOs and other interested parties. Indigenous representatives' participation in the sessions and in the Working Group's continued activities – sensitization seminars, country visits, information activities and research – plays a crucial role in ensuring this vital dialogue.

### **Facilitating dialogue between civil society and states at the sessions of the African Commission**

In 2015, the African Commission held its 56<sup>th</sup> and 57<sup>th</sup> ordinary sessions. Indigenous peoples' representatives from Kenya, Ethiopia, Uganda and Tanzania participated and contributed by making statements on the human rights situation of indigenous peoples in Africa. The African Commission's Working Group on Indigenous Populations / Communities (Working Group) also presented its progress reports. The participation of indigenous representatives, as well as the intervention of the Working Group's chairperson during the sessions, contributed to raising awareness of indigenous peoples' rights.

During each session, the African Commission also examines the periodic reports of African states. In 2015, the periodic report of Uganda, Ethiopia and Kenya were presented. IWGIA, Forest Peoples Programme (FPP), The United Organisation for Batwa Development in Uganda (UOBDU), The Mount Elgon Benet Indigenous Ogiek Group (MEBIO) and The Coalition of Pastoralist Civil Society Organisations (COPACSO) contributed with a stakeholder report<sup>1</sup> for the Uganda examination that provided an alternative source of information and assisted the African Commission in asking substantiated and critical questions on indigenous peoples during the dialogue with the state. The same was done for the Kenya examination where IWGIA, Minority Rights Group International and the Ogiek People's Development Programme (OPDP) prepared an alternative report in broad consultation with other indigenous organizations in Kenya. IWGIA and Anywaa Survival Organization also developed a paper and prepared questions on indigenous peoples' rights for the Ethiopia examination.

The participation of indigenous peoples' representatives in the African Commission sessions has also facilitated the exchanges with their respective governments and the advancement of the rights of indigenous peoples in their country. For example, the Ugandan indigenous representatives that participated in the session had the opportunity to meet with the governmental delegations and discussed the situation of indigenous peoples in the country. They also organized a debate where many civil society organizations from Uganda had the chance to exchange with the government representatives on key human rights issues in the country.

### **Awareness-raising on the Outcome document of the WCIP**

The WGIP participated actively in the preparatory process leading up to the World Conference on Indigenous peoples (WCIP) and played a key role in lobbying African embassies at the United Nations. As a follow up to the WCIP, the WGIP organized from 15 to 16 December 2015 in Yaoundé, Cameroon, a Regional Workshop on the "Outcome Document of the World Conference on Indigenous Peoples (the Outcome Document)", in collaboration with the Association for the Social and Cultural Development of the Mbororo (MBOSCUDA). The workshop was attended by 48 participants from Burundi, Cameroon, the Republic of Congo, the Democratic Republic of Congo, Kenya, Uganda, Tanzania

and the Central African Republic. The UN Special Rapporteur on the rights of indigenous peoples also took part in the workshop. The workshop aimed to inform and raise awareness among participants on the contents of the Outcome Document, the cornerstone for implementation of the UN Declaration on the rights of indigenous peoples (the Declaration) and other relevant international legal instruments; encourage its ownership for a wider dissemination in the various countries; and initiate dialogue between the different stakeholders for the operationalization of the Outcome Document at the national and local levels. Recommendations were made to the African Commission, Governments, National human rights institutions, civil society organization, UN agencies and development partners.<sup>2</sup>

### **Ongoing sensitization on indigenous peoples' rights**

In September 2015, with the support of the WGIP, the Centre for Human Rights of the University of Pretoria in South Africa conducted its fifth intensive course on indigenous peoples' rights. This course was targeted at senior government officials, civil society and academics in Africa. The lecturers were all well-known experts on the topic, including members of the WGIP.

The report from the visit of the WGIP to Tanzania that took place in 2013 was published in 2015.<sup>3</sup> The report was launched by the Commission on Human Rights and Good Governance, which is the Tanzanian national human rights commission. The event was attended by a total of sixty five participants from the government Ministries, Departments and Agencies, Civil Society Organizations, International Organizations and development partners. The event provided a forum for the participants to discuss challenges, share knowledge and experiences, and make recommendations to improve the situation of indigenous peoples in Tanzania.

Mindful of the impact of extractive industries on the lives of indigenous peoples in Africa, the WGIP carried out a "Study on Extractive Industries, Land Rights and the Rights of Indigenous Communities/Populations in East, Central and Southern Africa". This study is based on case studies from Kenya, Cameroon, Uganda and Namibia. It was validated at a workshop in Windhoek, Namibia, on 3-4 March 2015 and it is now pending for adoption by the African Commission.

## **The Ogiek case towards a judgement**

The African Court of Human and Peoples' Rights heard the case brought by the indigenous Ogiek community against the Government of Kenya on 27-28 November 2014. The Ogiek land case deals with their forced displacement from the Mau forest and the rehabilitation of their land and natural resource rights. The African Court has made a first attempt to agree on an amicable settlement between the two parties. After discussion, the complainants (The African Commission representing the Ogiek People) indicated that they were ready to go for an amicable settlement under the condition that the land was rehabilitated to the Ogiek people. However the Government of Kenya did not accept this condition and it was therefore decided that the Court should issue a judgement. The judgement is expected for 2016.

## **The Endorois people have actively sought to follow up on the African Commission's ruling**

The Endorois Welfare Council (EWC) has continued to put pressure on the Kenyan Government to ensure the implementation of the African Commission's ruling. Thanks to EWC lobby work, the Government put in place a task force in November 2014 to give recommendation on how to implement the decision and in 2015, EWC has started engaging with the Task Force. Unfortunately, the Task force did not get sufficient budget to effectively achieve its mandate and they could therefore do very little activities in 2015. EWC is now lobbying the Government of Kenya to give the Task Force the necessary means to conduct its work in an appropriate way. ○

## **Notes and references**

- 1 <http://www.forestpeoples.org/topics/african-human-rights-system/publication/2015/indigenous-peoples-uganda-review-human-rights-si>
- 2 <http://www.achpr.org/press/2015/12/d286/>
- 3 [http://www.iwgia.org/publications/search-pubs?publication\\_id=719](http://www.iwgia.org/publications/search-pubs?publication_id=719)

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## THE INDIGENOUS PEOPLES' FORUM AT IFAD

The Indigenous Peoples' Forum at IFAD, established in 2011,<sup>1</sup> is a unique platform of consultation and dialogue whose global meetings IFAD convenes every two years. The theme of the 2<sup>nd</sup> global meeting, held in Rome in February 2015, was indigenous peoples' food systems and sustainable livelihoods. Representatives of indigenous peoples' organizations, together with staff of IFAD's regional divisions, discussed and agreed upon regional action plans for 2015-2016. The Forum's Synthesis of Deliberations, which were delivered at the thirty-eighth session of IFAD's Governing Council, captures the issues, concerns, experiences and lessons shared during the second global meeting, and put forward a series of recommendations for IFAD's future work.

In February 2015, about 40 representatives from indigenous peoples' organizations and institutions from Africa, Asia and the Pacific, Latin America and the Caribbean met at IFAD's headquarters in Rome for the 2<sup>nd</sup> global meeting of the Indigenous Peoples Forum at IFAD. The Forum discussed indigenous peoples' food systems and sustainable livelihoods. IFAD and representatives of indigenous peoples' organizations renewed their commitment to work together to enhance IFAD's development effectiveness with indigenous peoples.

The second global meeting of the Forum at IFAD was preceded by four regional workshops organized in late 2014 in Africa, Asia, Latin America and the Pacific. The purpose of the workshops was to:

1. Exchange knowledge, experiences and good practices on indigenous peoples' food systems and sustainable livelihoods, traditional production systems and biodiversity conservation;

2. Identify key challenges and opportunities for strengthening these systems as sustainable solutions for the future, and identify key elements of regional strategies for enhancing IFAD's support to these systems.

The workshops also reviewed the progress of implementation of the recommendations and regional action plans adopted at the First Global Meeting of the Indigenous Peoples' Forum. Participants provided suggestions regarding indicators of well-being for indigenous peoples, related to a series of core themes including land, territories and resources; free, prior and informed consent (FPIC); traditional knowledge, seeds and medicine; and resilience.

Participants from all regions highlighted the need for IFAD to take a holistic approach to supporting and strengthening indigenous peoples' food systems. This approach should include recognizing traditional tenure, conserving biodiversity, and respecting and revitalizing cultural and spiritual values, such as the reciprocity and interdependence that characterize social and economic relations within and between communities. The need to ensure that projects are designed with the FPIC of indigenous peoples was also emphasized. Participants recommended that IFAD strengthen the participation of indigenous peoples throughout programme and project cycles.

At the 2<sup>nd</sup> global meeting in Rome, participants called on IFAD to support initiatives to: recognize and protect indigenous peoples' rights to lands, territories and resources, and disengage from projects that negatively affect these rights; strengthen indigenous peoples' participation throughout the programme and project cycles; and ensure that free, prior and informed consent (FPIC) is systematically and properly sought in the context of IFAD-funded projects targeting or affecting indigenous peoples. They called on governments to recognize and protect indigenous peoples' inalienable rights to lands, territories and resources and to acknowledge the value of indigenous peoples' diverse food systems as a key element of national policies and frameworks for sustainable development, food security and climate change resilience. Participants in the Forum committed to work with IFAD to document and scale up sustainable livelihood practices, and to build alliances and share good practices with partners that are working on issues related to sustainable livelihoods and food systems.<sup>2</sup>

Among the recommendations put forward in the Forum's Synthesis of Deliberations was that IFAD disaggregate data and include indicators specific to the situation of indigenous peoples in IFAD's Results and Impact Management Sys-

tem (RIMS) and Country Strategic Opportunities Programmes (COSOPS), and in project monitoring systems and tools, including in the context of the Sustainable Development Goals.

The thirty-eighth session of IFAD's Governing Council, which followed the global meeting of the Indigenous Peoples' Forum at IFAD, featured a panel on Indigenous Peoples and Sustainable Food Systems. The panel, attended by representatives of 173 governmental delegations of IFAD Member States, discussed issues related to: a) indigenous peoples' distinctiveness as expressed in the diversity of their crops and their farming, herding, fishing and hunting/gathering systems; b) the importance of indigenous peoples' food, culture and agro-ecological systems to food and nutrition security, ecosystem and resource management, environmental health, sustainability and resilience – and as models for the green economy; c) the need to recognize indigenous food systems as modern systems that are crucial for indigenous peoples' economic development and can make invaluable contributions to humanity's future; and d) the role of indigenous food systems in achieving the anticipated post-2015 sustainable development goals on food and nutrition security. ○

## Notes and references

- 1 The Workshop establishing an Indigenous Peoples' Forum at IFAD was held in cooperation with IWGIA on 17 and 18 February 2011. [https://www.ifad.org/topic/ip\\_forum/overview/tags/indigenous\\_peoples](https://www.ifad.org/topic/ip_forum/overview/tags/indigenous_peoples)
- 2 Report available on IFAD's web page at <http://www.ifad.org/english/indigenous/forum/index.htm>

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# PART III

GENERAL INFORMATION

## ABOUT IWGIA

IWGIA is an independent international membership organization that supports indigenous peoples' right to 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 has observer status with the Arctic Council, the African Commission on Human and Peoples Rights (ACHPR) and United Nations Educational, Scientific and Cultural Organization (UNESCO).

### **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' work programmes.

IWGIA works worldwide at local, regional and international levels, in close cooperation with indigenous partner organizations.

More information about IWGIA can be found on our website, [www.iwgia.org](http://www.iwgia.org)

### **Become a member of IWGIA**

Membership is an important sign of support to our work, politically as well as economically. Members receive IWGIA's Annual Report and *The Indigenous World*. In addition, members get a 33% reduction on the price of other IWGIA publications when buying from our Web shop.

Read more about IWGIA membership and join us at: <http://www.iwgia.org/iwgia/membership>

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Copenhagen  
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Copenhagen

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IWGIA and Indigenous Peoples National Steering Committee on Climate Change (IPNSCCC)  
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Copenhagen  
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Temuco (Chile)  
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By Maximiliano Mendieta Miranda  
Tierra Viva, Diakonia, IWGIA and  
Fondo ecuménico de pequeños proyectos  
Gran Chaco, Asunción (Paraguay)

**Querido Perico: Pedro García Hierro, defensor de los derechos de los pueblos indígenas**

Edited by Alberto Chirif

IWGIA

Copenhagen

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## **VIDEOS**

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Compilation of 5 DVDs containing 18 videos made by peoples, collectives and networks of Chiapas





