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Content

Editorial

The Saami call their territory Sapmi. Conceptually, the term encompasses the geographical area, the Saami territory and the Saami people, all in one. The land and the people are intrinsically united. During the colonisation of Sapmi, the territory and the people were divided between four different nation-states. This is to say that, among other things, the Saami as a people became subjected to four different judicial systems. In this way, the Saami share the fate of many other indigenous peoples who have seen their land divided between two or more nation-states, each one with its own special constitution and laws affecting the indigenous peoples. Today, Sapmi is located within the territories of the nation-states and constitutes, therefore, an interior colony. This predicament is at the root of the difficult process of creating policies which affect the Saami, with respect to autonomy and territorial laws. The population of the nation-states has been able to occupy Saami territory unchecked; and today, the Saami not only constitute a minority in relationship to the population of the nation-states, but also a minority in their own territory, Sapmi. The result is that it has been necessary to sacrifice Saami interests, frequently to the interests of the majority. This has had severe consequences on the activities and culture of the Saami, especially the Saami language, which in some places is nearly extinct. However, it has been attempted to implement various measures within the framework of the democratic system in order to guarantee certain rights for the Saami.

Saami rights were either established long ago or very recently. In the intermediate period, which in reality is the period when the nation-states were undergoing a process of consolidation, it is as if the Saami had completely disappeared as a people with their own laws. It is true that in Norway, in the period after the Second World War, there were Norwegians of the Saami language, but the Saami, as a distinct people, had disappeared from political rhetoric. It was a Saami political movement which, through an offensive strategy, succeeded in putting the Saami people back on the world map and revived Saami issues on the political agenda of the nation-states. "*Indigenous Affairs*" contains two articles in this number which focus attention on the judicial and political situation of the Saami. "The Legal Situation of Saami Territorial Rights in Finland, Russia, Norway and Sweden" by John B. Henriksen is written by request of the Saami Council and it was presented at the U.N. Seminar of Experts on Territorial Laws of the Indigenous Peoples, held in Canada from 24 to 28 March 1996.

John B. Henriksen highlights the necessity of a comparative historical focus, in order to be able to understand the current juridical laws that provide for the Saami in the respective nation-states. In some cases, the different judicial systems contradict each other. In other cases, the legislation of one country is also effective for the Saami of the neighbouring country, because new borders have been marked, without a corresponding adjustment of Saami rights. This is the case, for example, with Sweden/ Finland. In the pe-

by Claus Oreskov

riod when Finland was under Swedish domain. Saami territorial rights were recognised. Some jurists assert that this recognition of territorial rights should still be considered binding, in Sweden as well as in Finland, but up to now, Saami territorial rights have not been clarified in any of the nation-states.

Today, the Saami territories are considered state property in Sweden, Norway and Finland, based on the principle *"terra nullius"*, which means that the state is the owner of all "uncultivated" land. The manipulation at the root of the use of this principle is justified by the paradigm of pure Darwinism. Accordingly, the nomadic reindeer herder people can not own land, only the rural non-migrating peasants may do so.

Although there exists many similarities in the issues of territorial and political rights between the various states, there are also significant differences. 20 years ago, Norway was the country in which the oppression of the Saami was worst. However, a general, current estimate would clearly show that the Saami in Norway have achieved more as regards rights for an indigenous people than the Saami in the other countries. Norway is also the only country, inhabited by the Saami, that has ratified ILO Convention no. 169. The other countries have not ratified this agreement because they fear that it will open the door to Saami territorial rights claims.

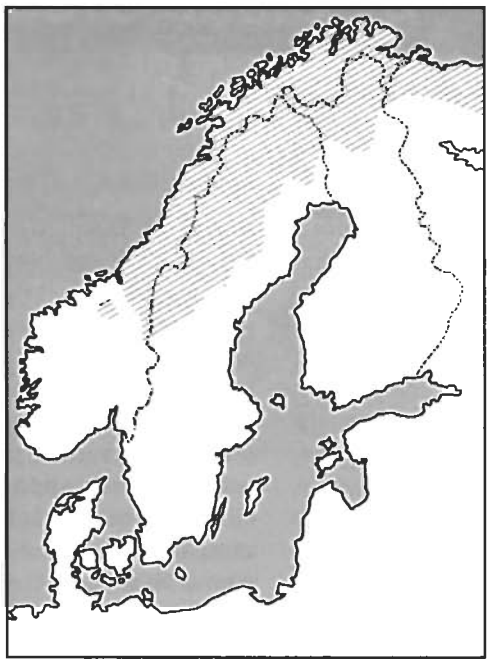
Finland, for its part, has taken a giant step backwards as regards the rights and discrimination of the Saami. The article by Hekki Hyvären discusses the controversy about the New Saami Parliament (Sámediggi) in Finland. Simultaneous with the establishment of the new Parliament, the Saami were granted cultural autonomy, and the Finnish state also recognised that the Saami have certain land and water rights. This unleashed a wave of anti-Saami sentiments throughout Finland. The majority of the population reacted strongly and the media supported the anti-Saami reaction. Only those who spoke Saami or who had a grandfather or father that could speak Saami were permitted to vote or be elected to the former Saami Parliament. But at present, anyone able to present evidence of the existence of a Saami among their ancestors is able to vote or be elected to the New Saami Parliament. The earlier ethnic criteria were culturally conditioned, while the new ethnic criteria are based on blood. In reality, this could imply that individuals who are culturally Finnish, from this ethnic point of view (i.e. that among their ancestors they can count a Saami), could become candidates, and hence elected to the New Saami Parliament. Due to the general anti-Saami feeling in the Finnish society and the fear that the peasants and owners of Finnish forests harbour concerning Saami claims to territory, it would not be unthinkable that individuals of an ethnic Finnish origin could come to utilise the new opportunity to undermine Saami rights. It seems that the Finnish state, by means of the new legislation, gives with the one hand what it takes with the other.

The troubles in Finland have become a cause for concern for the Saami in the other States. The Saami Council has called for the Finnish legislation's definition of the Saami to correspond to that of the Swedish and Norwegian legislation. It is important that the Saami are treated as a people, independently of the limits established by the nation-states. This is indispensable in the international context, for instance when agreements that affect the Saami are passed. IWGIA supports the declaration of the Saami Council and points out in this respect that the same Council has an official definition of who is Saami:

> *"those whose primary language is Saami, or who have a father, mother or grandfather whose primary language is Saami*
> *or*
> *- those who consider themselves to be Saami or are considered Saami and who fully respect the social order of the Saami and are recognised as being Saami by the Saami representative organs*
> *or*
> *- those whose mother or father are Saami according to the above stated requirements."*
> *(13th Saami Conference in Are, 1986).*

If the nation-states want to reach an agreement concerning the issue of a common definition of Saami, perhaps they could take as a starting-point the definition of the Saami Council itself and, as a minimum requirement, the process should include the participation of the democratically elected Saami Parliaments. ⌟

SAAMILAND



The legal status of Saamiland rights in Finland, Russia, Norway and Sweden

by John B. Henriksen

Introduction

Land and natural resources are the most fundamental concerns for indigenous peoples around the world. Besides the question of self-determination, the access to land and control over it and its resources are central for indigenous peoples throughout the world. Indigenous peoples depend on it for their material and cultural survival. In order to survive, indigenous peoples and their communities need to be able to own, use, conserve and organise their land and resources.

Since time immemorial indigenous peoples around the world have reaped the fruits of their lands and resources without threatening or damaging the ecosystem. Indigenous peoples' traditional concepts based on traditional knowledge and experience of subsistence use and conservation of lands and natural resources are therefore also essential in any attempts at rethinking the present resource demanding and environmentally damaging economic activities.

The effects of continually expanding requirements from urban societies are speeding up global economic activities. This of course increases the pressure on indigenous lands and resources. Without a change in the way of thinking and practising, there will be an ever-increasing effect on indigenous peoples in the short term, and eventually on all of mankind.

Indigenous peoples around the world evidence their concept of law and land rights based on their own customs and traditions, to support their claims that their traditional lands, including its resources, belongs to them, and not to the national state. Indigenous claims have generally been negated by applying various versions of the principle of *terra nullius*. Hopefully, the principles laid down in the decision delivered by the High Court of Australia in *Mabo and Others v. the State of Queensland*[1] will gain universal acceptance in the question concerning indigenous ownership of their traditional lands. In its opinion the High Court *inter alia* stated the following:

> *"The common law of this country would perpetuate injustice if it were to continue to embrace the notion of terra nullius and to persist in characterizing the indigenous inhabitants of the Australian colonies as people too low in the scale of social organization to be acknowledged as possessing rights and interests in land... Native title to particular land... and the persons entitled thereto are ascertained according to the laws and customs of the indigenous people who, by those laws and customs, have a connection with the land."*

Even if the legal strength of the principle of *terra nullius* is rather weak today, it is still *de facto* very much in force when it comes to indigenous land rights. The reason why indigenous rights to land, water and resources still remains unsolved is due to the adaptability of legal arguments and concepts which corresponds with the principle of *terra nullius*. This occurs in many forms, often accompanied by different sophisticated arguments as to why past injustices towards indigenous peoples should continue. The time which has passed since the state took possession of the land is often used as an argument, on the premise that new rights have been established during that time regardless of

the fact that the original takeover was unlawful. It appears to be a widespread phenomenon that states try to justify continued injustice towards indigenous peoples by claiming that even if their past takeover of the land was unlawful, it must be considered as lawful today because they have possessed and acted as the owners of this land for such a long time.

The present legal situation is a result of this grim unlawful past. It is hard to see how a lasting settlement can be found without resolving the core of the problem. This fact cannot be ignored in any serious and constructive attempt to solve this problem, even if it causes some pain in the backbone of the state concerned.

The United Nations Draft Declaration on the Rights of Indigenous Peoples[2] is a testimony of the efforts made to accommodate the variety of problems faced by indigenous peoples. Its provisions and principles concerning indigenous land rights must therefore also be taken into account; any attempts to weaken those principles will meet with stiff resistance from all indigenous peoples.

Part VI of the Draft Declaration focuses on issues of special concern to indigenous peoples: right to land, natural resources and cultural and intellectual property. It also deals with the right to the protection of environment and ecological security. Article 26 of the Draft Declaration deserves to be entitled as the universal indigenous land claim:

> *"Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights."*

The questions concerning indigenous land rights, land use and resource management are equally principal issues for *the Saami people* - indigenous people of Finland, Norway, Russia and Sweden. The traditional Saami livelihoods includes reindeer herding, fishing, hunting and gathering. However, the respective national legislations do not grant title to the Saami people. Likewise, there is limited legal protection against the external use of traditional Saami lands which conflicts with Saami interests.

The aim of this paper is to give a general overview of legal concepts and problems related to Saami land rights in the above mentioned states.

The legal status of Saamiland rights

Historical Background

The Saami are an indigenous people in Finland, Norway, Russia and Sweden. The Saami people have their own traditional Homeland, language, culture and history. The Saami people have inhabited parts of the above mentioned countries for thousands of years as documented by the earliest available historical sources.

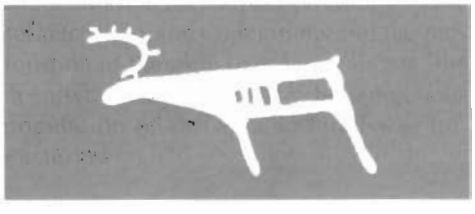
The present Saami area extends from the northern parts of Dalarna up to the northernmost part of Sweden, and adjoining areas in Norway from Finnmark County in the north to Trøndelag County in the south. Furthermore, it also includes the Kola Peninsula in Russia and the northern part of Finland. In the past, the Saami people were the majority people in this region. Today, it is only in the interior of Finnmark County in Norway and in Ohcejohka / Utsjoki municipality in Finland where the Saami still form the majority of the population.

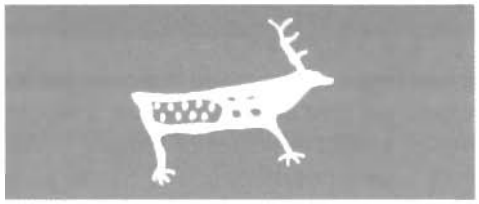
The total Saami population in the four above mentioned countries is estimated to be somewhere between 70,000 - 100,000 individuals. The estimated Saami population in the respective countries is: (1) *Finland* 6,500, (2) *Norway* between 40 - 60,000, (3) *Sweden* between 15 - 20,000 and (4) *Russia* about 2,000. These figures are based on estimates, due to lack of a census which includes a specific Saami component. However, due to historic political factors a census in the near future would not give accurate figures; it would not be a valid indicator of the size of the total Saami population. The Saami people who have suffered under the policies of assimilation of the respective state authorities need more time to express an identity that they have had to repress for so long.

The Saami people have been ruled by several national powers: by the Nordic countries Denmark, Finland, Norway and Sweden, and by Russia. All of those countries have been ruling the Saami people alone as a sovereign state or as part of one of the past state unions.

The Saami people suffered for centuries under constantly changing legal and political regimes. Eventually, the Saami people and their traditional Homeland was divided between Finland, Norway, Russia and Sweden. It is difficult to determine the existing rights for the Saami people by only studying the present legislation and concept of law of the respective states in isolation from the neighbouring legal system. The given history leads us to the conclusion that it is necessary today to study the respective legal systems, and to some extent, overlapping legal systems which had previously affected Saami rights. Legal principles and opinions with regard to Saami rights in the neighbouring state must therefore be examined very carefully. Legal conclusions with regard to Saami rights in one state can also apply to the neighbouring state as the existing border treaties in this region were not intended to change rights held by the Saami, but focused on state territorial questions. The changes in the legal principles and provisions often occurred successively with expanding political and economic activities in the Saami Homeland and increasing requirements from external urban societies.

The established official opinion was that the Saami were without any rights to





land and that the states, in annexing these lands within their respective national boundaries, had taken possession of "ownerless land". However, for some time Swedish-Finnish legislation recognised Saami ownership of land based on the system of Saami villages in which each family owned and used a hereditary or tax land. This must, de facto and legally, be interpreted as recognition of Saami ownership.

Saami customary law is unfortunately rejected in national courts. Theoretically, according to the principles in the national sources of law, the courts should be able to take cognizance of Saami customary law if there is uncertainty or ambiguity. However, Saami customary law is never applied if it is in contravention of national law. In practice only if the law is very unclear can Saami customs be a relevant consideration. Saami customary law and the Saami concept of law have been reflected on a very limited scale in the law-making process.

Finland

Most of the Saami people in Finland inhabit and use the northernmost part of Finland recognised as *the Saami Homeland* in the Finnish Constitution and the Saami Act. The Saami Homeland in Finland represents a geographical as well as a legal demarcation. This area covers 35,000 square kilometres, and consists of the municipalities of Enontekiö, Enare and Utsjoki and the northern part of Sodankylä municipality. Within this demarcated area, the right to *cultural autonomy* for the Saami people, through the Saami Parliament, is now acknowledged in the Finnish Constitution and the Saami Act, as a result of legal amendments which came into force on 1 January 1996.

The absence of legal acknowledgement and protection of Saami land rights in Finland is due to the principle of *terra nullius*. The legal principles which created the base for the present Finnish legislation rested on the notion that Saami, as a nomadic people, cannot own or possess land. Furthermore, it was an accepted principle that all land within the State boundaries must have an owner. If land did not have an owner, it was considered to belong to the state. The Saami were not considered as possessors of land rights, due to their cultural livelihood which was defined as a primitive nomadic life without any legal control over the land used by them. The lands which the Saami had considered and used as their own since time immemorial was defined as "ownerless", meaning that the state was the lawful owner.

The original legal basis for the present Finnish state title to the land in the Saami Homeland is the principle of *terra nullius*. This legal basis was substantially challenged in 1981 by an opinion of the Swedish Supreme Court in a legal dispute[3] between Sweden and Saami reindeer communities in Sweden. The case primarily dealt with the claim by the Saami party to ownership of land areas in the northern part of Jämtland County in Sweden. The arguments put forward by the parties during the court case included questions of law as well as fact which originated from the time when the present sovereign nations of Finland and Sweden were one state (Sweden-Finland). The Swedish Supreme Court declared that at least in the 17th century, it had been possible to acquire title to land by having used it for hunting, fishing and reindeer grazing. That means that the Court rejected the Governmental claim that nomads cannot acquire the right to own land. The court stated the principle that nomadic people can acquire title to land, without engaging in farming or having a permanent dwelling. However, the Supreme Court recognised this principle without giving it legal effect in the current case. The unsolved question is: does this principle opinion of the Swedish Supreme Court apply for Saami land rights in Finland?

This principle stated by the Swedish Supreme Court later received firm legal scientific support in a doctoral dissertation in 1989 by Dr. Kaisa Korpijaako. Dr. Korpijaako proved that the Saami nomads, fishermen and hunters had title to their land in the Sweden-Finland period, recognised by the state at that time. This scientific finding has up to this day not been challenged by the Finnish scientific community.

Dr. Korpijaako based her research on Swedish and Finnish state archives for the period of time when the present Finland and parts of Norway were part of the Kingdom of Sweden. Her findings show that the Saami had title to lands they occupied, and that this was recognised in the laws and courts from the middle of the 16th century to the latter part of the 18th century. The land areas concerned are today under the jurisdiction of Finland, Norway and Sweden. Dr. Korpijaako opined that these findings had the legal effect that Saami land ownership in the areas concerned must be acknowledged, regardless of which country the areas fall in today. The evidence for the past recognition of Saami land title is also to be found in Governmental Tax Registers from that period. The Saami in villages paid, like landowning farmers in the southern Finland, land tax[4] to the state. This tax could apply only to legally recognised land ownership.

When Finland was ceded from Sweden to Russia in 1809, the Saami land title again gradually came to be changed. Saami ownership rights which had been earlier recognised were from that time gradually ignored, and again replaced with legal notions based on the principle of *terra nullius*. Later, when Finland as a sovereign state passed new laws, this ignorance of Saami ownership rights was maintained; Saami land rights were not taken into account, although they were never abrogated by any formal legislative act.

The current Finnish legislation does not acknowledge or grant any special land rights to the Saami people in their own Homeland, nor does the legislation acknowledge any exclusive rights for the Saami people to pursue their traditional livelihoods. The material basis for the Saami culture consists of the land and

water in the Saami Homeland, and provides the natural resources in pursuing the traditional livelihoods of fishing, hunting, gathering and reindeer herding. In principle, all citizens of Finland and the other European Union member states have the same right to land and resources as the indigenous Saami people themselves in their own traditional Homeland. The question of old Saami title to present state land has yet to find a legal solution.

Most of the land areas (90%) within the demarcated Saami Homeland in Finland are regarded as state property. In accordance with the Finnish Forest Act of 1886, woodlands not belonging to village communities and other areas outside certain boundaries to which no one can prove a land title are considered to belong to the state. That means that state authorities can sell and lease the land and water in the Saami Homeland, given that certain conditions are applied.

The National Board of Forestry Act of 1993 contains provisions regarding the administration of state woodland in Finland. The Board of Forestry, together with provincial and regional advisory councils, have the responsibility for the administration of state woodland. The Finnish Act on National Board of Forestry includes special provisions concerning the Saami Homeland. In Section 11, it states that the management, use and protection of natural resources under the control of the National Board in the Saami Homeland must be harmonised in order to safeguard and protect Saami culture and traditional livelihoods.

In the Finnish Act on the Saami Parliament,[5] it is stated that authorities shall negotiate with the Saami Parliament in all important and extensive questions which may have the potential to directly influence the Saami and their situation as indigenous people, or their demarcated Homeland. This negotiation obligation for state authorities includes questions concerning management, use or transfer of state land. Negotiations shall also take place before state authorities grant any mining rights. However, this does not give the Saami Parliament any legal power to veto governmental plans which may effect the Saami people and their Homeland, it only obliges the authorities to negotiate in an attempt to find a solution to any disagreement which may occur between the state authorities and the Saami Parliament.

The rights to minerals do not exclusively belong to the owner of the land. Anyone can establish a claim on minerals. Nevertheless, the landowner has the right to take part in any mining activities and to receive compensation for mining activities which may take place on his land. This means that anyone can establish mineral claims in the Saami Homeland.

Unlike in Norway and Sweden, the legal right to own and breed reindeers is not an exclusive Saami right in Finland. Any Finnish and European Union member state citizen can own and breed reindeers.

In accordance with the Finnish legislation, the right to fish belongs to the owner of the waters, normally the landowner of the shore. In the Saami Homeland where the land and water are state property, every resident of the respective municipalities has fishing rights. In addition, the state authorities are entitled to sell fishing licenses to non-residents of the Saami Homeland municipalities.

The Finnish legislation states that the right to hunt on ones own land is reserved for the land's owner. In the Saami Homeland, where the state holds the title to the land, the residents of the respective municipalities within the region have hunting rights. However, non-residents can today purchase hunting licenses for the Saami Homeland. Such hunting licenses are sold by the state authorities.

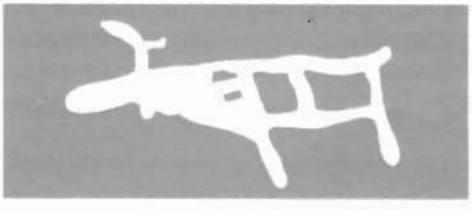
Everyone has the right to gather berries and mushrooms, and the Ministry of Agriculture and Forestry has the legislative power to forbid non-residents of the Saami Homeland to do so. As mentioned above, the legal status of Saami rights to land, water and resources in the Saami Homeland are unclear. The Constitutional Committee of the Parliament and the Government admit that the issue of Saami land rights, including title to land, is unresolved in the legislation. Therefore, the Finnish authorities are still discussing the current situation as concerns Saami rights, such as Saami title to state land and the legal conditions for the traditional Saami livelihoods: fishing, hunting, gathering and reindeer husbandry. This is the principal explanation as to why Finland has not ratified ILO Convention No.169 concerning Indigenous and Tribal Peoples in Independent Countries. Nor does the present Finnish legislation apply the legal provisions stated in Article 14 of ILO Convention No.169: The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised.

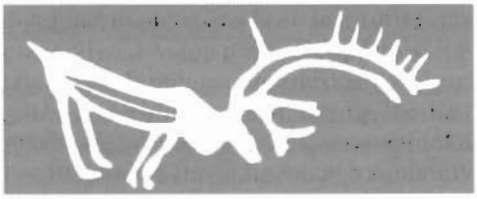
Norway

Similar to the Saami in Finland and Sweden, the Saami in Norway also have their own elected national Saami Parliament. The Norwegian Constitution acknowledges the Saami in Norway as indigenous people: in 1988 the Norwegian Parliament made constitutional amendments[6] which state that it is the responsibility of the state to ensure that conditions prevail to enable the Saami nation to maintain and develop its language, culture and way of life.

Unlike the situation in Finland, there is no clearly demarcated Saami Homeland in Norway. The only formal demarcation is *the administrative area for Saami language*, where the Saami language is recognised as an official administrative language on an equal basis with the Norwegian language. This area consists of the Finnmark county municipalities of Karasjok, Kautokeino, Nesseby, Porsanger and Tana, together with Kåfjord municipality in Troms county. This demarcation of a language area does not have any influence on the question of Saami land rights in Norway.

The absence of legal acknowledgement and protection of Saami ownership rights





to their traditional lands in Norway, as in Finland and Sweden, has its historical background in the principle of *terra nullius*. However, before 1751, Saami ownership of land in parts of the present Finnmark county was recognised for a certain period while this area was under Finnish-Swedish jurisdiction. Although this area came under Norwegian jurisdiction, state authority was based on a border treaty which had territorial effect only. However, the Saami right to ownership of their ancestral land was never recognised or denied by any formal legislative Act after 1751.

The notion that the land and water in the northernmost parts of Norway belongs to the state started to gradually influence the state administration of the areas. Later, the Norwegian legislative assembly also started to make legal amendments in order to legally confirm this notion. Saami customary law, as well as recognised Saami rights during the Finnish-Swedish period, were ignored in all legislative decisions. This ignorance and rejection of Saami rights in Norway is due to the principle of *terra nullius;* the State could only claim ownership to "ownerless land". This is the historical fact, even if the present legal justification for the takeover and the present legal status of Saami land rights avoid this type of argumentation. The Saami ownership and possession of the land where they traditionally live are so far not recognised by the Norwegian Government.

The Government appointed a Saami Rights Commission in 1980, which was to look into, *inter alia*, the Saami rights to land and water. In 1984 the Commission appointed a group of six Norwegian legal experts to study the legal aspects of the question of Saami land rights. No Saami legal experts were included in this group. This group of experts submitted its recommendations[7] to the Commission in 1993, concluding that the state holds title to unregistered land areas in Finnmark county. However, one member of the group was of the opinion that the Saami hold title to the land in Inner Finnmark.

This group of experts did not take into account Saami customary law. They reasoned that the group did not have any expertise in this field and moreover, Saami customary law is unwritten, hence difficult to study. The majority of the group was of the opinion that regardless of whether or not the original takeover of the land was unlawful, it must be considered as lawful today, due to the length of time which has passed. Furthermore, the premise that new rights have been established during this time and that the state has possessed and acted as owner of this land over such a long period were also cited as valid grounds. However, the group of experts agreed that the Saami have permanent usufructuary rights to land in Finnmark, based on customary law, long-established use or formal legislation. The Commission has still not submitted its recommendations to the Norwegian Government. It is expected that the Commission will do so during 1996.

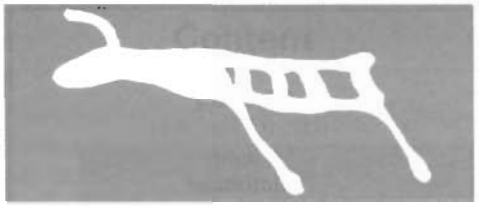
The Directorate for State Forests administered the state-held land until fall 1993. In 1993 this land was transferred to a new legal entity, *Statskog SF* (state owned land and forest company). *Statskog SF* is a public enterprise with primarily business objectives. By this measure the Government relinquished a degree of political control over the management of traditional Saami land. In addition, the political influence of the Saami Parliament over the management of the land has also been strongly reduced as a result of this reorganisation. It is noteworthy to mention in this context that this transfer of traditional Saami land would not have been possible if Saami ownership and possession had been acknowledged by the State authorities.

Norway ratified the ILO[8]-Convention No.169 concerning Indigenous and Tribal Peoples in 1990[9]. The Norwegian Government is of the opinion that *strongly protected usufruct* must be regarded as sufficient for fulfilment of the legal requirement in Article 14 which concerns *land ownership and possession for indigenous peoples.* However, the position of the Saami Parliament is that ownership and possession are *cumulative rights*, therefore, only *simultaneous implementation* is acceptable, and permanent usufructuary rights do not satisfy the requirements of ILO-Convention No. 169 Article 14, paragraph 1.

In 1993 the Norwegian Government instituted a special court –the Commission for Outlying Fields in Nordland and Troms Counties[10]– to organise, on the basis of current law, the legal relations between state and private interests with regard to out-fields in these counties. This involves making decisions onborders between State and privately owned land, as well as deciding who may have the right to use the land, without taking questions concerning Saami land rights into consideration. The Saami Parliament called[11] for an immediate halt in the Commission's work due to the opinion that this Court was violating the ILO Convention No.169 and the work of the Saami Rights Commission. The Government's position is that the Saami interests will not suffer by a continuation of the work of this special Court; and the Commission for Outlying Fields in Nordland and Troms should therefore carry on with its work.

The state holds the title to all sub-surface resources, but nobody should be able to explore and exploit these resources in conflict with the recognised Saami usufructuary rights. However, the traditional Saami lands are repeatedly subjected to encroachment, and in 1993 and 1994 the Norwegian authorities granted a mineral prospecting licence to two multinational mining companies: Rio Holding Norway A/S and Ashton Mining Ltd. The Saami Parliament and other relevant Saami bodies, including the local reindeer herders and the local Reindeer Herder Administration, were not even informed, let alone consulted in advance about the prospective activities. This is also in direct contravention to the requirements of Article 6 and 15 of ILO-Convention No.169 ratified by Norway. The position

A demonstration led by Lars Jon Allas in the Jokkmokk market against the hunting of small animals, February 1995. Photo: Gustav Heikka



of the Saami Parliament in Norway, regarding land and water rights in Saami areas, is that the land and water, including resources (both surface and sub-surface), belong to the Saami people. On several occasions, the Saami Parliament has voiced its fundamental objections to encroachments in Saami areas, *inter alia*, in a case[12] concerning a granted license to prospect in vast areas of Finnmark:

> *"The Saami Parliament wishes to emphasize that Ashton Mining Ltd. does not have a legal right to be granted a prospecting licence. The Land-Sales Office in Finnmark is the administrative body for the most important parts of the property rights of the Saami nation and also for areas where Saami interests are vital. Therefore the Saami Parliament requires the Land-Sale Office to evaluate the consequences of granting applications for prospecting licences. The Saami Parliament also wishes to emphasize that such permission in Saami areas is not valid without the consent of the Saami Parliament."*
>
> *In particular the Saami Parliament refers to damage and inconvenience during the period of prospecting, and fears that such permission may lead to an application for monopoly mining rights.*
>
> *In this connection, the Saami Parliament refers to the following extract from page 8 in the application from Ashton Mining Ltd.:*
>
> *The investment of large sums of money into prospecting over relatively long periods of time is typical for the mining industry. Prospecting in this connection is very risky. Thus the AML regards the right to the extraction of future finds as a fundamental condition."*

In order for the Saami to practice their traditional economic activities such as fishing and hunting, it is now necessary forthem to purchase licences from the State owned land and forest company. It is only Saami reindeer herders who can hunt and fish without such licences. This is seen as a curtailment of traditional Saami rights.

The right to own and breed reindeer is an exclusive Saami right in Norway. In order to be in possession of the right to own and breed reindeer, the person has to be a Saami and fulfil some other objective conditions. Anyone who wants to own reindeer has to apply for an official concession from the agriculture authorities.

The land titles to reindeer grazing land in Norway are held by the state or private owners. Saami reindeer owners only have the right to use the land as grazing land. Areas used as reindeer grazing land have a stronger legal protection than normal forest and rural land. However, if a conflict of interest between reindeer grazing rights and modern development enterprises should arise, the Saami party is likely to lose in a legal dispute, and modern development is given priority.

Saami reindeer husbandry in the traditional Saami areas was established long before any settler purchased land from the state and started with farming activities in this area. However, until a month ago, Saami reindeer owners had the burden of proof for their reindeer grazing rights on land owned by private legal entity. The Norwegian Legislative Assembly adopted a new Reindeer Husbandry Act in February 1996, whereby the burden of proof for any claim of non-existing reindeer grazing rights is on the landowner. This is an essential principle change in favour of the Saami. This newly adopted legal principle will have an important influence on the Saami reindeer rights in the southern Saami area where the reindeer grazing land to a great extent is owned by private legal entities.

The Russian Federation

In the Russian Federation there are about 2,000 Saami, which is the smallest Saami population among the four countries where they live. Unlike in the Nordic countries, the Saami in Russia do not have their own official institutions.

A second difference is that in addition to the Saami, there are many other indigenous peoples within the Russian borders. Many of the indigenous people of the north of Russia are traditionally hunting, fishing and reindeer-herding peoples like the Saami. What is written here about the Saami in Russia also applies, to a certain extent, to the other indigenous peoples in Russia.

The fishing in the rivers, lakes and in the Barents Sea has always held great importance for the Saami. Before the establishment of the Soviet Union, the Saami divided the fishing waters between themselves according to the size of their communities. During the Soviet era there were limitations on the Saami fishing rights, but the Saami were entitled to use the land and waters for their own subsistence.

Under the Soviet regime, the means of production, among the reindeer herders were collectivised. Many of the state-owned reindeer herding farms in the Soviet Union were multi-ethnic: e.g. the Komi, Nentsi and Saami people often herded reindeer together within the co-operative structure of the farm. A programme of forced centralisation of the means of production was introduced and implemented. Saami and other indigenous peoples were relocated to large towns, centres for the collectivisation programme. In this way, the indigenous peoples were forced to leave their traditional villages, which were often destroyed to prevent their return. This forced relocation of indigenous peoples resulted in the destruction of indigenous social, cultural and economic structures.

Until the collectivisation in the 1930s there was traditional Saami reindeer husbandry in Russia. During the 1990s private reindeer husbandry was again allowed. However, the reindeer husbandry in Russia still continues as in the Soviet era. For the time being there is only one completely private reindeer herd in the Kola Peninsula.

In 1992 the Governor of the Murmansk County issued a Decree[13] which gave the

local authorities the power to lease all the waters of the Kola Peninsula to the person or organisation who offers the highest fee. The Decree was issued without referring to any legal basis for the empowerment of the local authorities.

The present Constitution of the Russian Federation was adopted[14] in 1993. There are at least three Articles which directly apply to the indigenous peoples:

Article 9

"1. Land and other natural resources are utilised and protected in the Russian Federation as the basis of life and activity of the peoples living on corresponding territories.

2. Land and other natural resources can be in private, state, municipal and other forms of property."

Article 36

"1. Citizens and their associations have the right to possess land as private property.

2. Possession, utilisation and management of land and other natural resources are exercised by the owners freely if it is not detrimental to the environment and does not violate the rights and lawful interests of other people.

3. Terms and rules of the use of land are fixed by federal law."

Article 69

"The Russian Federation guarantees the rights of indigenous small peoples according to the universally recognised principles and norms of international law and international treaties of the Russian Federation."

There are many uncertainties concerning the application of these constitutional provisions. There are disputes concerning the concept of private ownership; what is the exact rights and obligations of the owner versus other private parties and the authorities? There is no consensus on this matter in the legislative assembly (Duma). The previous Duma tried unsuccessfully to find a solution to the questions concerning land rights.

On 7 March 1996 President Yeltsin passed a Presidential Decree on land rights. There is no further information about the substance of the Decree. However, it is likely that this Decree further clarifies the constitutional land rights provisions. This question of rights will most likely be an important issue in the Russian Presidential elections later this year. However, it is clear that the Saami people in Russia today de facto do not hold title to their traditional land and water; and their right to use the land and its resources is also denied. Even basic subsistence use has now been curtailed dramatically.

Traditional Saami land and water are now leased to private companies, foreign as well as Russian; about 65 abundant fishing rivers are leased to private companies. These companies, in turn, sell exclusive fishing rights to wealthy foreign tourists. Due to this system of leasing rivers to private companies, the Saami and other indigenous people in Russia are denied the ability to meet their own daily subsistence needs through fishing.

Although the Russian Constitution grants the indigenous peoples certain rights, including the right to land and natural resources in their own regions, without the necessary political and legal implementation of these measures, they do not have much practical value for the concerned parties.

Sweden

The Saami Parliament in Sweden is elected by the Saami with Swedish citizenship. Unlike the provisions for election of the Saami Parliament in Finland and Norway, Swedish citizenship is a requirement for participation in the elections in Sweden. In Finland and Norway, any Saami of full age can participate in the elections, regardless of citizenship, if the person has been registered as a resident in the country for the last three years.

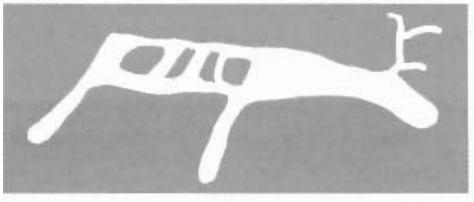
As mentioned above (the chapter on Finland), Saami ownership of the land that they have traditionally occupied and used was recognised in the Swedish - Finnish period. The question concerning Saami ownership and usufructuary rights in Sweden came up in the Supreme Court-se". This case took nearly twenty years before it finally reached the Supreme Court, and the decision was handed down on 29 January 1981.

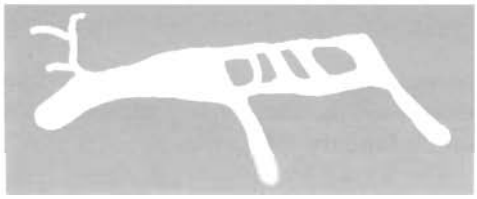
The Taxed Mountains case dealt with the claim of Saami ownership of certain areas, mainly in the northern parts of Jämtland county. The Saami party, which consisted of a certain number of reindeer husbandry communities, also counter-claimed several types of curtailed rights in the areas concerned. The questions to be discussed in the court also included law and fact which originated from the Swedish-Finnish period when Saami ownership was officially recognised.

The Supreme Court concluded that the state has to be regarded as the owner of this disputed area (the Taxed Mountains), and that the rights of the Saami have been limited to rights of use. On the basis of this opinion, the Supreme Court decided that since the Swedish State is the owner of the disputed mountains, the Saami only hold usufructuary rights to this area. It is noteworthy to mention that none of the respective laws stated who was the owner of the disputed area.

Even if the Supreme Court rejected the Saami ownership claim, it clearly stated that the Saami have reindeer grazing and fishing rights in the Taxed Mountains, based on a general interpretation of the Swedish Constitution. The Court did not have the same clear opinion concerning Saami hunting rights in the Taxed Mountains, although it said that the Saami most likely also have such hunting rights.

However, the Supreme Court rejected the primary governmental claim that Saami, as a nomadic people, cannot acquire title to land. The decision stated that it was possible for the Saami to acquire title to land by using it for traditional Saami economic activities such as reindeer husbandry, fishing and hunting, without engaging in farming or having a permanent dwelling. The Supreme Court





concluded that even if traditional land use could establish title to land, the Saami party did not have a proper evidential basis for the claim that such use had taken place in the disputed Taxed Mountains. Although this recognition was not given legal effect in the disputed Taxed Mountains, it can be of great legal importance for those parts of traditional Saami land included within the territorial ambit at issue in the Taxed Mountains Case.

In 1982 the government appointed a Saami Rights Commission to study questions concerning Saami rights. However, this did not lead to any positive measures in favour of Saami land rights.

The Saami culture and livelihoods: reindeer husbandry, hunting and fishing are today threatened by the Swedish urban society and its demand for the right to fish and hunt in Saami areas, until recently an intrinsic part of exclusive Saami reindeer herding rights. In 1992 the Swedish Parliament adopted legislative measures affecting traditional Saami hunting and fishing rights. The Swedish Legislative Assembly decided that all traditional Saami hunting grounds shall be accessible and open to all Swedish citizens. This change took place despite the acknowledged support for Saami land rights eleven years earlier in the Supreme Court decision "Taxed Mountain Case".

The 1992 legislative measure enabled unrestricted small-game hunting and fishing for non-Saami in traditional Saami areas. Until this change took place, hunting and fishing in Saami areas had been considered an exclusive Saami right.

The Saami filed a case which failed in the Swedish Supreme Administrative Court, partly due to legal technicalities. The Saami party later took the case to the European Commission on Human Rights. The complaint has been declared admissible by the Commission and will enter the next stage of ascertaining the facts and attempting to bring about a solution.

The question concerning the right to use land in *private title* for reindeer grazing is also disputed. In 1990 some Swedish forest companies and some other private landowners claimed that there are no traditional rights for winter grazing beyond the Saami village borders. The question was partially settled in 1993 in an agreement between the companies and the Saami, according to which the Saami could use the land owned by the companies on the condition that the reindeer herds were reduced.

However, the individual landowners continued the lawsuit. On 21 February 1996, the District Court of Sveg stated that the Saami do not have traditional rights to reindeer grazing in the disputed area. The Saami have filed a complaint to the Court of Appeals stating that this is not only a legal matter, but also a political question highlighting the conflict between traditional indigenous use of land and modern European land management, and the lack of protection of indigenous Saami rights in Sweden.

Legislation in Sweden acknowledges reindeer husbandry as an exclusively Saami occupation. The exclusive Saami right to own and breed reindeer in Sweden is similar to the corresponding right in Norway.

ILO Convention No.169 concerning indigenous and tribal peoples in independent countries

Norway is the only one of the four states counting Saami among their population to have ratified ILO Convention No.169 concerning Indigenous and Tribal Peoples in Independent Countries. In 1990 Norway became the first state to ratify the Convention, and the Convention has been in effect since 5 September 1991.

Part II of the ILO Convention No.169 deals with indigenous land rights, and Article 14 is the most disputed article of the Convention:

Article 14

"1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the people concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned."

The Norwegian Government and the Saami Parliament in Norway have contradictory positions in the interpretation of Article 14, paragraph 1, where it is stated that *"the rights of ownership and possession"* of indigenous peoples shall be recognised.

The Norwegian Government is of the opinion that strongly protected usufruct must be regarded as sufficient for fulfilment of Article 14, paragraph 1. The Government has also said that their ratification of the Convention was based on this view.

The Saami Parliament's position is that ownership and possession are cumulative rights, and therefore only simultaneous implementation is acceptable. Permanent usufructuary rights do not satisfy the requirements of this provision.

The ILO Committee of Experts has been looking into the reports received on Convention No.169 from the Norwegian Government and the Saami Parliament in 1993 and 1995. In its Direct Request (1995) to the Norwegian Government, the Committee of Experts expressed the following ILO position with regard to Article 14, paragraph 1:

"The Committee does not consider that the Convention requires title to be recognized in all cases in which indigenous and tribal peoples have rights to lands

traditionally occupied by them, although the recognition of ownership rights by these peoples over the lands they occupy would always be consistent with the Convention. The Committee awaits with interest the final determination of this question in Norway."

Unfortunately, the ILO has not committed itself to a uniform approach at this stage. In the 1995 Direct Request to Norway, the Committee of Experts has chosen not to define the rights involved, but has left the question open for a final policy decision by the Norwegian Government. However, the Committee of Experts emphasises that respect for Articles 15 and 18, regarding resource rights and non-encroachment, do not depend on the form of rights recognised under Article 14.

The Saami Parliament and other relevant Saami bodies have said that the Norwegian position is incompatible with the clear meaning of the requirements of Article 14.

Members of the Saami Council who were involved in the drafting process of the Convention in the 1980s have pointed out some important elements which are essential in the dispute about Article 14, paragraph 1: (1) Norway proposed an amendment to Article 14 during the drafting of the Convention along the lines of its current interpretation that was not accepted by the International Labour Conference; (2) the proposed amendment is well documented in the official ILO records.

On several occasions Norway, together with other governments, proposed that the language of Article 14 requiring recognition of indigenous "rights to ownership and possession" of lands be changed to require recognition of rights to "ownership, possession *or* use".

In 1988, during the drafting process, ILO members were invited to send written comments on the draft Convention to the International Labour Organisation, which then prepared a working text for the session in 1989. These comments from ILO members were summarised in Report IV (2A) (1989) along with an ILO office response. The ILO's reply to the Canadian and Norwegian request for a change in Article 14 to "possession, use or ownership" contains a very interesting element in the dispute concerning the interpretation of Article 14 as it stands today:

"As concerns the use of the terms 'ownership', 'possession' and 'use', the Governments of Canada and Norway have made identical proposals based on a proposal submitted to the first (1988) discussion. In view of other observations received, the Office considers that to assimilate the term 'use' to ownership and possession would weaken the revised Convention by comparison to Convention No.107, which recognizes the right to ownership; it has therefore dealt with this question separately."

The Office's separate treatment of the issue of "use", with some modification, eventually became the second sentence of Article 14(1). The comments relating to changing "and" to "or" were ignored by the office.

For the 1989 drafting session Finland, Canada, Denmark, Norway, Sweden and the United States jointly proposed[15] amendments to Article 14 (1) and (2) seeking to replace "ownership and possession" with "ownership, possession, or use". The intention was to give governments the option of recognising land rights in the form of either ownership, possession, or use at their discretion. The summary record[16] of the session includes the following:

"The Government member of Norway referred to an amendment submitted by several Government members to include the word 'use' in Article 14. He explained that the intention had been to extend the rights that should be protected, not to weaken the paragraph."

The term "ownership and possession" in Article 14 (1) and (2) states cumulative rights that must be satisfied if a state party is to be in full compliance with their obligations under the Convention. That means that rights to both collective title and effective possession must be recognised.

NOTES

1 Mabo v. Queensland (No.2)(1992) 175 *Commonwealth Law Reports* 1 (Mabo(No.2))
2 UN Document No: E/CN.4/Sub.2/ 19942/Add.1 - 20 April 1994
3 The Taxed Mountains Case (Skattefjällsmalet)
4 This tax was called "Lapp tax".
5 Effective from 1 January 1996.
6 New Article 110a
7 *Norge Offentlige Utredninger (NOU* 1993:34) - Retten til og forvaltning av land og vann i Finnmark.
8 International Labour Organisation (ILO)
9 Norway was the first country to ratify ILO-Convention No.169
10 Utmarkskommisjonen for Nordland og Troms
11 Sak (Item) 23/93 - Utmarkskommisjonen for Nordland og Troms
12 Item R 48/94 –Application for prospecting permission– Ashton Mining Ltd.
13 Decree No.100/07.02.1992
14 Adopted on 12 December 1993
15 International Labour Conference – 76th Session– 1989, proposal c.c. 107/D. 150 and D.151
16 International Labour Conference, 76th session – 1989, Record of Proceedings, Report of the Committee on Convention No.107 (1989), p.25/18 ❑

FINLAND

Threats to the cultural autonomy of the Saami

by Heikki J. Hyvärinen

Antecedents

The Saami from Finland (some 7,000 individuals) are an indigenous people, the majority of whom inhabit the Saami territories in the northern part of Finland. They have had a representative organ since 1972 (Saami Parliament), whose members are elected by the Saami population alone. Last year, the status of the Saami was finalised in the constitution through the granting of cultural autonomy to the Saami as an indigenous people in the Saami territory (Law 17/ 7/ 1995/ 973). At this time, a new representative organ for the Saami, the New Saami Parliament (*Saameting*) was also established (Law 17/ 7/ 95/ 974). The Saami with the right to vote (some 5,000 people) are registered in the electoral register, which is housed in the New Saami Parliament. From the year 1972 until 1995, the Saami have trusted that this register is only for electoral purposes and that the information should not be available to third parties.

Opposition to the Saami

In connection with the preparation and processing of the above mentioned laws, a part of the majority population in the Saami territory, through newspapers, radio and demonstrations in front of the Parliament, threatened the Saami with Yugoslavian and Chechenian style violence and civil war, if the Parliament approved the laws; and the Saami have sufficient enough grounds to take these threats seriously. The opposition demanded a copy of the electoral register from the administrative tribunal, in accordance with the law safeguarding the right to information (30.4. 1987/ 471) and the law concerning the publicity of official activities (9.2.1951/ 83). Also, on 14 December 1995, this group, "Lappalaiskulttuuri ja-perinneyhdistys ry" (Union for the promotion of Lapp culture and traditions), was registered as an association "open to all those who identify with this cause."

Fundamental demands of the opposition

According to the ruling of the Supreme Tribunal of Administrative Law (29/ 12/ 95, N 5546), the New Saami Parliament is not obliged to turn over a copy of the electoral register or any information about it to the applicant. But the opposition to the Saami, part of the media and a group of state officials interpret the ruling as if the electoral register of the Saami Parliament –a registration of the Saami by ethnicity– is a public document that the New Saami Parliament, according to the ruling, must make available to anyone who seeks its information.

The opposition has demanded that they be allowed to examine the electoral lists and they now have media support behind them. On 10 January 96, without prior warning, the opposition visited the office of the New Saami Parliament in Enare in order to examine the electoral register. On Monday 15 January 1996, the president of the secretariat of the New Saami Parliament, Juha Guttorm, appeared in the office of the New Saami Parliament and announced that the registers, after the autumn of 1995 Saami election, were sealed by stamp and that at the present time –until the New Saami Parliament begins its work and elects their organs– there exists no organ in the New Saami Parliament competent to break the seal and make public the electoral lists. The opposition then appealed for a police investigation of the case. On 19 January 1996, the police interrogated the legal secretary of the New Saami Parliament, Heikki J. Hyvärinen, as a criminal suspect –breach of duties– and continued to interrogate other officials of the New Saami Parliament on 1 February 1996.

The New Saami Parliament –as determined by the cabinet on 12 January 1996 – met for the first time on 17 January 1996. They elected their leadership and Pekka Aikio as president. However, the case of the electoral register has not yet been addressed.

All the of the local Saami associations, and a large number of Saami, have prohibited the New Saami Parliament from making the electoral register available to outsiders. Similarly, a number of Saami individuals have prohibited the New Saami Parliament, by telephone and post, from disclosing personal information. The register contains the following municipal information (and national, as far as Saami from outside of Finland are concerned): personal signature, complete name and address.

The secretary of information of the Supreme Tribunal of Administrative Law, Mikko Raytamaa, gave the opposition and the media the opportunity to examine the Saami electoral register for a period of two days (18-19 January 1996) in the office of the Supreme Tribunal, under the condition that they take no notes. The opposition announced, through the media, that the register lacked 150 addresses. The media then made public the names of the Saami without an address listed in the register. Furthermore, the opposition have called on the office of the Ministry of Justice to investigate the case, and demanded that the autumn Saami elections be declared null and void.

The Saami fear for their future because the Finnish society and part of the media misuse the principle of publicity as a means to increase racism against the Saami.

The reasons behind the opposition's demands

These are, according to our opinion, the former Saami rights to the "state forests" of the Saami territories (90% of the area). The government of Finland has recognised, starting from 1976, and most

Photo: IWGIA Archives

recently again last year, that the Saami could have the (ancestral) right to the land and water which right at this time belongs to the state, and also that the Saami, as potential rural proprietors, have the right to utilise these areas for their traditional subsistence: reindeer breeding, hunting and fishing (RP 248/ 1994 rd, p. 3, 4, 7).

The existing Finnish law does not recognise Saami rights of this type (private rights), with the result that no contemporary government has put up the case for consideration by Parliament.

In 1990, the constitutional committee of the Parliament observed that in connection with the consideration of a new reindeer breeding law, the most recent scientific research (especially Kaisa Korpijaakko, Saamelaiste oikeusasemasta Ruotsi-Suomessa 1989: Regarding the Saami legal situation in Sweden-Finland 1994) "has introduced worthy points of view that indicate that the Saami have the right to ownership of land." The committee verified that the case was undergoing legal consideration and hurried through the working-out of a Saami law proposal, deeming that "the case should be tried quickly before Parliament." (GrUU 3/ 1990 rd). Therefore, the various Parliamentary committees have left the question of the Saami right to their means of traditional subsistence and the clarifying of the land issue to be resolved in future legislation.

Later in the same year (1990), the Finnish Parliament declared a third of the Saami territories "uncultivated lands" under the law of uncultivated land (17/ 1/ 1991/ 62), by virtue of being "zones belonging to the state". The state continues to dispose of the "state forests" as if they were the owner, without the permission of the Saami. The Saami right to land, waters and traditional resources is not reflected in the new legislation. On the other hand, the right to own reindeer was opened to all of the European Union's citizens (Law .28/ 6/ 1993) in connection with the incorporation of Finland in the EU.

A large part of the majority population of the Saami territories have created a strong opposition to the setting in practice of the Saami laws (regarding the protection of property). They also opposed the legislation on cultural autonomy for the Saami (despite the fact that it did not encompass the right to land and water or to natural resources). Nevertheless, the Parliament approved these laws (see point 1). Unfortunately, at the same time, the Parliament also changed the concept defining Saami in such a way that anyone who could count a "Lapp" among their ancestors could be defined as Saami, be admitted in the electoral register for the New Saami Parliament, vote and also be an election candidate. Although the annual registers of the "Lapps" from the period 1695-1923 still exist for a zone that is three times bigger than the current Saami territory, it is very possible that with time, the number of "new Saami" will be several times thecurrent number of Saami. This would mean an unavoidable assimilation of the Finnish Saami as a result of the new legislation on cultural autonomy for the Saami.

During the last decades, the Finnish society has systematically broken down the identity of the Saami by misusing the traditional Saami attire, for example, which, together with the Saami language, constitutes a rich expression of the Saami identity. The Finns make use of the Saami attire in the tourist industry and in advertising, domestically and abroad, in order to attract international attention. The abuse of the traditional attire in the tourism industry, which has commercial success as its sole objective, is carried out without any Saami influence. The images presented of the Saami on the radio, TV and Finnish periodicals are those of an indigenous: dirty, destitute, drunk and clothed in ragged traditional attire. The aforementioned attitude of the majority of the population makes it difficult for Saami children to identify themselves with the language and culture of their parents.

The objective of the opposition

The Finnish society does not want to recognise the private rights of the Saami (in accordance with the customary protection of property) or Saami rights stipulated in the international instruments. On the other hand, the opposition to the Saami can freely avail themselves of the new legislation in order to weaken the Saami. The objective seems to be the forced assimilation of the Saami by means of the transformation of the new representative organ of the Saami, the "New Saami Parliament" into an instrument of the Saami opposition, the "new Saami". In this way, it can be assured that with time the Saami will no longer wield legal power and the current situation (in which there is no protection of property and culture) will appear legal. In summary, the opposition has the possibility of fracturing Saami cultural autonomy from the inside.

The opposition's interests appear to be random, as they take on any issue in sight. They have now begun to address

issues of Saami culture and language – although they do not have anything to do with them– and they demand, via diverse juridical and political petitions, their rights as "new Saami".

Means

The opposition to the Saami has been organised as an association, "Lappalaiskulttuuri ja -perinneyhdistys ry", open to the public. Nobody knows who really belongs to this grouping. Although the group does not have many members, it has been able –with the aid of the media – to hinder the normal operation of the New Saami Parliament for over a year. This opposition group has not had especially well-founded arguments, but rather puts forth false affirmations, half-truths, lies and libel published in their own newspaper, "Kiisa". The group has been able to operate so effectively because the principal official in charge of Saami matters at the Ministry of Justice, Inkeri Leppäniemi, has promoted her own cause in the media and among municipal and state authorities, instead of promoting the Saami cause. She has done this with the aid of false and erroneous documents. Now the municipalities of Enare and Enontekis are against the Saami to such a degree that Enare practises extortion against the Saami, for example, through an illegal decision of the municipal authorities which contains a threat of reprisals if the Saami should try to demand their rights through the legal system, while Enontekis granted municipal support for the financing of the opposition delegation's journey to Helsinki last year (in order to demonstrate against the Saami in front of the Parliament).

At the end of 1995 and beginning of 1996, the representatives of the Saami Parliament tried unsuccessfully to organise a meeting with Saluli Niinistö, the Minister of Justice. In turn, on 19 January 1996, the Secretary of Legal Affairs of the New Saami Parliament, Heikki J. Hyvärinen, sent a memorandum concerning the before mentioned official to the Minister of Justice. In his journey to Lapland on 22 - 23 January 1996, Minister of Justice Niinistö also visited Saami territory. During the journey he was provided with information about current Saami problems through the representative of the Enare Municipality, and not the Saami. Now,due to political demands, the Ministry of Justice is evaluating the possibility of a new Saami election (to replace the autumn of 1995 election) to include the participation of the "new Saami" who have the right to vote and stand for office.

Although last year's Saami election was carried out legally, nobody questioned the election within the stipulated time period, and as such the government proceeded to appoint the Saami Parliament, as planned. Next, the government designated the New Saami Parliament/ *Sametinget* to replace the Saami Parliament, in accordance with the temporary provisions of the law of the New Saami Parliament.

The New Saami Parliament has significantly fewer resources at its disposal than the Saami Parliaments in Sweden and Norway. For example, the Saami Parliament in Norway receives an annual budgetary increase that is more than the total sum that the New Saami Parliament in Finland receives for their entire annual activities. This occurs even though the tasks and powers of both organs are equal and neither of them affords direct services to the Saami.

Conclusion

Up to now, Saami cultural autonomy has meant –in contrast to its intention– the highest level of Saami persecution that has been experienced in Finland during the last decades. The situation does not appear to be improving, but in spite of this, the politicians and the media do not see reason to intervene. On the other hand, there is every indication that the political demands of the opposition are being met with understanding and are generally welcomed in Finland. The situation is one of absurdity and contradiction, considering that the Parliament promulgated the laws for Saami cultural autonomy in order "that the right of the Saami to equal treatment by the government, in comparison with the other sectors of the population, be secured via an ethnic cultural autonomy." (see GrUB 17/ 1994 rd).

Heikki J. Hyvärinen is the legal secretary of the New Saami Parliament ❑

SWEDEN

Prologue

According to the "State of the World" report for 1993 from Worldwatch Institute, there are some 4000 - 5000 indigenous cultures in the world constituting some 190-635 million individuals. The UN General Secretary Mr. Buotros Buotros-Ghali stated during the inauguration of 1993 as the International Year for the World Indigenous Peoples that indigenous peoples comprise over three hundred million individuals across the globe. The figures depend on how "indigenous people" is defined. As concerns indigenous peoples of the Arctic countries, including Sweden, there are not many difficulties with the definition. About 50 indigenous languages are spoken in the Arctic and the estimated number of indigenous individuals is approximately 2 million.

The Saami people are an indigenous people who live in the northernmost part of Europe. The history of the Saami people is the history of human adaptation to Arctic climate and nature. This has been the foundation of the Saami society with its specific cultural and religious tradition. The relationship between man and nature resulted in a holistic view similar to that expressed in pre-Christian religion. The Saami still regard the relationship between man and nature as an integrated whole.

The Saami people have traditionally used land, lakes, forests, coastal areas, fjords and the sea for a variety of uses, in particular for hunting, trapping, reindeer grazing, fishing for food and fuel gathering, as well as for the extraction of raw materials.

The Saami people are the indigenous people of Saapmi (Lapland-Saamiland), but the people and the land have been divided up during the course of history by the states of Norway, Sweden, Finland and Russia. The Saami people call their land Saapmi and call themselves Saami.

Indigenous People's Land Rights

by Lars-Anders Baer - *President of the National Union of Saami People in Sweden*

The Saami people constitute the oldest ethnic group in the Nordic countries and on the Kola Peninsula and also probably the oldest people in Europe, as stated in the latest findings in genetic science.

The Saami are a numerically small people, only about 70,000. Norway has the largest Saami population with 35,000; Sweden has 17,000, Finland 5,000 and Russia 2,000. However, many claim that the Saami population is much bigger, perhaps as much as 100,000. It is difficult to estimate the true size of the Saami population since no census has been taken among the Saami as a whole. Keeping the population estimates of the Saami people at a low level has been in the interests of the different nation-states.

Earlier, Saami areas of settlements reached much further south, but just like the Native American Indians, the Saami had to retreat from the aggressive advance of Western "civilisation". Since the Saami were so spread out, living in small communities, they soon were in the minority in most areas. However, there are exceptions; some municipal districts in northern Finland and Norway have a Saami majority.

Similar to the history of many other indigenous peoples, the Saami history is full of excesses and injustices committed by strangers who invaded the Saami territory. Although, they have not been object of genocide, different forms of discrimination still exist. For example, Saami inherent rights have been undermined not only in the name of communism, but also in the name of democracy. Today, Saami rights to land and water, which they have considered to be theirs throughout the past several thousand years, are being questioned. The Saami political demands are simply to have the right to make decisions concerning the issues which affect our lives, culture and our land, as many of the other indigenous peoples around the world have. Compared with other indigenous peoples, the Saami have come a relatively long way in this respect. In fact, the Saami are a privileged indigenous people: they are not being killed.

Saami political goals in the 1990s

First of all, I want to make a general presentation of the issues on the Saami political agenda. All indigenous peoples have the right to self-determination as provided for in the Covenants on Human Rights and the right to continue our existence as peoples. These rights must be implemented with due consideration to other principles of international law.

Self-determination is necessary for all indigenous peoples. We want to be equal to all national and ethnic groups in their enjoyment of the human rights and fundamental freedoms. The Charter of the United Nations prohibits all kinds of discrimination and a number of international instruments provide for special rights and measures in order to guarantee equal enjoyment for the indigenous peoples. ILO-Convention No.169 is so far the only international instrument directly addressing the question of the rights of indigenous peoples.

The Saami are a people. We possess the same dignity and the same rights as other peoples of the world, without qualification. We join with other indigenous peoples in seeking a clear and unambiguous expression of our rights to self-determination in the evolution of adequate international standards. We also believe that these instruments should reflect our rights to control our societies and our destiny.

Self-government?

The last initiative from the Swedish Government to investigate Saami affairs and the status of the Saami in Sweden was taken in 1982. The first result of this was the submission of a report in 1983 from the appointed *Saami Rights Commission* entitled *The Status of the Saami in International Law*.

The report was published in 1986 in order to provide a coherent picture of international laws relevant to the Saami and to present the background to the commission's further recommendations *(The Saami Rights and the Sameting)* (The Sameting is the name of the proposed elected Saami Parliament or Saami Agency). The final report was published in 1990.

The report from 1986 concluded that the Swedish society acknowledges the Saami as a minority and an indigenous population. The Swedish Constitution does not state anything explicit about the Saami, but it stipulates measures to enable ethnic groups to preserve and develop their own cultural and social life. There is a certain ambiguity in the official Swedish position regarding international law formulated in international conventions and covenants and the Swedish Constitution. This is clearly the case of the UN covenants from 1966 in which Article 1 stresses the rights of a people.

Since it is not the attitude of the Constitution to regard the Saami as a people, Article 1 is not applicable. On the other hand, Article 27 focuses on ethnic minorities, which is compatible with the Swedish Constitution, and therefore applicable. It is as an ethnic minority that the Saami are protected by the Swedish constitution. Therefore the Saami Rights Commission proposed that the Act should recognise that the Saami occupy a special position among minorities since they constitute an indigenous population in their own country. This proposal was rejected both by the Swedish government and the Parliament in bill 1992/93:32. The Swedish government clearly interprets the Constitutional Act as sufficient for guaranteeing the rights of the Saami as an ethnic minority, referring to Article 27. It is also stated that the

culture-concept of Article 27 should be interpreted in a wider meaning, also taking into consideration material prerequisites, for instance the Saami reindeer herding.

Concerning the ratification of ILO Convention No.169, the Swedish Government has stated that provisions concerning land rights are not compatible with Swedish law.

The Saami Rights Commission also proposed the establishment of a representative Saami elected body, called the *Sametinget*. The bill (1992/93:32) essentially followed this recommendation. The bill proposes that the *Sameting* contain 31 members. The *Sameting* constitutes its own board and electoral committee. The *Sameting*, our Saami Parliament in Sweden, is mainly an advisory agency to the government, but the government has stated that they are prepared to transfer more power to the Saami Parliament in due time. The Saami Parliament in Sweden was inaugurated on 26 August in Kiruna by the King of Sweden.

The *Sameting* has functioned for three years and the structural conflict between the elected body and a governmental agency is obvious.

Indigenous Land Rights

American Indians, our brothers and sisters, or to be politically correct, Native American Indians, used to say that "Our land is our lives". This is also applicable to the Saami people's situation. The Saami people and the Swedish Government are now involved in a "dirty" political and judicial war. As the aggressor, the Swedish nation-state is determining both the contents of the agenda and the level of conflict. The question of land rights and the control of natural resources, the environment and development is now on the table in courts in Sweden, as well as internationally. Governmental inquiries concerning Saami hunting and fishing rights are being conducted and the Swedish Parliament will soon discuss and decide how a sustainable management programme of the environment in the Saami area will take shape.

On matters concerning land rights and natural resources, ILO Convention No.169 reflects the position among the Saami people that we possess both collective and private rights to land and that our occupation and use of land preclude any state from claiming rights to land by any so-called rights of *"discovery"* or *"occupation"*. In accordance with Finnish, Swedish, Norwegian and probably also Russian law and legal practice, the hereditary Saami rights are founded on the principle of continual usage from time immemorial, taxation of Saami land titles and other legal documents.

ILO Convention No. 169 has now been ratified by seven countries. Norway was the first country to ratify the convention and among the Nordic countries, Denmark was the second to ratify. Finland and Sweden have stated that the provisions in the land chapter (part II) are not compatible with Swedish and Finnish law. But what is the problem with part II, Article 14 in the convention? Article 14 states that:

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of the nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned."

Since the Norwegian ratification there have been problems with the interpretation of Article 14. The Norwegian interpretation is a little strange, due to the wording in Article 14. According to the Norwegians, it is sufficient if they recognise that the Saami people have a usufructuary right to lands. This interpretation has been communicated to the concerned bodies in the ILO. The ILO has so far not accepted the Norwegian interpretation of Article 14. It seems that the Swedish Government also has the same interpretation of Article 14 –this is not surprising.

As concerns human rights standards, it is mainly the individual's rights which are addressed. This means that most of the international human rights standards do not address the reality of the indigenous peoples of the world. During the last decade, the debate has changed and resulted in the evolution of new standards. ILO Convention No.169 is the result of this process. Indigenous peoples have for decades advocated that they need protection as peoples and as cultures. This collective aspect must be considered.

Saami fishing and hunting rights

As is known, the conflict between the Saami and the government concerning the right to hunt and fish in the Saami area is escalating. Sweden has introduced unrestricted small-game hunting and fishing in core Saami areas, despite the fact that this interferes with reindeer herding, and is in violation of Saami civil rights. Furthermore, the hunting season falls at a time when ptarmigan chicks etc., are not yet fledged and small-game hunting threatens the food supplies of rare species such as gerfalcon, golden eagle and arctic fox.

Instead of strengthening Saami land rights, the Swedish nation-state is now attempting to more or less nationalise or, as many Saami put it, *"confiscate"* private Saami hunting grounds and fishing rights through administrative measures. The Swedish Parliament bill 1992/92:32 decided that all traditional Saami hunting grounds should be open to all Swedish citizens in the name of the *"public Swedish interest"*. The change of Swedish hunting policy in traditional Saami hunting grounds and reindeer pastures was enforced –with no consultation with the people concerned.

The Saami parties tried to block the decision in Swedish courts, but without success. Next, the Saami Villages and Saami Village members sent a complaint to the European Commission for Human Rights in Strasbourg. The complaint has been declared admissible by the Commission.

Customary rights put in question

All lands in the north of Sweden are covered by the right to winter breeding of

reindeer. This means that reindeer herders have the right to use breeding land in traditional ways, practising subsistence fishing and hunting. However, not all landowners accept this right. It is important to underline that many of these landowners arrived only 100 - 150 years ago. This has been a source of very intensive conflict between the reindeer herding Saami and private landowners in the southern part of the reindeer breeding area in the county of Jämtland. In the beginning of 1990, some of the main forest companies and private landowners went to court claiming that there are no customary rights for winter grazing beyond the Saami village borders. In 1990, the National Council of the Saami stated in a petition to the Government that:

"The mere opening of a case means a threat against the Saami industries and the Saami culture in the area. On the side of the prosecutor the approximately 700 landowners and three forest companies are to be found. There should be no economic restrictions to carry on this lawsuit from the landowners point of view. The economic means of the Saami Villages financing a case are extremely limited, considering the amount of investigation needed and furthermore, the total need of assets for the case: a case that will require many years before having gained legal force."

In 1993 the Saami and the companies reached an agreement. The agreement was a compromise, allowing the Saami the use of company land for winter grazing if they reduce the reindeer herds. The private landowners continued the lawsuit. The District Court of Sveg ruled in a verdict on 21 February 1996 that the Saami had no customary rights at all to winter grazing of reindeer. This verdict was a surprise not only for the Saami, but also for the public. Traditionally, many Saami place very little trust in the "big-Swedish" courts and this decision will not improve the belief that the Swedish state is practising a kind of ethnic cleansing. The Saami parties have appealed the decision to the Court of Appeals and the case will properly end up in the Supreme Court. This lawsuit is not only a legal matter, but also a political question. The issue highlights both the conflict between traditional use of lands and the modern Western mode of land management and lack of protection of indigenous Saami rights in Sweden.

The conflict - an example

During the past 30 years, reindeer herding Saami have lost large tracts of pasture lands due to various kinds of economic encroachment. Modern forestry in particular –including practices of clear-cutting and ploughing– has created great difficulties for the Saami to feed their reindeer in the wintertime. Clear-cutting of large areas together with ploughing destroys reindeer lichen on the ground. The main food supply for the reindeer during the wintertime is reindeer lichen. Large clear-cutting also changes the structure of snow in a way that makes it difficult for the reindeer to dig through the snow for the lichen on the ground. In addition to the reindeer lichen, the pendulous lichen is the most important food supply during the winter. Pendulous lichen grow only on old trees. Today, when very little old growth forest is left in the reindeer breeding areas, this food supply is vanishing. Another significant problem that the modern forest industry creates is the fragmentation of breeding land. The modern forest industry needs a lot of infrastructure. The reindeer grazing lands one today trapped in a web of forest roads. This fragmentation of breeding lands results in the need to use modern equipment such as snow scooters, cross-country motorcycles and helicopters. Use of this type of equipment is not only expensive, it is also a way of introducing western thinking into the traditional Saami way of life.

Aspirations and Conclusions

The Saami, like other indigenous peoples in the world, have been discussing environmental issues related to land rights, development and peace. The 13th Saami Conference in 1986 adopted –"The Saami Programme for the Environment".

The principles in the programme call attention to the fact that the Saami are an indigenous people and have inhabited Saapmi (Saamiland) since time immemorial, tending land and water with respect and care.

It points out that the environment within Saapmi is very sensitive and that as a result of colonisation, the rest of society has influenced the environment and Saami economic activities.

With reference to the Saami Political Programme, the Environmental programme states the following:

"It is our inalienable right to preserve and develop our economic activities and our communities in keeping with our own common conditions, and together we wish to preserve our lands, natural assets and national heritage for future generations."

The rights of the Saami to land and waters must be protected by law. An administrative order must be laid down whereby the Saami themselves can administer their natural resources and rights.

The Saami people must be recognised politically, and their right to land and water must be recognised as well. Furthermore, more effective control of the environment is essential if there are to be any natural resources left to access. Today, the Saami in Finland, Norway and Sweden to some extent are recognised as indigenous peoples with some political rights within the nation state. The question concerning land rights is still unresolved.

These demands are very common among the indigenous peoples of the world. We can also note that there is support in the international community for these aspirations. In 1992, the Rio Declaration was adopted. Principle 22 of the Rio Declaration states that:
"Indigenous peoples and their communities have a vital role in environmental management and development because of their knowledge and traditional practices."

Furthermore, Agenda 21, chapter 26, is entitled: "Recognising and strengthening the role of indigenous people and their communities". This chapter acknowledges the holistic and harmonious relationship of indigenous peoples with their lands and with nature. This relationship is the foundation of the development of the sustainable resource management traditionally practised by indigenous peoples.

Finally, what we can learn by the experience of the Saami people in Sweden is an open question. Former Prime Minister Olof Palme once said that "Politics is will." –that may be the answer. ❑

PANAMA

The indigenous people and the mining threat

by Atencio López M.

Once again, the indigenous peoples of Panama are facing a historic challenge: The defense of their territories in the face of the exploitation of minerals.

In Panama, the indigenous territories, known as Comarcas (Regions), have not yet been legally demarcated as its inhabitants continue to demand. Nor has the outdated Codigo Minero (Mining Codex) –which dates back to the early sixties– been modified, and the State is continuing to sign agreements with international mining companies behind the backs of those affected. Once again, the indigenous people are being catalogued "primitives", "enemies of development", and as wanting to remain "isolated from progress", all because they refuse to placate the government and the foreign mining interests.

According to official statistics, the indigenous people in Panama total approximately 195,000 persons, a number many consider to be an underestimation. In the national territory as a whole, the Ngobes (Quaymíes) constitute the majority with more than 150,000 persons. They are followed by the Kunas, consisting of approx. 60,000 persons, the Emberás with 15,000 and the Uaunanas and the Buglés with a population of 3,000 persons.

Cerro Colorado

In March of 1996, The Commission of Indigenous Affairs of the Legislative Assembly in Panama summoned the Minister of Commerce and Industry, Nitzia de Villareal, who informed them of the numerous requests for concessions for the exploration and exploitation of mines in indigenous regions. There are 43 requests in the Comarca, Ngobe-Buglé, 15 in Kuna Yala, 2 in the Comarca of Kuna de Madungandi and 3 in the Comarca Emberá-Uaunan. Of these requests, 4 concessions have already been granted: the one in Cerro Colorado, two more in the Ngobe territory and one in the Emberá. But at present, the one in Cerro Colorado presents grounds for discussion at a national level.

Since the 1970s, several studies and plans for development of a mining project in Cerro Colorado have been carried out. Between 1970 and 1974, the company Canadian Javelin Ltd. began to study the area and between 1976 and 1979, the Canadian company Texasgulf Inc., in collaboration with the Panamanian Government, looked into the vast resources of Cerro Colorado and the exploitation possibilities. In February of 1976, the Panamanian governmental company, Cooperación Minera Cerro Colorado (CODEMIN) and Texasgulf signed an agreement stating that CODEMIN was to receive 80% of the firm's shares (Cobre Cerro Colorado, S.A.) and Texasgulf 20%, plus the rights to administration and management of the project for a period of 15 years. In May of 1978, the investigation into the feasibility of the project was concluded and in October of the same year, the Canadian Government's company, Corporation for the Promotion of Exports, offered Panama a credit package of USD 1.2 billion as support for Cerro Colorado's purchase of Canadian goods and services.

In 1979, in spite of all this, Texasgulf announced its wish to withdraw from the project. Among the reasons cited were the differences regarding the cost-effectiveness of the mine, the delay of the arrangements concerning the financing of the debt and the company's capital, the term of the sales contracts, the cost increase of the project and the persistent instability of prices in the copper market. Another reason for the withdrawal of Texasgulf was related to its incapacity to withstand the increasing capital costs of the project. The International Monetary Fund and the World Bank recommended that Panama reduce its percentage of the capital from 80% to 55%, a suggestion that Panama deferred to by lowering its participation to 51%.

With the withdrawal of Texasgulf, the Panamanian government began to look for buyers for the 20% of the shares they had left behind and for the 29% of the shares the IMF and the World Bank recommended it to sell from its holdings. Among the companies that showed interest were Noranda Mines Ltd. of Canada and the British-Canadian company Río Tinto Zinc Corporation.

Towards the end of the 1970s, provisional camps were created for the mine workers in Hato Chamí and Cerro Esc communities. This led to the driving out of some of their settlements. In a proclamation from February of 1980, the indigenous people claimed that the destruction of the wells, of the wire fences and the damage done to the coffee, banana and orange crops was a result of the activities related to the exploration of the mines. In January of 1979, contamination of the San Félix River was detected.

The position of the Guaymí land before the mining

The Guaymí General Congresses held in September of 1979, in Kankitú (Bocas del Toro) and in April of 1980, in Soloy (Chiriquí), discussed in detail the consequences that the exploration and the exploitation of Cerro Colorado could have on the indigenous community.

In September of 1979, at the same time as the Kankintú Congress was being held, a report titled "the Guaymí land and Ce-

rro Colorado" was published. It analyzed the different aspects that would affect the indigenous population economically, ecologically, socio-culturally and politically-legally. This report, drawn up by the indigenous people, still holds value today, since none of the factors or any of the investigated situations have significantly changed.

Based on this, the Ngobes issued Resolution No. 4, concerning mines, at the General Conference in Kwerima, San Félix, which was held during 6 - 10 March 1995. It stated:

Considering:
1. That during many years, the Ngobe-Buglé People and the peasant-farmers have demanded the recognition and the definition of the Comarca, which consists of the inhabited territory currently divided among three regions of the Bocas del Toro, Chiriquí and Veraguas provinces.

2. That in the last years, the national government has drawn up concessions for exploitation of the mines (gold and copper) in land belonging to the Ngobe-Buglé People.

3. That these concessions cover nearly all the territory claimed by the indigenous people as Comarca.
(...)

9. That the Mining Codex fails to recognise traditional lawfulness, discriminates against the Ngobe-Buglé and against the peasant-farmers in matters of decision, concession and planning of the economic benefits from the mine development projects.

10. That in reality, the state seems orientated towards handing over the natural riches belonging to the Comarca and to the country, to foreign companies without guaranteeing the financial benefits and without respect for the patrimonial rights that the Ngobe-Buglé People have to their resources.

Resolves:
1. The Ngobe-Buglé General Congress VII ratifies the resolutions from the General Congresses in 1980 and 1982 concerning the exploitation of mineral resources projects which provide: a) to regain the patrimony of the Ngobe-Buglé concerning the natural resources and b) that all exploration of the mineral resources projects be suspended, as long as the Ngobe-Buglé Comarca is not defined.

2. To demand of Dr. Pérez Balladares' government the rapid passage of a law concerning the Ngobe-Buglé Comarca and that the government take into consideration the rights to patrimony and the benefits from the natural resources belonging to our indigenous community.

3. To request that the national government ratify ILO convention no. 169.
(...)

5. To denounce in domestic and international fora, the proliferation of mining activities which favour national and transnational companies and constitute a threat to the survival of the Ngobe-Buglé People as an indigenous nation.
(...)

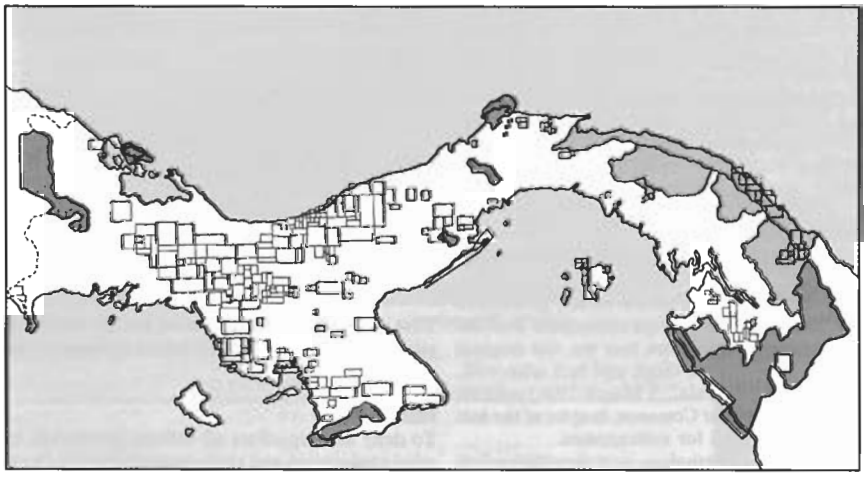
8. To apply to the national and international Human Rights Organisations for support of and solidarity with the Ngobe-Buglé cause.

Panama signs a new contract

On 13 February 1996, the Ministerial Council agreed upon the contract between CODEMIN and the Sociedad de Panacobre S.A., for the exploitation and the exploration of mineral sediments found in indigenous territories. Nevertheless, the Ngobe-Buglé have not been able to participate in this decision reviving a mining project that came to a standstill in 1980.

Cerro Colorado is considered to be one of the largest copper deposits in the world which explains why the government is trying to exploit it, even without the consent of the Ngobe Indigenous People.

The possible profit is considered to be extraordinary. At the same time, the indigenous people know that they will not be let in on the benefits. Faced with this situation, the Ngobes in all three provinces are gathering and all the organisations have assembled their leaders to demonstrate that they are not going to be scared off by threats and that they will continue to fight for the legalisation of their Comarca.



CONCESSIONS AND RESSERVES OF METALLIC MINERALS

indigenous reservations

concessions

national parks

Source: Ministry of Commerce and Industry

The danger is moving closer

"The mine will bring about a change in the Guaymí way of life, a change in customs and a change in their manner. As the Guaymís form a single people, the changes will eventually affect everyone, in both Bocas del Toro, Veraguas and in Chiriquí. Change in itself is not a bad thing; life is like a river, always bringing something new, even if it looks the same. The important thing is to distinguish between good changes and bad changes just as the river sometimes gives life to the crops and other times carries them

away. Therefore, the Guaymí people can be open-minded about the changes, but they must ensure that they be positive changes."

These are words from the report titled "The Guaymí People and Cerro Colorado", presented in 1979 at the Kankintú Congress. This report continues to be true today, since none of the investigated factors or situations have been significantly altered.

When evaluating the changes undergone by the indigenous people in the 1970s, it is necessary to consider the incorporation of the Guaymí People in wage-earning jobs, the growth of the population and the ever insufficiency of their land, which were reasons for many to leave their region and "stop being Guaymí in language and in tradition". The mines, for their part, were able to provoke more severe and profound changes, fundamentally generated by the arrival of a massive number of workers who were not indigenous and who did not share the same philosophy of life as the Guaymí.

The Case of the Kuna

The Canadian company Western Keltic Mines Inc. has been accused by the Kuna General Congress of carrying out "a policy of penetration and winning individuals over to their cause", with the aim of "dividing, udermining and weakening the political institutions of the Kuna People".

Donald McInnes, the president of the company, has stated his intention of exploiting five mining concessions in Kuna territory and he is not planning to back down to Kuna opposition. He was quoted as saying that "they have explained to me that the Kunas have not permitted us to enter their territory, but I like challenges".

The Kuna General Congress, which is the highest authority in the Kuna Yala Comarca, has stated that they are against all activities concerning mine exploration and exploitation in their territory, just as the proclamation that was sent out from the village of Achutupu on 10 March 1996 (see the inset) confirms.

Currently, the representatives of the Panamanian Government have decided to actualize the signing of the mining contracts and, along with it, the threat to the indigenous people that if they do not accept the mining exploitation in their territories, they will be "condemned to forever to live a life in misery". It is expected that within the next few months the state will start to widely proclaim, through all forms of media, the "opportunity of the century: The exploitation of the mines in Panama". For the time being, the indigenous people are getting full support from the non-indigenous popular organisations, as actualisation of the government's plans will lay waste to all the natural resources, transform the hills into useless hollows and submit the people to great poverty.

Atencio López is a Kuna lawyer. ❑

PROCLAMATION FROM THE KUNA GENERAL CONGRESS

Comarca of Kuna Yala

The land and the natural resources give us life and hold profound significance for the Kuna People; they are not simply objects of profit, they form the essence of our physical and cultural life because they feed us, keep us healthy and help us to maintain our community.

This being the essence of our vision as a people, the Kuna General Congress, in its extraordinary session held in the village of Achudup from 8-10 March 1996, addressed national and international public opinion, in order to express its total rejection of the anti-indigenous politics of the Panamanian Government. It is not enough for them not to want to admit to the legitimate borders of our territories, they also want to arbitrarily dispose of the lands acknowledged by national law as Kuna property, only to hand it over to foreign companies for mine exploitation, without as much as consulting with the Kuna General Congress.

On the one hand, we are surprised by the facile access to the goods and resources of the Republic that has been given to foreign companies and the contempt, on the other hand, contempt and humiliation that we, the original inhabitants of this country, are shown. How can we think and feel otherwise, when the media (La Prensa "The Gold of Kuna Yala", 5 March 1996) informs us that mining concessions have been granted in our Comarca, in spite of the fact that we have lived on and taken care of this land for millenniums.

This government claims to respect the Law, nonetheless, its policy contradicts ILO convention no. 107 from 1957 and the National Constitution that in articles 5, 86 and 123 states that it will protect the rights of the indigenous peoples by Special Rule, defend their ethnic and cultural identity and guarantee the collective ownership of their territories, prohibiting private appropriation of their lands.

We also denounce the policy of penetration and winning over of individuals that the company "WESTERN KELTIC MINES INC." is carrying out, a policy that is directed towards dividing, undermining and weakening the political institutions of the Kuna People.

Because of this, we once again manifest our total repudiation of all mining activities in Kuna Yala and our determination to prevent it by all available means.

We repudiate and condemn all activities, seminars, etc. organised by the aforementioned companies and their associates.

We express our solidarity with the Ngobe People who are confronted with a situation similar to ours and we encourage the creation of a joint front.

And we will once again prepare ourselves for a situation of maximum alert and call upon all friends to act in solidarity and join us in the struggle to defend the rights of the indigenous peoples.

Kuna Yala, 10 March 1996.

RESOLUTION NO. 01/03/96

By the right endowed upon it by law, the Extraordinary Kuna General Congress was convened in the Village of Achudup from 8-10 March 1996.

CONSIDERING

That the Political Constitution of the Republic of Panama establishes the Fundamental Rights of the indigenous peoples as: Special Rule of the Indigenous Comarcas; recognition of and respect for ethnic identity; Common Property and the prohibition of private appropriation of indigenous lands;

That art. 11 of ILO Convention no. 107 from 1957, ratified by Panama, acknowledges collective and individual ownership of lands - in favour of the indigenous people;

RESOLVES

To deny and repudiate all activity in relation to the allocation or concession of mine exploration and exploitation permitted by the national government, without the consent of the Kuna General Congress;

To repudiate all activities concerning the mines such as: seminars, workshops and conferences which involve the leaders representing the Kuna People without the consent of the Kuna General Congress;

That the General Congress establish the necessary coordination with national and international organisations, with the purpose of attaining the necessary support and solidarity to guarantee our fundamental rights;

To appeal to all Kunas and other indigenous peoples in Abya Yala and all over the world, as well as to friends, to stay alert for the complete defense of our natural resources, resources that are a part of Mother Earth.

Carlos López	Salomón Guerrero	Julián González
Saila Dummad (Cacique)	General Secretary	Saila Dummad (Cacique)

DECLARATION

Mining and Indigenous Peoples Consultation

London, England. 6 -16 May 1996

We, the representatives of the Indigenous Peoples organisations, communities and nations, from Peru, Bolivia, Brazil, Venezuela, Panama, Costa Rica, Mexico, Colombia, Guyana, French Guyana, Suriname, in Central and South America; from the United States of America and Canada of North America; from Australia, Fiji, India, the Philippines, Papua New Guinea and Irian Jaya of Asia and the South Pacific; from Namibia and Ghana of Africa; and from Samiland, The Russian Federation, and Greenland of the Arctic,

Convened together for the Consultation on Mining and Indigenous Peoples on 6-16 May 1996 in London, England, after having shared an analysis of each others' situation through democratic discussions, we are convinced that we, as Indigenous Peoples, have the inherent right to self determination; the inalienable right to land and resources; the right to self governance; the right to be respected as distinct peoples with our own social organisation, customs and traditions and the fundamental right to life and survival.

We are alarmed at how our inherent and fundamental rights as Indigenous Peoples are systematically trampled upon, disregarded and violated by the dominant world neo-liberal economy through their transnational corporations motivated by greed and profit.

We are further alarmed that these transnational corporations make use of international funding institutions such as the International Monetary Fund, the World Bank, regional funding institutions and even the United Nations, to impose, coerce and deceive sovereign nations through their policies and programmes. International organisations such as the GATT and the World Trade Organisation, and their imposition of structural adjustment programmes and privatisation result in the continued national oppression and exploitation of Indigenous Peoples.

We recognise from our common experience that the worldwide transnational mining industry works in complicity with our national governments to aggressively enter into our territories, to appropriate lands and territories, exploit our natural resources, pollute the air, land, forests and waters and displace and kill the Indigenous Peoples, the result of which is nothing less than ethnocide and genocide.

We share in the knowledge that there is nothing that justifies the destruction of our air, forests, waters, lands and territories, or the destruction of our lives and identities as peoples, and that there is no development that when it includes the blood and death of our Peoples and the destruction of Mother Earth.

We are inspired by the wisdom and knowledge of our peoples and our heroic ancestors' tradition of the defense and protection of our lands and territories and the assertion of our rights, existence and identity.

We are conscious of the need to unite and strengthen our mutual support in the struggle to achieve full recognition andrealisation of our right to self-determination.

We struggle for our survival and in defence of our lives, our lands and territories, our own traditional forms of development and our own socio-economic, cultural and political well-being as Indigenous Peoples.

We therefore condemn in the strongest terms the transnational mining companies which through international and national organisations and multilateral agreements, and the complicity of the states and their national laws denying our existence, continues to land-grab and destroy our land and territories, air and environment, and to exploit our resources and decimate our peoples.

We therefore unanimously conclude:

1. To continue strengthening our organisations, communities and nations so that we can be stronger to defend and assert our right to self-determination;
2. To broaden the support of the Indigenous Peoples' struggle for self-determination by linking it with the struggles of other oppressed groups, sectors or classes in our own countries and throughout the world.
3. To demand recognition of our right to life and our right to survive as Indigenous Peoples, and condemn the violations of our inherent and fundamental rights.
4. To demand the recognition of Indigenous Peoples' inalienable rights to our lands and territories and our waters, including surface and subsurface resources in accordance with, and respect for, Indigenous Peoples' traditional forms of collective ownership and control.
5. To demand that Indigenous Peoples be consulted with, and full and comprehensive information be provided in a timely manner, when mining activities are being considered for sites located in Indigenous Peoples' lands and that the free and informed consent of Indigenous Peoples be obtained before any mining development can occur on Indigenous Peoples' land.
6. To support adoption of the United Nations draft declaration on the rights of Indigenous Peoples as drafted by the UN Working Group on Indigenous Peoples, without any substantive change or amendment.
7. To create an alliance among Indigenous Peoples in defense of Mother Earth and our human rights and fundamental freedoms beginning with the participants of this conference, in order to continue our efforts against mining and its destructive effects on our communities.
8. To evaluate situations, plan solutions and carry out actions in defence of our lands and territories, air, forests, waterways, coastal waters and other sources of life within our territories in conjunction with other cultural, environmental, religious and other organisations with common interests in solidarity with Indigenous Peoples and their aspirations.
9. To support the Declaration of Beijing and Indigenous Women written and adopted at the 4th World Conference of the United Nations on Women held in September 1995; in particular, To condemn the violations of Indigenous women's human rights as committed by mining companies and governments and To demand an investigation of violations of women's rights through thetrafficking and trading of women, and acts of discrimination against women, and further that these be considered and punished as crimes.
10. To demand the health and well being of our children and To condemn the violation, exploitation and exposure to contamination created by mining efforts; further, To demand a healthy and safe environment for our children,especially in those communities where mining activities occur.
11. To propose our united action in opposing and resisting the strategy of the world globalisation of the economy and the worldwide exploitation of workers, as these policies produce a concentration of wealth and power against our peoples and convert the Indigenous mine worker into a subordinate and disposable element.
12. To demand labour policies that integrally meet the Indigenous worker's needs and rights that dignify his or her role as craftsman and creator of wealth and well-being. ❑

THE PREVAILING SITUATION OF OIL ACTIVITY IN THE PERUVIAN AMAZONIA

by Lily La Torre
Racimos de Ungurahui

To date, the oil boom in Peru represents an investment of USD1,045 million for the exploration and exploitation that more than twenty transnational corporations have been carrying out on a total area comprising 13 million 600 thousand hectares of lands conceded to them in the Amazon, most of which are located in territories belonging to indigenous peoples. So far, the highly pollutant process of oil exploration and exploitation in the world's rainforests has only brought pernicious consequences to the local populations. In Peru, of the 59 million hectares of land with the potential for exploiting hydrocarbons, 83% of them are located in the humid rainforests that comprise the Amazonia.

The Amazon region and the indigenous peoples who have inhabited it for hundreds of years are challenged by a new threat, one which puts the environment, territories, quality of life and culture of the indigenous people in serious jeopardy. In fact, almost all the oil concessions in the Amazon are superimposed on titled territories or territories traditionally occupied by native peoples.

According to government data, Peru now occupies 5th place in the world as "an attractive country for oil exploitation", primarily due to the extensive facilities and tax exemptions granted to the corporations by the new legislation. During the last three years, in accordance with the demands of the structural adjustment policies dictated to Peru by the multilateral international financial institutions, the country has initiated a process of privatisation of the states companies, liberalisation of the economy and promotion of private investment, mainly foreign, for the exploitation of natural resources.

In the hydrocarbon sector, the Amazonia is being sold off to the oil industry, and the entire territory has been numbered and divided into "lots", to accommodate the sale. At present, there are 13 contracts pending signing and to date, 32 contracts have already ready been signed, 17 for exploration and 15 for exploitation, which means the perforation of 76 to 78 exploratory wells.

The legislation

During the last five years, our country has signed and promulgated important legal organs: the Environmental Code (el Código del Medio Ambiente), which regulates the sufficient conservation and sustainable use of natural resources; ILO Convention 169, which promotes respect for the rights of the indigenous peoples; and the Convention on Biological Diversity; however, this legislation is not respected and norms concerning the promotion of economic investment by private corporations continue to be superimposed, violating the civil law, restricting the state's role as guardian and protector, and granting privileges to and sheltering the major investors.

The great attraction of the transnational oil corporations to Peru is due fundamentally to the Comprehensive Law of Hydrocarbons (Ley Orgánica de Hidrocarburos), and to the Framework Law for the Growth of Private Investment (Ley Marco para el Crecimiento de la Inversión Privada). Clearly outlined in these norms is the path of promotion that the government is following, for which it has had to modify and repeal a number of laws that were opposed to it. The principal measures that improve the rules of the game for oil investors are: juridical and taxation stability; exemption from duties on the importation of materials and supplies for the development of their activities; tax exemptions on the repatriation of profits; reduced taxes on interest; the privatisation and liberalisation of the hydrocarbon industry; the deregulation of the market for the use of combustibles; sale by auction of state businesses currently for sale; refining, production and transport of combustibles; repeal of the protection of labour regulations; an increase in the concession area for exploration and exploitation; help in obtaining ownership of the lands where the granted lots are located, through expropriation; an easing of the process to obtain obligation rights for the ownershipof territories belonging to third parties as well as for the obtainment of all types of permits for the use of resources and waters; limitations and restrictions on the establishment of new Nature Reserves; repeal of the constitutional prohibition restricting the granting of land concessions to foreigners in national territory located within 50 km. of the border; declaration of the oil activity as a matter of National Necessity and Public Utility; a merging in the Ministry of Energy and Mines of the administrative functions, regulations, supervision and control of the operations and the application of sanctions on those corporations not meeting environmental standards in the sector; decrease in the administrative sanctions on the use of agents contaminating the environment and the repeal of various important articles in the Environmental Code.

The presence of oil corporations in the Amazonia

The first refinery in the rainforest was built more than 60 years ago, by the company

Ganso Azul in Aguas Calientes, on the banks of the Pachitea River in Pucallpa, in the central rainforest. In the 1970s, most of the country's northern rainforest was explored by Petroperú, the state corporation that was in charge of the hydrocarbon industry and trade until the present year, in which it now faces privatisation, in order to meet the agreements outlined in the IMF's Letter of Intention.

In 1972, the first productive wells were discovered in Lots 8 and 8X, located in the basin of the Chambira and Corrientes Rivers, which provided the location for the construction of the northern Peruvian oil pipeline, which stretches 856 kilometres, traversing the Andes from the rainforest to the Peruvian coast. In the year 1974, in the so-called Lot 1AB, located in the upper basin of the Tigre River, a frontier zone with Ecuador, the company Occidental Petroleum Co., from the United States, found an important deposit that now has 100 wells operating in it and that continues to be the country's most important in terms of productivity.

What significance has oil had for the indigenous peoples?

For the *Quichuas*, *Achuares* and *Urarinas* indigenous peoples who inhabit these lands, the oil activities have brought serious consequences: contamination of the rivers by spillage and underground waterways by chemicals and other residues resulting from the perforation process, accidental spills due to cracks in the ducts; new fatal sicknesses; chronic respiratory sicknesses due to inhalation of carbonic gas produced by burning the residual gas; a deficiency in food resources, deforestation, a fall in medicinal plants, materials to build houses and tools for work and use in the home, black rain and acid rain, local price inflation; the violation of places sacred to the indigenous people; a proliferation of alcohol, prostitution and violence; abandonment of communal and family life by the males; alteration and loss of cultural values; a work increase for the women, who now have to spend more time and effort to find clean water and firewood, take care of the contaminated cultivated land, look after the children due to the increased risk of accidents, and live in insecurity due to the problems of abuse and rape by the foreigners, etc.

In 1986, 18 *Quichua* children of the Vista Alegre Community died of unknown causes, all exhibiting similar symptoms: vomiting, diarrhoea and intense stomach pains. The members of the community point out that there is no other source of water near to the zone, which is why they have to use the water from the Tigre River where the Montano gulch empties out, which brings residuals from the Barta production well, concession 1AB of the OXY Corporation. The Iquitos General Health Hospital has had a number of emergency cases involving poisoning due to drinking the water of the Tigre River.

Scientific evidence exists which shows that the contamination in the Corrientes, Samiria, Cocha Pasto, Capahuari, Trompetillo, Tigre, Amazonas, Cocha Monatana, Pastaza and Marañón Rivers directly affects the indigenous communities of the zone: *Achuares, Urarinas, Cocamillas* and *Quichuas,* who traditionally obtain the majority of their protein from fish.

The communities of the Pastaza, Corrientes and Tigre Rivers have protested that during the dry season, the population often has to search for alternative water sources far from their villages because the water from the river is not usable due to its strong odour of chemicals. At other times, they have to wait for the oily covering in the water of their receptacles to rise so that they can skim it off and use the remaining water.

In 1984, the National Office for the Evaluation of Natural Resources, ONERN, determined that the area around the Pastaza, Tigre, Corrientes and Marañón Rivers, comprising approximately four million hectares of the country's northern rainforest, is one of the country's "critical environmental zones".

In Lot 8X, the *Achuares* of the Corrientes River, who have suffered from the negative affects of more than 25 years of oil activity which did not take into account the grave environmental and social impact, the illnesses affecting the population and the contamination of the waters, ask who is going to respond to these damages, once the state corporation that operated the lot is sold. The costs of the damage to the environment that the national corporation left have not yet been discussed in the evaluation of the cost of the investment.

The *Achuares* indigenous people from the community of Pucacuro, located along the banks of Corrientes River, reported that:

"for more than 20 years we have suffered from the contamination of our rivers, and for almost as long we have sent letters and complaints to Petroperú. They continue to deny culpability for the contamination. Commissions have been formed, but we never hear of results. In our cocha *(lagoon) Emiliano, we have always had a sufficient supply of fish, until once, while eating fish caught there, everyone began to vomit and have diarrhoea, and five men died".*

"Since that time, our children are always sick. We never had these illnesses before, which they say are malaria, tuberculosis, hepatitis, anaemia and yellow fever. We thought that it was from a lack of food, because we can hardly find any animals in the forest, and also because we become sick from the polluted water as we do not have anywhere else to go to consume water. We have to bring it from the river, even if the river is polluted."

In November of 1995, during a visit to the zone carried out by a technical commission and the indigenous leader of AIDESEP from the Iquitos region, a major ecological disaster was ascertained in this area. In the lake of crystal clear water abundant with aquatic life that the community members told about, one could only observe an oily liquid of dark colour. Through the gulch branching off the lake toward the Corrientes River, oily water flowed, dotted with pools of crude oil. Along the banks, as far as 5 metres on each side, remained indications of a major recent spill, that possibly reached a height of approximately one metre, as calculated by the point on the trees that had been discoloured by the crude oil. The bark of the trees was then "scraped" by brigades sent by the corporation to conceal the disaster.

"Now that there are laws, Petroperú says that they are improving, however, in a recent substantial spill in Battery 4, for example, we have seen that they are covering the area with dirt and grass so that it is not detected during the inspection, but when the rains come, all the crude oil will be washed into the river".

The Regulations for Environmental Protection during Hydrocarbon Activities (El Reglamiento Ambiental para Actividades de Hidrocarburos) was promulgated in 1993 by the Ministry of Energy and Mines. The oil activities carried out prior to this measure had no established parameters to limit the polluting emissions nor regulation to foresee and minimise their social and environmental impact. The oil operations were

managed according to the politics of each corporation.

In the Regulations, it was established that all the corporations that had been operating in the period before the promulgation must present a Programme of Environmental Adaptation and Control, in which the adaptation mechanisms of the corporation to the norms demanded by the Environmental Regulations are specified.

As a result of the Texaco Corporation's spillage of some 17 million gallons of oil in the oil rich areas in Ecuador bordering Peru, hundreds of kilometres of the Napo River, in Peruvian territory inhabited by the *Quichua* indigenous people, have been contaminated.

On 27 December 1994, a leak in the northern branch of the oil pipeline used to transport oil exploited by the OXI Corporation in Lot 1AB, occasioned the spill of large quantities of oil in the Tigre River. In some zones, these spills continue over a long period of time to affect the riverside communities and the indigenous communities that live in these zones, conceded to the oil corporations.

The last spill that affected the native communities, of approximately 6,400 barrels of crude oil, took place on 13 April 1996 in section II of the northern Peruvian oil pipeline, in the Rojo River, in the basin of the Marañón, and affected the *Aguarunas* communities that live in the zone. The corporation responsible, Petróleos del Perú, announced that it had adopted the corresponding measures in order to attend to the damage to the population: it delivered plastic buckets to the communities in order to collect rainwater for their consumption. Through the immediate response of the population and their representative organisation, the Aguaruna Organisation of the Alto Amazonas Province, ONAPAA, acting together with the Regional Indigenous Coordination, AIDESEP San Lorenzo, the appropriate reports reached the authorities and the national press, which has allowed the Ministry of the sector to send a Directive Resolution so that the compensation to those affected and the restoration of the polluted areas is effected.

Racimos de Ungurahui is a peruvian NGO.

Oil lots in indigenous territories

LOT 1AB
Size: 497,000 has.
Concessionaire: Occidental Petroleum Corporation, Oxy.
Nationality: North American.
Situation: Exploitation of the lot since 1974. It has an estimated daily production of 50,348 barrels of crude oil, with an existence of close to 150 million barrels of known reserves. It is considered the most important lot in terms of productivity in the country.
Affected indigenous peoples: *Kwichua* of the Tigre River.

Organisation: Federation of Native Communities of Alto Tigre, (FECONAT).
Location: Intuto District, Maynas Province, Loreto Department.
Indigenous People: *Achuar and Urarina* of the Corrientes River.

Organisation: Federation of Native Communities of the Corrientes River, (FECONACO).
Location: Trumpeteros District, Loreto Province, Loreto Department.

Indigenous People: *Kiwchua* of the Pastaza River.
Organisation: Quechua Indigenous Federation of Pastaza, (FEDIQUEP)
Location: Pastaza District, Alto Amazonas Province, Loreto Department.

LOT 8-X
Size: 697,000 has.
Concessionaire: Petroperú.
Nationality: Peruvian.
Situation: Contract for the exploitation of hydrocarbons. It is considered to be the country's second lot in terms of productive importance.
Affected indigenous territory: *Achuar, Urarinas* and *Muratos.*
Organisation: Federation of Native Communities of the Corrientes River, (FECONACO).
Location: Trumpeteros District, Loreto Province, Loreto Department.

LOTS 31-B, 31-C, 31-D
Size: 88,000 has.
Concessionaire: Maple Gas Corporation of Peru, Peruvian subsidiary.
Nationality: North American.
Situation: Gas exploitation. The concession was granted in 1994 in order to develop the "Integral Aguaytia Project" that will exploit 223 thousand million square feet of gas reserves in that zone. A 145 megawatt thermoelectric plant will be constructed, with 225 kilometres of gas pipelines, 105 kilometres of ducts for natural gas liquids, installations for the division and storage of gas liquids, as well as electric substations and 400 kilometres of high tension lines for a total investment of USD 150 million.
Affected indigenous territory: *Shipibo.*
Organisation: Federation of Native Communities of the Lower Ucayali, (FECONBU).
Location: Lower Ucayali basin, Contamana District, Ucayali Province, Loreto Department.

Organisation: Federation of Native Communities of the Ucayali, (FECONAU).
Location: Basin of the Upper Ucayali, Puerto Inca Province, Ucayali Department.
Affected indigenous territory: *Cacataibo.* This part of the lot also affects the Cacataibo population not connected to the Azul mountain range.
Organisation: Federation of Cacataibo Native Communities, (FENACOCA).
Location: Aguaytia District, Padre Abad Province, Ucayali Department.

LOT 50
Size: 1,000,000 has.
Concessionaires: Yacimientos Petrolíferos Fiscales, (YPF) and Quintana Minerals Corporation (QMC).
Nationality: Argentinean and North American.
Situation: They have been in the exploratory phase since January of 1995.
Affected indigenous territory: *Huambisa.*
Organisation: Federation of Native Communities of the Santiago River, (FECONARSA).
Location: The Santiago River basin, Santiago River District, Condorcanqui Province, Amazonas Department.

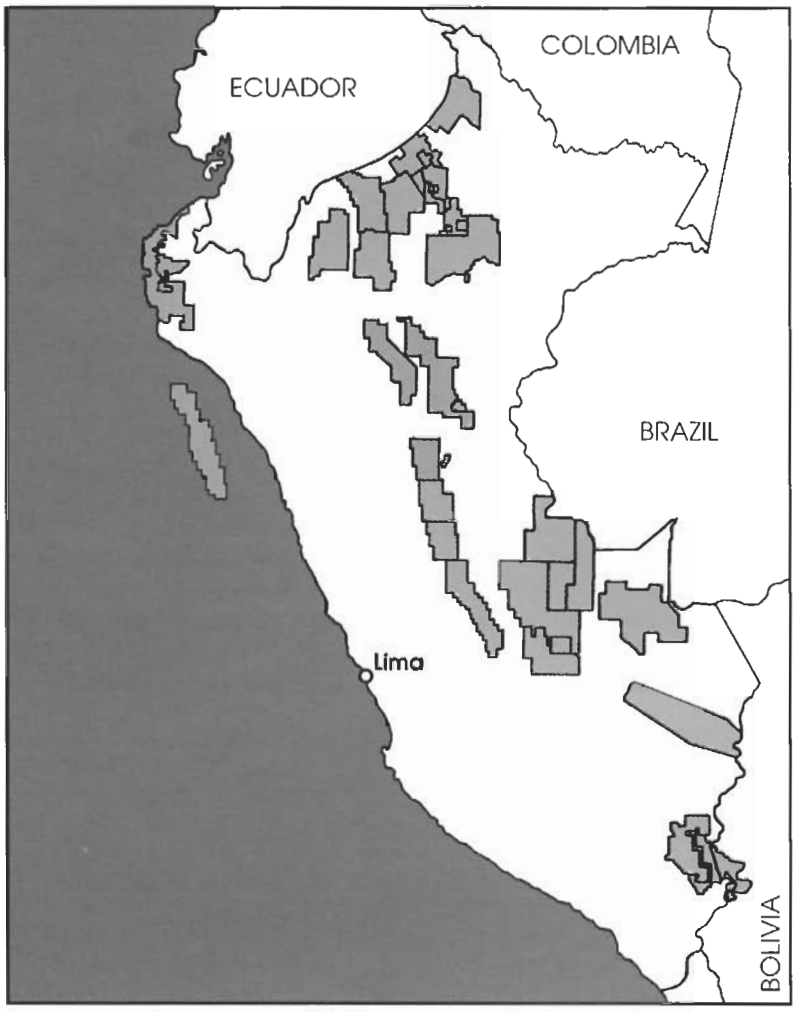
Affected indigenous territory: *Aguaruna.*
Organisation: Aguaruna Organisation of the Alto Amazonas Province, ONAPAA.
Location: Manseriche District, Alto Amazonas Province, Loreto Department.

Affected indigenous territory: *Aguaruna.*
Organisation: Ijumbau Chapi-Shiwag.
Location: Mnaseriche District, Alto Amazonas Province, Loreto Department.

LOT 52
Size: 718,930 has.
Concessionaire: Chevron Overseas.
Nationality: North American.
Situation: Contract signed in June of 1995. It established a 30 year exploitation period in the case of discovering oil and forty if gas should be found.
Affected indigenous territory: *Machiguenga.*
Organisation: Machiguenga Congress of the Urubamba River, (COMARU).
Location: The Urubamba River basin, Echarate District, La Convención Province, Cuzco Department, southern rainforest.

LOT 54
Size: 805,000 has.
Concessionaires: Pluspetrol S.A., Peruvian subsidiary.
Occidental Petrolera of the Peru Inc., Peru subsidiary (OXY).
Nationality: Argentinean and North American.
Situation: Contract for the exploration and exploitation signed in August of 1995.
Affected indigenous territory: *Quichua.*
Organisation: Quichua of Pastaza Indigenous Federation, (FEDIQUEP).
Affected indigenous territory: *Achuar.*
Organisation: - Achuar Chayat Organisation, (ORACH)
- Achuarti Ijundramu Federation, (ATI).
Location: Basin of the Pastaza and Huasaga, both located in the Pastaza District, Alto Amazonas Province, Loreto Department and Region.

LOT 64
Size: 954,000 has.
Concessionaire: Atlantic Richfield (ARCH)
Nationality: North American.
Situation: This lot is adjacent to Lot 54, and its oil activities also affect *Achuares* territory. The *Achuares* are one of the Amazon indigenous peoples who have decided to maintain only minimal contact with the surrounding society. They proudly assert their identity and they fervently defend their cultural and territorial integrity. Their representative organisations have declared their opposition to oil activities in their territory to the authorities and to the public because all factors seems to indicate that the impact of the oil exploitation will cause irreversible consequences to their communities.
Affected indigenous territory: *Achuar.*
Organisation: - Achuar Chayat Organisation, (ORACH)
- Achuarti Ijundramu Federation, (ATI).
Location: The Huitoyaco, Huasaga and Manchari river basin. Pastaza District, Alto Amazonas Province, Loreto Department.



Oil lots in Peru

LOT 65-M
Size: 1,477,000 has.
Concessionaires: - Great Western Resources Ltd, Peruvian subsidiary.
- Enterprise Oil Exploration.
Nationality: North American and Britain.
Situation: Signed contract in December of 1994.
Affected indigenous territory: *Cocama-cocamilla.*
Organisation: AIDECOS.
Location: Basin formed by the Marañón and Ucayali Rivers, in the districts of El Tigre and Urarina, Loreto County and Department.

LOT 66
Size: 1,000,000 has.
Concessionaires: - ELF Aquitaine Hidrocarbures Peru, Peruvian subsidiary
- Eurocan Venture (Bermuda) Ltd., Peruvian subsidiary
- The Anschutz Overseas Corporation, Peruvian subsidiary
- Great Western Resources Ltd., Peruvian subsidiary
- Enterprise Oil Exploration.
Nationality: French, Canadian, North American and British.
Situation: Signed contract in September of 1995 for the perforation of six exploratory wells, for a term of seven years and 30 years for exploitation, in the case that oil is found, and of 40 years if natural gas is found.
Affected indigenous territory: *Asháninka* and *Nomachiguengas.*
Organisation: The Indigenous Unification of the Central Rainforest in Peru Council, which is the regional organ that represents the *Asháninka* and *Nomatsiguenga* organisations of the central rainforest. The organisations directly affected will be:
- Head Office of the Native Communities of the Central Rainforest, CECONSEC

Photo: Racimos de Ungurahui

- Head Office of the Asháninka of the Ene River, (CARE)
- Head Office of the Asháninka of the Tambo River, (CART)
- The Asháninka Nomatsiguenga Kanuja Indigenous Union.

Location: Basin formed by the Ene and Tambo Rivers. Provinces of Oxapampa, of the Pasco Department, of Chanchamayo, Satipo Province of the Junín Department and Atalaya Province of the Ucayali Department. Central rainforest.

LOT 67
Size: 831,000 has.
Concessionaires: - Mobil Exploration and Producing Peru Inc., Peruvian subsidiary, managing the contract, in association with:
- Chieftain International (Bermuda) Ltd, Peruvian subsidiary
- Minnowburn, Peruvian subsidiary
- Plain Resources International Inc, Peruvian subsidiary
- Murphy Peru Oil Co, Peruvian subsidiary
- Advantage Resources International, Peruvian subsidiary.

Nationality: North American (of the managing company).
Affected Indigenous territory: *Kichuas* from Napo.
Organisation: Kwichuaruna-Wangurina Organisation, (ORKIWAN).
Location: In the basin of the Tangarama and Curaray Rivers in the province of Maynas, Loreto Department.

LOT 71
Size: 1,259,000 has.
Concessionaire: Murphy Peru Oil Co., Peruvian subsidiary, branch of the Holding Murphy Oil Corporation.
Nationality: United States.
Situation: Signed contract in September of 1994. Seismic exploration studies have been carried out.
Affected indigenous territory: *Asháninka, Yine.*
Location: Breu District, Atalaya Province, Ucayali Department.

LOT 74
Size: 1,095,200 has.
Concessionaire: Coastal Peru Ltd, subsidiary of The Coastal Corporation.
Nationality: United States.
Situation: Signed contract in December of 1994, for the exploration and exploitation of hydrocarbons.
Affected indigenous territory: *Shipibo*
Organisation: Federation of Native Communities of the Lower Ucayali, (FECONBU)
Location: Ucayali Province, Ucayali Department and in the Requena Province, Loreto Department.

LOT 77
Size: 1,500,000 has.
Concessionaire: - Mobil Exploration and Producing Peru, Inc. Peruvian subsidiary,
- Elf Petroleum Peru B.v. Peruvian subsidiary
- Exxon Corporation and Production Peru Limited, Peruvian subsidiary.

Nationality: North American and French.
Situation: Licensing contract for the exploration and exploitation of hydrocarbons. It includes the perforation of five exploratory wells and the raising of 600 km. of seismic oil line .
Affected indigenous territory: Territory of isolated indigenous peoples: *Yora o Yaminahua, Mashco-piro* and *Amahuaca.*
Location: Basin of the upper Las Piedras River, provinces of Purus in the Ucayali Department, and Tambopata and Tahuamanu in the Madre de Dios Department.

LOT 78
Size: 1,507,000 has.
Concessionaire: - Mobil Exploration and Producing Peru, Inc. Peruvian subsidiary
- Elf Petroleum Peru B.v., Peruvian subsidiary
- Esso Exploration and Production Peru Limited, Peruvian subsidiary.

Nationality: North American and French.
Situation: This lot, located in one of the more ecologically sensitive zones in Peru, will affect the southwestern portion of the Tambopata Candamo Reserve, in the area planned for the establishment of the "Bahuaja-Sonene National Park", considered one of the most biologically diverse regions on the planet, containing species still unknown to

science. Several years ago, the right to establish the Amarakaeri Community Reserve, was applied for, in order to protect the land and resources of the *Harakmbut, Piro, Kisamberi* and *Machigenga* communities that live in the zone.
Affected indigenous territory: *Harakmbut, Toyeri, Huachiaperi, Esse-eja.*
Organisation: - Native Federation of Madre de Dios, (FENAMAD)
- Harakmbut Council, (COHAR).
Location: Provinces of Manu and Tambopata in the Madre de Dios Department. Paucartambo and Quispicanchis in the department of Cuzco. Southern rainforest.

LOTS 88-A 88-B
Size: 213,000 has.
Concessionaire: Royal Dutch Shell Group and Mobil Oil.
Nationality: British-Dutch and North American.
Situation: Contract for the exploitation of the Camisea deposit, which has an estimated 10.8 billion square feet of natural gas and 725 million barrels of natural gas liquids.
Affected indigenous territory: *Machiguenga, Yine, Kugapakori, Nahua, Yaminahua.*
Organisation: - Machiguenga of the Urubamba River Council, COMARU
- Yami-Yine Federation of Native Communities, FECONAYY
- Head Office of the Machiguengas Native Communities, CECONAMA.
Location: Communities of San Martín, Cashiriari and Mipaya in the basin of the Urubamba and Ucayali Rivers, Echarate District, La Convención Province, Department of Cuzco and Atalaya Department of the Ucayali. Southern rainforest.

Lots under negotiation:
The Peruvian State is negotiating the concession of lots: 79, 80, 81, 82 and 83 of the Amazon rainforest, located in the basin of the Ucayali, for the exploration and exploitation of hydrocarbons.

Lots applied for:
Pluspetrol has applied for Lot 10.
The North American corporation ARCO has applied for Lot 84.
The MOBIL Corporation has applied for Lot 61.
MOBIL and SHELL have applied for Lot 75, comprising 1,795,220 has, in the southern rainforest.
OXY has applied for Lot 72 in the central rainforest. ❑

CAMISEA

The largest gas deposit in Latin America, located in indigenous territory in the Amazon

The contract of the century for the peruvian government

by Lily La Torre

On 17 May 1996, the Peruvian Government reached an agreement to exploit the Camisea gas deposit with the consortium formed by the British-Dutch corporation Shell and the North American corporation Mobile, during their intense publicity campaign called "The Contract of the Century". The contract was assessed by government officials as "the key to the continued development of our country during the next 50 years".

Camisea is the site of a deposit of 10.8 billion square feet of natural gas and 725 million barrels of gas liquids divided into oil Lots 88A and 88B (totalling 230 thousand has.), both located in the southern rainforest of Peru, 250 kilometres from Cuzco, in the Urubamba and Ucayali River basins. The affected indigenous communities are the *Machiguenga, Yine-yami, Asháninka, Nahua, Kugapakori, Amahuaca* and *Yaminahua.*

The area in which the exploitation of gas activities will take place is located in the intermediate area of the Urubamba River basin, between the Alto rainforest and the Amazon plain, bordering the Manu National Park.

Experts who have studied the ecological conditions of the location point out that from the Pongo de Mainique, which divides the Upper and Lower Urubamba, the zone consists of a varied topography that stretches from the Amazon plains to the cloud forests at 3,700 metres above sea level. It contains an abundant biodiversity in each of its varying ecological strata, consisting primarily of virgin territory and forests still in an exceptional state of wholeness and preservation, similar to those of the Manu National Park and the Tambopata and Candamo Reserve Area.

It is for these reasons that the applications for the establishment of two Nature Preserves, the Sanctuario Natural Machiguenga Megantoni, consisting of 176 thousand hectares, and the Reserva Comunal Machiguenga have been kept alive, even though they have been under review for two years by the Ministry of Agriculture. They will guarantee the conservation of the area's biodiversity and the stock of flora and fauna resources which are a traditional source of nourishment for the neighbouring indigenous communities.

The Urubamba Valley has been inhabited by a native Amazon population since time immemorial. The current population consists of more than 10,000 indigenous inhabitants, who live in communities on legally recognised and titled lands. An isolated indigenous population leading an itinerant life also occupies the area pertaining to the *Amahuaca, Yaminahua, Nahua* and *Kugapakori* peoples.

The relationship of these peoples with the national society dates back to the beginning of the century, at the time of the violent arrival to the zone of the rubber exploiters. Rubber is a coveted natural resource that abounds in the indigenous peoples' lands, but unfortunately its presence brought about raids, slavery and the mass murder of the indigenous population of Urubamba.

However, after these bloody events, the indigenous population succeeded in recovering and maintaining, to a great extent, their traditional lifestyle and, as they live far from the urban centres, they have maintained little external contact. This has led to the development of a sustainable economy which combines shifting agriculture, hunting, fishing and gathering, complemented by agriculture orientated towards local commerce (cacao, corn, rice, beans). At present, they are organised in Councils or Federations that assemble several communities in the basins, for the defense and affirmation of their rights as peoples.

The oil activities of Shell

The Shell Corporation carried out their exploratory activities in the zone during 1983 to 1987. However, the final studies did not include an environmental audit, which was to have evaluated the level of contamination and impact produced by the seismic exploratory operations and the perforation of the wells. Notwithstanding, the negative social impact that the indigenous population of the area suffered was tremendous.

Additionally, there was a very significant increase in the total population of the region, given that at times the Shell Corporation and their contractors had more than 2,000 people working simultaneously in the Urubamba. This resulted in the rapid expansion of the local market, principally the regional agricultural products, fish and wild meat, resulting in price inflation in the local economy.

The indigenous communities found themselves unequally incorporated into this new mercantile economy. Many people arrived who invaded the communities' lands to colonise them, for commerce, the extraction of wood, the building of settlements, prostitution, etc. These activities put pressure on the nourishing resources in the area, which generated a scarcity of foods available from the forest for the indigenous population, and the consequent dependence on outside products to fulfil their food needs.

The decrease in forest resources also altered the conditions affecting the population's health: deficiency illnesses appeared such as anaemia and malnutrition, especially among the most susceptible sectors of the population, women and children.

It also brought with it the breakdown of the immune system's defenses, which in turn aided the proliferation of infectious illnesses. This is the case with malaria and venereal disease. During the years 1983 - 1986, coinciding with the presence of Shell in the region, more than 4,000 cases of malaria were observed in the native population, as determined by theWorld Health Organisation's studies.

On the other hand, the growing dependence on the market drove the native population's males to seek employment as hired hands in order to obtain the needed food for their home, abandoning the family and communal life, and increasing the work and responsibilities of the women.

In communities that remained primarily populated by women, old men and children, the women were victims of sexual abuse committed by the workers who moved about in the area.

The inquiries made by the sanitary authorities of the region are important as they cite a very significant increase in infectious venereal diseases, especially in the areas near to the corporation's camps.

Impact on the isolated population

The isolated indigenous population has suffered the worst consequences. The *Kugapakori-nahua*, who inhabit the inter-fluvial regions which separate the Urubamba basin from the Manu basin, were decimated.

The first contact with the *Kugapakori-nahua* population was at the beginning of the 1980s. The encounters were sporadic and violent, as they were carried out by lumbermen. Subsequently, during the exploratory stages for oil undertaken by Shell in 1984, contact was renewed, with the same level of violence as the previous years.

The confrontations with the Shell crews resulted in several wounded, and the corporation finally altered the pattern of the relationship with the indigenous population by offering them gifts.

Taking advantage of this approach, the lumbermen entered the region offering the same gifts, in exchange for the possibility of extracting wood. The successive contact introduced numerous infectious diseases, especially whooping cough and the flu, for which the population had not developed any immunity. This caused violent epidemics that decimated the *Nahua* population.

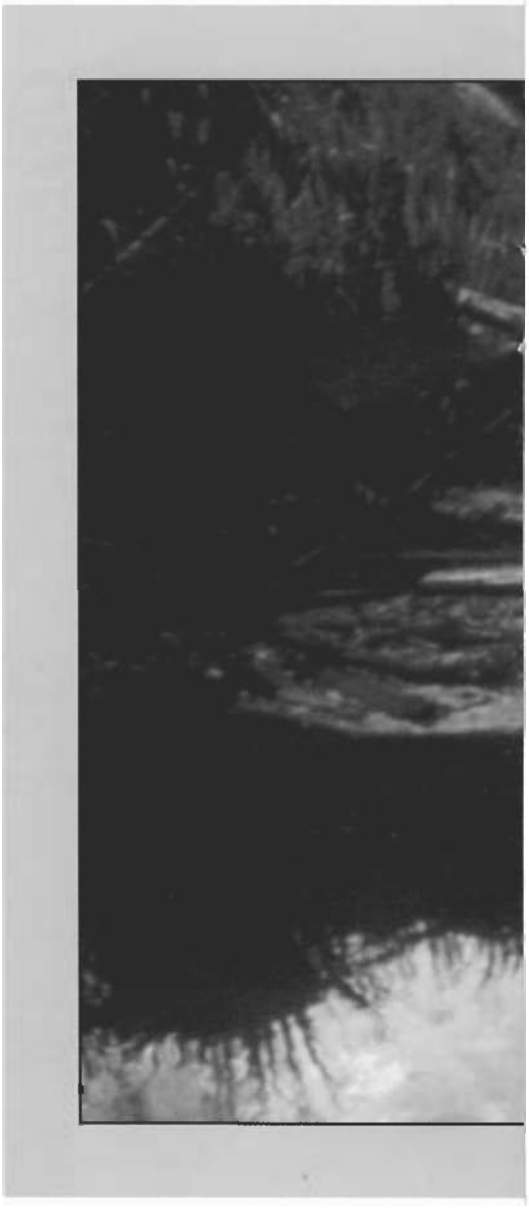
The most conservative calculations indicate that 50% of the *Kugapakori-nahua* population died due to the contact with outsiders and the remainder fled from the region in fear. Some of the survivors moved toward the neighbouring Manu basin.

The terms of the current contract with the Peruvian state

Several days before the signing, the contract was published and the terms of the deal became known. The promised USD 2,800 million in investments that should have added USD 6,000 million to the Treasury during a period of 25 years by way of royalties and interest, will only go into effect when Shell-Mobil is able to affirm the profitability of their investment, dependent on the fulfilment of certain conditions which, if not fulfilled, will result in the modification or the rescindment of the contract.

During the first stage, one of the most relevant aspects conditioning the continuity of the contract is the obtainment of information certifying the existence in the deposit of at least 7,000 barrels per day of natural gas liquids. (This hydrocarbon has a secure market, and this level of production constitutes the initial level of profitability that the corporation must attain in order to continue with the project).

The other condition is that there must be a national market for the consumption of the gas, so as to benefit the consortium. (To achieve this there are plans to obtain the needed credit to develop a macro-economic plan to rationalise the national industries to consume gas, implement mechanisms such as subterranean gas ducts for domestic use, the adaption of oil driven cars to vehicles which use gas, etc.).



In addition, in order to give continuity to the contract, during this period the plans for theconstruction of a 600 megawatt thermoelectric plant to be built by a company which is interested in electric power in the central and southern zones of the country must be formalised.

These conditions call for the division of the contract into three stages.

During the first stage, of two years, the following activities will be carried out:

- Preparation of the Environmental Impact Study.
- Additional exploration of the deposit, by the perforation of 3 wells.

Photo: Racimos de Ungurahui

- Reprocessing of 250 kilometres of seismic lines.
- Geological surveys.
- An evaluation of the market for gas in Lima .
- Engineering studies of routes, ducts, production, the development of the operations and the drainage of dams.

The second stage will encompass:
- Development of the deposits in the area of the contract, and the beginning of the commercial extraction of the gas and gas liquids.
- The construction of the plant for the separation of liquids and the reinjection system.
- The construction of the principal natural gas ducts and of the ducts for the transport of natural gas liquids to the central coastal area.
- Construction of a plant for the division and supply of hydrocarbons.

During the negotiation process, just a few days before the signing of the contract, the Government implemented modifications in the tax legislation which, according to national experts, are special norms which have the objective of favouring the Shell-Mobil consortium and facilitating the defining of the terms of the deal.

Some of the granted benefits are exoneration from importation taxes on goods marked for the activities of the business, during a four year period; exoneration from all export taxes on hydrocarbons coming from the area stipulated in the contract; exoneration from the Selective Consumption Tax for gas until the year 1999, etc.

The negotiations for the elaboration of the contract for the exploitation of this deposit were begun in June of 1995 in total secrecy.

The environmental organisations and indigenous organisations concerned with the treatment of the environment and the social impact in the zone were shocked by the weak position the contract took as regards environmental and social protection. It was only agreed that the "contractor will make the necessary efforts in order to avoid affecting, when possible, the native communities or peasants".

The environmental impact studies and the participation of the indigenous peoples

The national and international environmental legislation, and the legislation concerning indigenous peoples, Legislative Resolution No. 26253, which ratified ILO Convention No.169, prescribes the proper information, participation and consultation with the in-

digenous peoples in whose territories it is planned to develop projects for the exploitation of subterranean resources.

The work will be begin during the first two weeks of July with the construction of installations in the indigenous community Nuevo Mundo, as a port of transfer for the approximately 7 thousand tons of equipment and supplies for the first stage of work.

Shell has reported that it has provided the means to carry out a continual consultation process with the communities, both before and after the operations, and some communities have already signed contracts with the corporation for the use of their lands.

Nevertheless, the information that constitutes the fundamental base for the decision-making and that would enable the indigenous organisations and their technical experts to project, in advance, the possible impact and subsequently put forward corresponding recommendations, has still not been made available.

It is necessary that the consultations and the agreements between the corporation and the indigenous population consider:

- the necessary information which will allows for the incorporation, from the outset of the project, of the contributions of the indigenous inhabitants, who, by being the best informed about their environment, are also better qualified to report on the potential impact on their surroundings and resources.
- a pertinent account which takes into consideration the cultural differences which exist between the contracting parties and the participants –the corporation and indigenous peoples– as many of the oil activities do not exist as notions or frames of reference in the conceptual universe of the indigenous peoples. Therefore, a pertinent account must include an explanation translated into the indigenous languages and heeding their cultural framework. Only this will allow for effective understanding of the procedures of this industry and its environmental and social impact.
- a complete and detailed report of the entire Activities Plan, regarding the effects on the local population during the diverse phases of the project.
- and an objective account, carried out by qualified technicians from institutions of proven credibility, such as universities and professional schools, which will allow for the corroboration of the technical information provided by the oil corporation.

The Plan for the prevention of negative environmental and social impacts caused by the exploitation of the deposit must be verified by the indigenous communities of the zone, represented by their organisations, the Yine-Yami Native Communities of the Urubamba River Federation (FECONAYY), the Machiguenga of the Urubamba River Council (COMARU), and the Machiguenga Native Communities Council (CECONAMA). They are constantly meeting in order to make decisions which will allow them to develop a common strategy regarding the oil issue in their territories. To facilitate this process, they created the "Commission for the defense of life and natural resources in the Urubamba Valley", to be comprised of representatives of the three organisations who will undertake the necessary coordination between the native communities, the Peruvian Government and the Shell-Mobil consortium, in order to carry out these plans.

The organisations published a demand to the government calling for the oil activities to be carried out in a manner which respects the rights of the indigenous communities, including those who have no contact with outsiders: *Kugapakori, Nahua, Yaminahua* and *Amahuaca*, and that the prevailing national and international legislation is applied. They also demanded that the government ensure the adoption of the adequate mechanisms for the effective participation of the communities in the monitoring of the execution of the measures of environmental mitigation and administration, throughout the duration of the project. Here, they appeal to a criterion of common sense and reasonableness, given that as the land and resources are a fundamental part of the life of the indigenous peoples, they will be the most interested in conserving it.

The Regulations for the Environmental Protection of Activities Involving Hydrocarbons requires the presentation of an Environmental Impact Study(EIA) and a corresponding Environmental Management Plan for the activities that the oil corporations elaborate in the granted concessions, prior to the commencement of operations.

The seismic detonations, the exploratory drilling, the transfer of 225 thousand tons of materials, supplies and teams,the destruction of the forests; the continuous traffic of the workforce, airplanes, helicopters and barges; the camps of hundreds of people; the work of the gas exploitation process and the condensers; the construction of the thermoelectric plant; in addition to the industrial transformation process that separates and compresses the gas; its transport via ducts and polyducts to Lima, etc., are all highly contaminating activities that are being carried out on the land of indigenous communities, and which will cause an irremediable environmental and social impact, unless the oil corporation take responsibility for their work.

Recently, in Lot 52, adjoining Camisea, where the North American oil corporation Chevron has begun seismic exploration activities, there arrived hundreds of labourers looking for work. They came from the cities in caravans and upon not finding any jobs, they attacked the local communities, stealing the livestock and abusing the women. The corporation had to contract boats in order to effect the return of the unemployed labourers turned invaders.

Shell has announced that it has scheduled two weeks for fieldwork in the zone in order to undertake an environmental impact appraisal. This is an insufficient amount of time to adequately comply with the study's objectives.

Serious studies must include cost-benefit analyses of the oil activity, in terms of incorporating all the costs of the project: the corporation's own investment costs: wages, property, equipment, materials, etc.; the cost in natural resources that will be lost or spoiled: polluted rivers, flora and fauna, aquatic life, genetic materials, etc.; and health costs due to the increased risks the population face as a result of the introduction of new illnesses and the proliferation of infectious foci.

These are the costs of the oil activities which are not taken into consideration in the various studies. It is of the utmost importance that scientifically validated studies are undertaken in order to determine if the oil activities in the rainforests are truly profitable in economic terms. This should be a minimum requirement of the corporations which already subscribe to the criteria of market efficiency and quality.

We believe that every life and every being has value in and of itself and therefore, the true cost-benefit studies must incorporate the varying ecological conditions of the land and guarantee that nobody will be infringed upon and that all forms of life will be respected. ❑

THE NENET PEOPLE

by Jens Dahl

The pictures on the next pages will remind some people of a period long since past. Indeed, the *Nenets* of the Yamal Peninsula no longer use bow and arrows, and small boats with outboard engines have replaced the old wooden rowboats. So, there is truth in that. Additionally, the photographs themselves are technically antiquated due to the outdated processing method.

The Nenets' reindeer herders still roam the land with their animals. When spring arrives, they leave the vast forests and taiga areas to spend the short summer on the tundra of Yamal. Some of them will travel as far north as possible. Further north, there is only the Polar Sea, aside from the White Island, across the Malygin Strait.

The White Island is difficult to reach, which only adds to its imaginary significance to those foreigners who came to the land of the Yamal Nenets, before and after the Russian Revolution.

On the White Island the sacrificial home of the Nenets' god Seru Iriku is found. The altar, Yaumal-khe, was guarded by three Nenets families of Yamal, and no white people had been allowed to enter the area until 1929 when the Nenets took the scientist Vladimir Petrovich Yevladov to the island. Yevladov was from the Urals and he studied engineering in St. Petersburg. He took part in the October Revolution, and the Civil War brought him as far east as Mongolia. In 1926 he visited Yamal for the first time, but it was not before 1929 that he crossed the Malygin Strait to the Whide Island.

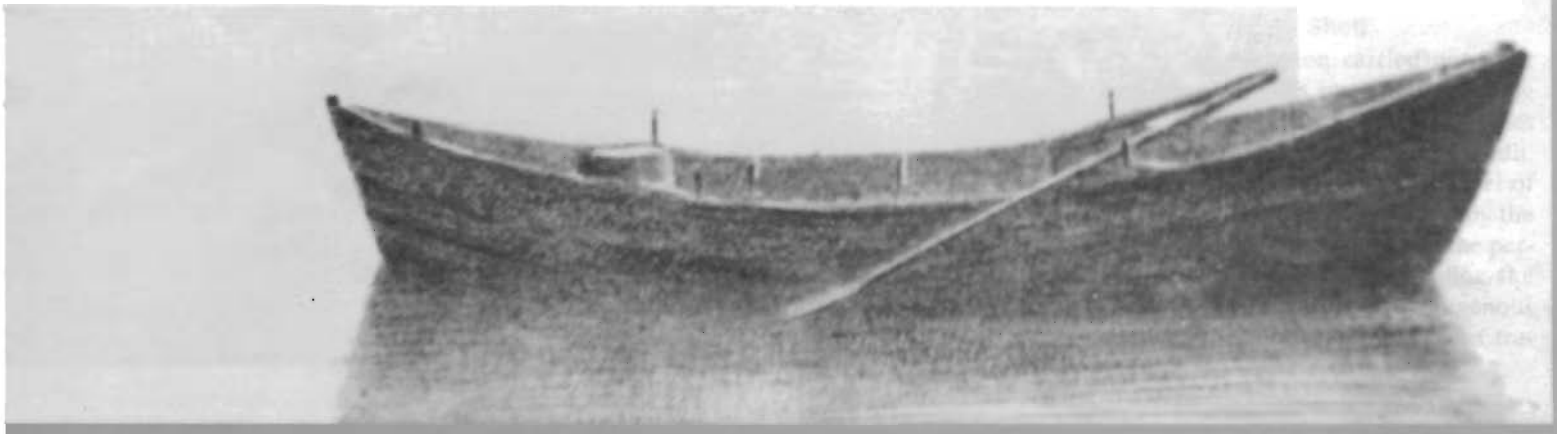
It was a misty day when they set out and only the Nenets could possibly find the White Island, as they had used and occupied the land since time immemorial. The Nenets escorted Yevladov to the holy area, although it was only by a great effort that he was able to persuade them to do so. Why is it that the holy places pertaining to other cultures are so fascinating? Why is it that Yevladov was so eager to see an enormous pile of reindeer horns, in the middle of which tall sticks stood out and skulls of polar bears lay scattered about? Was it because an essential feature of the culture might reveal itself?

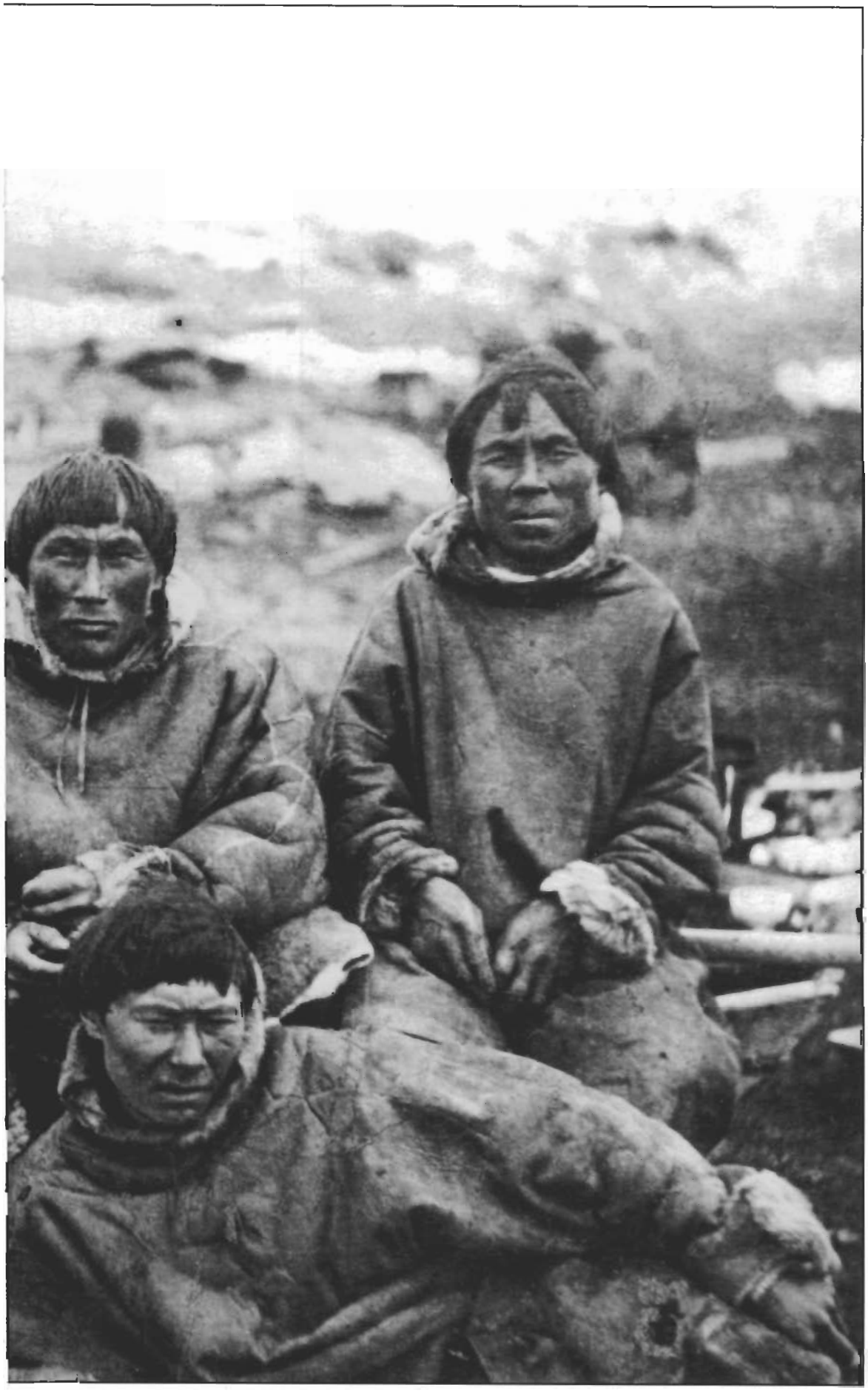
From his diary we know that Yevladov understood the significance of the White Island and the holy altars. He did not desecrate the holy places as explorers, tourists, scientists and even greedy locals have done. He was not a Russian version of Indiana Jones. In that case, he would never have been able to produce these unique photographs. His photographs tell us a different story, one which can be used and admired by today's Nenets and the rest of the world alike. They might prove to be an important link, a cultural legacy of the Nenets, who are in the middle of a process of social and cultural reconstruction, and who, perhaps, have never been so poor off as they are today. ❑

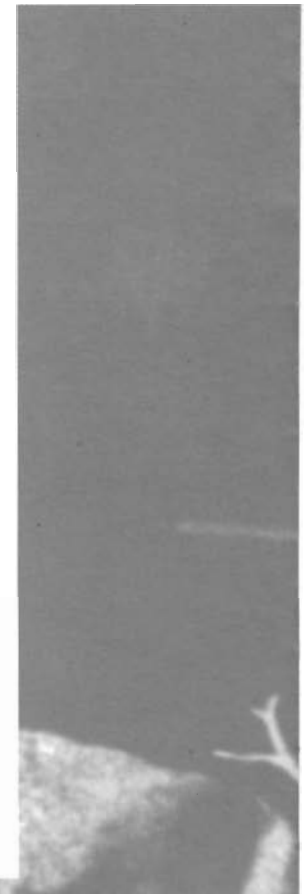
Jamal Harutti

RUSSIA
THE NENET PEOPLE

PHOTOS:
JAMAL HAKUTTI







MILITARIZING COMMERCE IN AFRICA

THE EXAMPLE OF SHELL IN OGONILAND

by Deebii Nwiado

Abstract

The history of commerce in Africa, even in its most rudimentary state, is replete with "horror" to say the least. Not even barter, which existed as the earliest form of commerce, is spared the brutal treatment characteristic of European trade relations with Africa. African slaves that were traded across the Mediterranean were captured in slave raids conducted by local chiefs who were armed by European slave traders (Colchester, 1993).

In the Central African Republic (CAR), for instance, villagers unable to flee from slave raids were captured and tied together, and brought naked to the forests to tap the rubber vines. These were the "weaklings" who, not being fit for slavery, were only physically tortured. "It is incontrovertible that Europe, by introducing slavery.... generalised slave raiding and manhunt". (O'Brien, ed. 1979). Under the impact of industrial revolution, Western capital came to Africa in search of raw materials. Forced labour and work under extremely inhuman conditions led to the death of several thousand Africans. The Congo-Ocean railroad built by some 80,000 African labourers, led to the death of another 20,000 (Curchaoua, 1989:17). To provide timber for European factories, colonial armies undertook brutal campaigns to enact forced labour. In the Garbon, the extraction of timber had to be done by axe, and handsaw, the logs being then carried to rivers and creeks in order to be floated out to the waiting trading ships (Colchester 1993).

Africa and Africans fare no better in the era of industrial capitalism. African territories were forcibly colonised against the wishes of Africans. Colonialism was essentially an effort by the colonizers to protect sources of cheap raw materials for international trade. A delegate to the French Association of Industry and Agriculture in March 1899 graphically described this objective as:

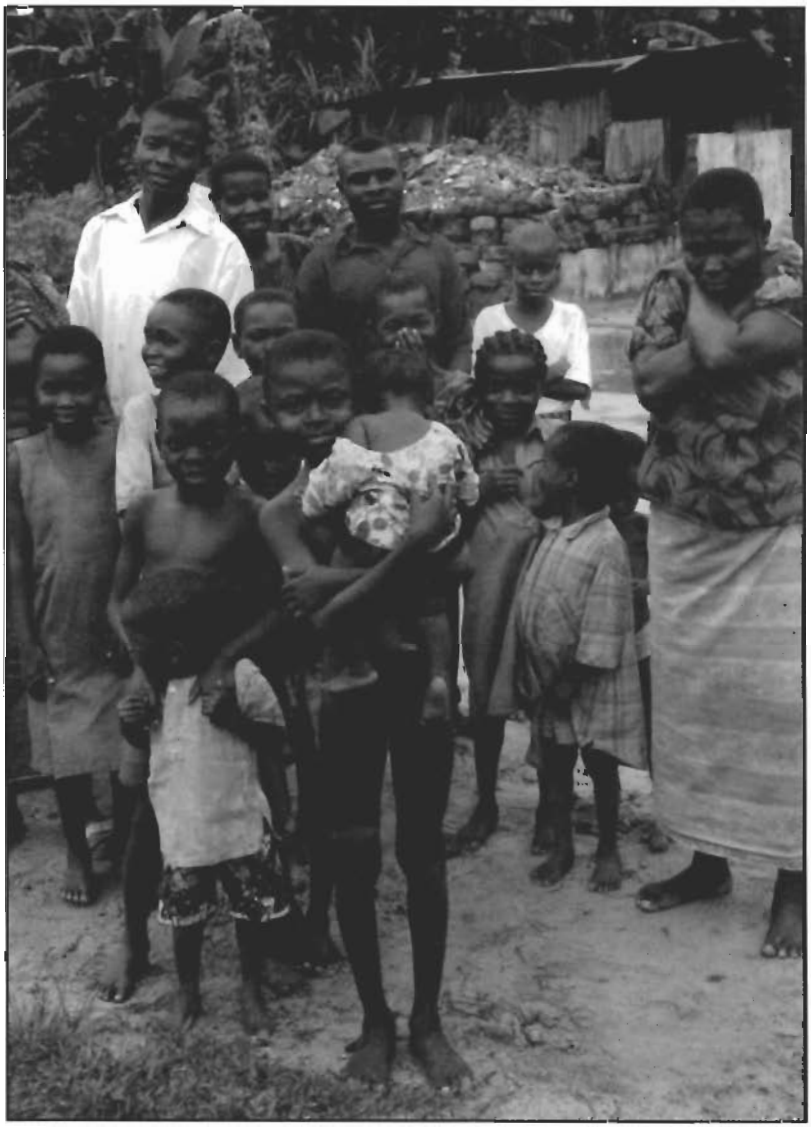


Photo: Anne Hege Simonsen

"...to discourage in advance any sign of industrial development in our colonies, to oblige our overseas possessions to look exclusively to the mother country for manufactured products and to fulfil, by force if necessary, their natural function, that of a market reserved by right to the mother country's industry" (Dumont 1962:51), quoted by Colchester.

Mercantile imperialism was carried out based on the unequal exchange between various modes of production (Nabudere, 1977:19). Marx argued that, "merchant capital that derives from mercantile capitalism stood as a system of robbery directly connected with plundering, piracy, kidnapping slaves, and colonial conquest" (K. Marx vol.III 330), cited by Nabudere.

Ronald Robinson (et al, 2nd 1981:40) notes that "there were twenty-one British firms operating in the Delta..." (Nigeria of today) in the palm oil trade. These firms did not play the game according to the rule. According to Ronald Robinson et al, (op. cit) "Liverpool firms of the Delta and African middlemen who supplied them, stirred up tribal resistance..., upstream as a result the steamers ran into violence and gunplay". Continuing, Robinson noted, "it had happened to the Lander in the thirties. It had happened to Laid's captain in the fifties. It was still going on in the next decade." No other testimony of the continuous military raids on Africa in the name of trade could have been more accurate than this by Ronald Robinson, himself citizen of Great Britain, the former world colonial giant.

This brief review of the history of the European-African commercial relationship leaves nobody in doubt as to the true nature of the business. It is in this historical context that the genocidal activities that the multinational oil company Shell has perpetuated in Ogoniland since 1958 will be examined.

Introduction

The Ogoni nation is located in Nigeria, a country in West Africa. Nigeria came into being in 1914 after the amalgamation by the British colonial administration of the northern and southern protectorates. Prior to 1914, Nigeria had been administered by the British in two distinct units - the protectorate of northern Nigeria and the protectorate of southern Nigeria. It is important to point out that until the amalgamation, Ogoni was a separate independent nation with a distinct cultural identity. Ogoni has never been conquered by any of her ethnic neighbours. But with the arrival of the British colonialists, Ogoni was subjugated and forced into the British created southern protectorate and thus became part of Nigeria. Nigeria is a nation of ethnic groups, in which the Yorubas, Ibos and Hausa/Fulani dominate. There are over a hundred other smaller groups including the Ogoni, Ijaw, Uhrobo, Ibibio, Anang, Effik, Gwari, Nupe, Ikwere, Ndoni, etc.

The Ogoni nation lies in an area between approximately latitude 4°.05' and 4°.20' north and longitudes 7°.10' and 7°.30' east. Its approximate boundaries are the Aba-PortHarcourt highway to the west, the big bend and mouth of the Imo river in the north and east respectively and costal flats occupied by the Andonis to the south. Covering a total area of 404 square miles, it forms part of the costal plain terrace which appears as a gentle sloping plateau intersected by a few deep valleys which intermittently carry water. The central part of this plateau is about 100 feet above sea level. The nation numbers some 500,000 people and consists of four groups:

(i) Khana - is the largest, located in the eastern and northern parts and are divided into 3 kingdoms: Babe and Ken Khana and Nyo Khana, and speak Khana.
(ii) Tai - live in the western part and speak Tai which is closely related to Khana and therefore the two understand each other.
(iii) Gokana - the second largest group, live in the south-central part of the nation and speak Gokana which is closely related to Khana.
(iv) Eleme - live in the west of the nation and speak Eleme which though divergent from both Khana and Gokana is still closely related to them.

Oil was struck in commercial quantity in Ogoniland, Afam (Lekuma) in the late fifties by the Shell-BP consortium. In 1962 and 1963, two more oil fields were discovered: the Korokoro and Ebabu respectively. By 1967, statistics of crude oil production from the various oil fields in Ogoniland were as follows:

Bomu	25 wells	-	76,637 barrels per day
Ebubu	7 wells	-	3,440 barrels per day
Korokoro	6 wells	-	20,519 barrels per day

Source: (Ken Saro-Wiwa, 1968 : 11)

The total, approximately 100,000 barrels a day, represents about one quarter of Nigeria's total oil production today. The discovery of crude oil in the Ogoni nation has resulted in a damaged environment, low crop yields and deaths, instead of happiness and wealth. It is ironic that the discovery of oil on our land has brought us nothing but poverty, misery, hunger, torture, arrest and detention and above all, death. The structure and business practices of Shell are the root cause of these miseries. It is an example of a modern day military raid by a multinational corporation on an African community.

Shell: A Military Partner

Early Shell-BP oil exploration activities in Ogoniland were characterised by horrifying barbaric technological practices. Explosives, perhaps a form of highly potent dynamite, were loaded into virgin oil wells and ignited to blast open the sediment. The resulting vibrations did not only destroy crops and vegetation, but also homes. Several entire houses were sunk during the blasting. This is because of the weak walls of the tiny buildings that dot Ogoniland. The damages were never compensated by Shell.

The vegetation suffered as well, not only from the quaking produced by the ignited dynamite, but also from heavy machinery used to construct access roads to oil wells and fields. The machines are used in a very careless manner. They are simply rolled over farms and crops, forest reserves are torn down and needed trees crushed. The heavy human traffic which characterised early Shell-BP oil exploration activities in Ogoniland also added to the degradation of the environment. Access roads were constructed irrespective of the destruction they may cause to waterways, farm crops or veg-

etation. Huge pits of well over 100 metres in radius were dug to provide the soil to fill the access roads. Such holes (barrow pit) are never refilled. The whole portion of land is not only wasted, but collects water with the result that children have frequently drowned in them. All these auxiliary activities caused severe destruction to the environment as well as the ecosystem. It is no surprise, therefore, that within just over a decade of Shell presence in Ogoniland, several forest reserves, economic trees, soil fertility, farmland andthousands of tons of farm crops have been lost to exploration and related activities.

This destruction of the land has been carried out in the usual militaristic fashion with which European businesses have always treated Africa. Shell simply invades whatever area, farmland, field, forest reserve, stream or even homestead in search of oil that it is interested in. If oil is found, mining follows immediately accompanied by considerable attendant hazards. Access roads to oil wells or pipeline routes are laid irrespective of where they pass. Sometimes oil pipelines are laid in people's backyards and access roads constructed through the heart of villages and towns. The examples of Botem and Korokoro, both towns in the Tai Kingdom, and K. Dere in the Gokana Kingdom are cases in point. Shell does not seek permission to use land in Ogoni, nor does it pay compensation for the untold damages it wreaks on the land.

Shell does not use the Environmental Impact Assessment Study (EIA) to evaluate its numerous operations in Ogoniland. It simply tears open whatever area of the environment it sees fit: forest reserves, homesteads, farm crops or streams. In the same militaristic style relationship that characterised slave trade, mercantilism and industrial capitalism, Shell simply brutalises the local people by using local military, which it only recently admitted it arms (Observer, London Jan. 1996).

The decimation of the environment and the pollution caused by the activities of Shell is further worsened by endless gas flares, oil spills and oil blow-outs. Ogoniland measures only 404 square miles in total land area. In this small area, there are five gas flares which burn day and night, all are situated near human habitation. Moreover, several hundreds of acres of farmland immediately surrounding the site of a flare are rendered waste or barren land as nothing will ever grow there again. The flare at Nchia, k. Dere, Korokoro and Yorla are all less than a few hundred metres away from several homesteads. The Nchia gas flare is located less then twenty metres away from a road and a college compound.

Gas flare generates several kilojoules of heat in the already very warm tropical environment. The flare suffocates crops and fruit trees: banana, oranges, mango, etc. The atmosphere is charged and poisoned with hydrocarbon vapours, methane, carbon monoxide, carbon dioxide and soot emitted by gas which flares 24 hours everyday for 35 years. The result is low crop yields and the death of the fruit trees. Incomplete combustion from the flares results in acid rain which again causes severe damage to crops and vegetation. Rain water which once used to be a source of drinking water no longer exists. It is now covered with soot which darkens it and makes it unfit for drinking.

Oil spillage is a common sight in Ogoniland. Generally, oil spillage occurs as a result of the mauriburn technology used byShell in its oil mining activities in Ogoniland. In the 1970s, there was an oil spillage in k. Dere that lasted over a week and covered several hectares of farmland. All of the vegetation, farmland, wildlife habitat and crops were destroyed in the spillage. Oil spillage often affects local streams which provide the only source of drinking water for local communities.

In October of 1992, an oil blow-out occurred in Botem and lasted one week. It completely destroyed the stream water which provided drinking water for the people of Botem. Besides the destruction of the drinking water, the aquatic life and habitats was also wiped out in the blow-out. Vegetation as far as 100 metres away was turned coal black. Ebubu, a town in the Nchia Kingdom, also suffered a devastating oil blow-out in the 1970s. The site of the blow-out covers several metres of agricultural land. As in the previous examples, all of the land area affected by the blow-out has been rendered useless forever.

Besides the waste of agricultural land, oil blow-outs generally emit gaseous hydrocarbons and other gases which in their natural states are very hazardous to life. Although no known study has been conducted to determine the extent of injury, the nature of most deaths, especially among children in Ogoniland and other areas of the Delta where oil is mined, could be rightly attributed to the effects of these gases that are unavoidably inhaled. The effect of all these various dimensions of damages on land, water and air is indescribable. Unfortunately, Shell, the chief culprit in Ogoniland has been unconcerned with the damage it has inflicted on the Ogoni environment and people these past thirty-five years. Characteristic of the Western nations approach to business in Africa, Shell prefers to use the apparatus of state terrorism to suppress and kill the inhabitants of the rich areas, rather than redress the severe environmental problems its operations has caused.

It was in direct response to this situation that the Ogoni people organised themselves and founded the Movement for the Survival of Ogoni people (MOSOP) in 1990 to struggle non-violently against the further degradation of the Ogoni environment. Demands were made on the Shell Oil Company to improve the conduct of its oil mining activities in Ogoniland. Naturally, the demands were very simple, but Shell's response was again high-handed. Military raids of Ogoni villages were organised and carried out. In April 1993 Ogoni peasants peacefully protesting the seizure of their land by Shell were shot and killed by Nigerian troops hired by Shell. On 25 October 1993, Shell invaded the Ogoni village Korokoro with a detachment of armed Nigerian troops. Thereafter, military invasions organised and paid for by Shell became everyday events in virtually every other Ogoni village and town. It was in one of these organised military raids that four Ogoni chiefs were killed, an event which was fraudulently pinned on the late Mr. Ken Saro-Wiwa and eight Ogoni leaders for which they were falsely tried, fraudulently convicted and sentenced to death. On 10 November 1995, they were hanged.

Conclusion

As described in the paper, the European trade relationship with Africa has been characterised more by military expeditions than commerce. This distorted view of commerce has been perpetuated throughout several generations of European businessmen. The result is that the wrongs and injustice that were inflicted on Africa and Africans by Europeans during the era of slave trade and mercantile and industrial capitalism are still being perpetrated in the 20th century. Africans continue to be decimated by Europeans, all in the name of business.

This is exactly what Shell, the multinational oil company, is doing in Ogoniland in Nigeria. For the past thirty-five years, Shell has put thousands of Ogonis to death, either directly or indirectly. There are sufficient reasons to believe that Shell ensured that Saro-Wiwa and the eight other Ogonis were fraudulently tried and killed. Dangerous gas emitted from gas flares, oil blow-outs and spillages, deforestation, etc., have all rendered Ogoniland a wasteland and killed thousands of its people. Direct organised military raids by Nigerian troops hired by Shell have further decimated the Ogoni population since 1994, destroying homes and property and leaving thousands of widows and widowers, just as the slave trade did.

Only a redefinition of the business relationship between Africa and Europe can save Africa and its people. It is in this light that Shell must be forced to re-evaluate and change its operations. It is only then that Shell will no longer mine crude oil mixed with human blood and begin to respect the environment. Therefore, until Shell redefines its business relationship with its host communities in Africa and especially Ogoniland, its products should be boycotted by the civilised world, a world which ended slavery approximately one hundred years ago.

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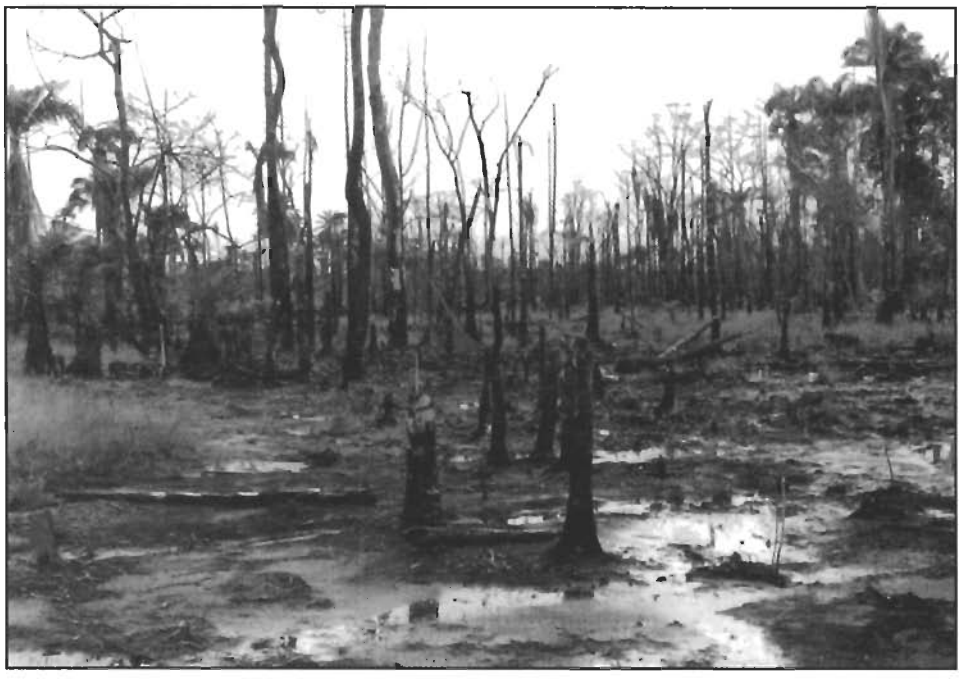

Photo: Anne Hege Simonsen

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Part of the Healing?

The struggle to change mining company views of indigenous rights at Weipa

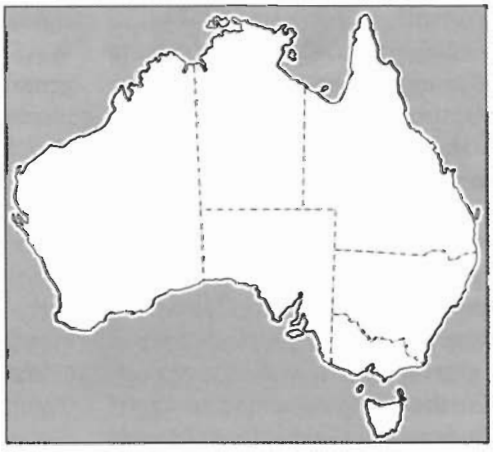
Very public protests of local Aboriginal people in the 1970s and 1980s made Comalco's Weipa bauxite mine in north Queensland (see Map 1) an international icon of the negative effects of mining on indigenous peoples[1]. In much less publicised struggles over recent years, local Aboriginal people have set about changing the relationship between the company and their communities. Central to these efforts has been a consistent demand that the company make a public statement of recognition of and respect for the traditional land-owning families of the mining areas, whose land provides the foundations of the company's profitable aluminium business. Demands for substantial compensation and royalty-type payments, as well as return of land, participation in regional decision-making and control of land and sea resources, are also long-standing at Weipa.

The struggle for justice for Aboriginal people on western Cape York Peninsula has had many dimensions, including a widely discussed common law native title claim by the Wik peoples[2], efforts by the Napranum Aboriginal Community Council to influence company decisions about a proposed alumina refinery[3], and the transformation of the company-funded "good neighbour" programme discussed here. Inevitably, relations with the company have also been affected by a range of other matters, such as the recent negotiation of a mining agreement by the nearby community at Mapoon for development of a small kaolin mine north of Weipa[4], the wider geopolitical dynamics between the mining industry, governments and indigenous rights in Australia in the wake of the *Mabo* decision and the social dynamics established by the federal government's "national reconciliation" process. The lack of easily enforced legal rights for the traditional owners of the active mining areas has meant that less formal domains of interaction with the company have been of great importance in re-shaping the everyday impact of the mine, the company and the wider regional development processes.

Currently, transformation of the relationship remains problematic and incomplete, but extraordinary progress has been secured and there are many lessons to be learned from the experience. Underlying the strategies developed by local people has been their unanimous assertion that Comalco has clearly been "part of the healing" of the damage done to the community over recent decades[5]. Late in 1995, Comalco committed itself to negotiation of an agreement to settle grievances related to the mining leases. This clearly opens prospects for some genuine healing to commence, but a "geological imperative" remains paramount as the dominant ideology within the company[6].

Dispossession and disintegration

Bauxite was identified at Weipa in the mid-1950s by company geologists assisted by local Aboriginal men. A mining lease was approved by special legislation of the Queensland state parliament in 1957 (*Commonwealth Aluminium Corporation Act*). At the time, Aboriginal



AUSTRALIA

by Richie Howitt, Sandy Callope and Bella Savo

people in Australia were not considered citizens, and in Queensland were subject to the extremely repressive provisions of the *Aborigines Act 1971*, which controlled every aspect of their lives[7]. The western side of Cape York Peninsula was largely covered by gazetted Aboriginal reserves (areas "reserved for the use and benefit of Aboriginal people"), and a series of coastal mission stations were established in the late 19th century at Mapoon, Weipa and Aurukun by the Presbyterian Church. While this situation protected Aboriginal people from some of the worst excesses of the early pastoral, pearling and mining frontiers of north Queensland, it secured none of their rights, and dramatically transformed family, cultural and personal lives.

Restrictive state and church policies in force in the 1950s meant that there was no possibility for consultation or negotiation of the terms of development, nor discussion of the impacts of mining, or ways of mitigating those impacts. Instead, as soon as there was some real "benefit" to be taken from the land, its Aboriginal Reserve status was revoked, and the church, the state and the company assumed that they were best placed to decide what was "best" for the local Aboriginal people. This involved discussion of moving the mission station at Weipa. In the case of Mapoon to the north, the Queensland Government unilaterally closed the mission in 1963, removing reluctant residents at gunpoint in a dawn raid by armed police exercise and burning the remaining village buildings, as well as destroying individuals' property. At Weipa, the final settlement between the parties saw the company provide a small cash payment to the church, which constructed a number of aluminium cladding houses at Napranum. The poor quality of these houses provided a dramatic contrast with the housing being built at the same time in the growing mining community to the north of Napranum at Weipa North. Like many of the changes to the local landscape that came with mining, the continued use of these houses, despite their extreme state of dilapidation, is one of many constant reminders to local Aboriginal people of the way in which they have been dispossessed and impoverished by the development of mining (Plates 1 & 2).

During the early development of the mining operation and its associated port and town developments, Aboriginal people at Napranum faced a series of dramatic and disorienting changes to the landscape, their economic and social lives and the administration of their community. While some local Aboriginal people obtained work in the construction and operation of the mining project, access to the benefits of the new wealth in the area for most was extremely restricted. It was, for example, illegal for Aboriginal people to drink alcohol at this time, but alcohol was freely available in the mining community. The circumstances quickly led to a breakdown of internal cohesion and control mechanisms within the community, with increased prostitution, alcohol abuse, violence, poor nutrition, increased physical and mental health problems and general social disintegration. Inequitable employment practices meant that even those local Aboriginal people who did gain employment with the mining company received significantly lower incomes than non-Aboriginal people recruited from outside to this remote location[8].

Many aspects of the undermining of Aboriginal society at Napranum were documented in a murder trial in which the social stress experienced by the people involved in the tragic death of a young woman in a drunken fight were used by the defence counsel as mitigating circumstances[9]. Despite the continuing legacies of this period of disintegration, many people within the mining company culture still have no sense of any linkage between the development of the mine, the prosperity of their company and the social breakdown in the 1960s and 1970s at Napranum. Claiming a commitment to improving the future, current company management often seeks to avoid dealing with the past. It has certainly been hard, slow work even starting company officials on the path to coming to terms with the local Aboriginal views of that past.

In many ways the contrasting views of the experience of resource-based devel-

opment at Napranum can be glimpsed by looking at the key site of Lorim Point where Comalco's bauxite processing, stockpile and ship loading facilities were built (Plates 3 & 4). The view from Napranum quite literally overlooks these facilities. And it is here that Comalco has continued to centralise its industrial development, with expansion of bauxite handling operations, a new kaolin processing facility and a proposal to develop a new alumina refinery here. Before the mining company came, the Lorim Point area was used as a camping area for Aboriginal people working at the Mission. It was rich in economic resources that provided abundant food along its foreshores and inland areas. It was also a crucial source of cultural resources and Aboriginal people often spent their weekends walking along the coastline, telling their children about the resources and the stories attached to them and linking this experience to the stories of other parts of their estates which were less accessible.

Like so much of the land around the Weipa Peninsula, the land and resources at Lorim Point have not only become inaccessible to Aboriginal people, they have actually ceased to exist. These lands and resources have, in fact, become the foundation upon which Comalco depends for its operations.

In 1992, after almost twenty years of operations of the "good neighbour" programmes of the Weipa Aborigines Society (WAS), a strategic review of WAS was commissioned with a view to making recommendations for improving operations and outcomes and laying foundations for at least a further twenty years of operations. This work, while it has never been formally published[10], identified many key issues for pursuing new sorts of relationships between the Aboriginal people of the area and the mining company, and set in place new ways of approaching this relationship, including winding-up the paternalistic "good neighbour" approach which had dominated relations since the early 1970s.

In many ways, the processes of change under way at Weipa represent the extremely difficult task of local level reconciliation, in which the affected parties *must* face up to the consequences of past actions and the reasons for current perceptions, and move on from there. At the national scale, the reconciliation process can proceed on the basis of principles and commitments, but at the local level, such abstractions merely provide the context and not the substance of the challenge. It is this, we believe, that makes the Weipa experience so significant for other Aboriginal groups in Australia, and more widely in the indigenous world. At Weipa, Aboriginal people have not yet been able to secure recognised and enforceable rights. We have had to explore ways of transforming powerful and entrenched corporate culture from the outside in order to advance local reconciliation and secure de facto recognition of indigenous rights.

Weipa Aborigines Society - Comalco's 'good neighbour' programme[11]

In 1972, following substantial public criticism of its employment practices after the publication of Stevens' work, and the escalation of political debate about Aboriginal land rights after the strike of Gurindji pastoral workers at Vesteys' Wattie Creek station in the Northern Territory, the Comalco Board decided it would have to take some initiative to depoliticise Aboriginal demands for recognition at Weipa. It was also recognised that the company could not rely on the Queensland Government to provide funds and other support to address the needs of Aboriginal people at Weipa, and regardless of the legal situation, it would be Comalco and not the government which would face direct blame for the fate of local Aborigines. In response to their reading of this situation, the Comalco Board approved funding of the Weipa Aborigines Society, a trust which would sponsor community development projects for Aborigines at Weipa. Trustees included representatives from Comalco and the State and Federal Governments. The WAS Executive Committee added a group of five Aboriginal leaders to this group of trustees.

In its first ten years of operations, WAS emphasised "bricks and mortar development". Its projects included paving roads, building and running a pre-school, water, sewerage and drainage work and so on. It was run as a highly paternalistic organisation, in which the Aboriginal executive members have little influence over priorities and decisions, and no power at all over management of the money provided by Comalco and the governments. Despite its shortcomings, the work of WAS was appreciated by the community, and the operations exposed a group of company managers to a long-term personal relationship with Aboriginal leaders which lay the foundation for a less ideological response to some later issues. The structure of WAS, unlike any other Aboriginal organisation we are aware of, was firmly rooted in the culture of corporate Australia. This is significant because it allowed the company personnel to feel relatively comfortable in what was, for them, a very alien situation.

In the mid-1980s, following changes in government, company and community personnel and wider changes in the Aboriginal affairs arena, the paternalism of WAS began to be challenged by a new generation of Aboriginal leaders. The emphasis of the group's work changed from "bricks and mortar" to "people development", with considerable investment in development of pre-employment and vocational training, and later development of a training centre in Napranum. By the early 1990s, this had moved to development of joint enterprises between WAS, Comalco and the Napranum Aboriginal Community Council providing contracted services to the company for cleaning, maintenance and parks and gardens. Parallel to these operational changes, WAS also began devolving decisions away from the Melbourne-based trustees towards Weipa-based company officers and the Aboriginal executive members.

During the 1992 review of WAS, it became clear that these changes had *not* yet come to terms with many of the long-standing grievances and underlying concerns of Aboriginal people,including the Aboriginal people involved in the work of WAS. It was also clear in the review that the failure of WAS to be accountable to the community, and particularly to the traditional Aboriginal landowners of the mining areas, was a source of ongoing resentment. And perhaps most fundamental was the different views of just what WAS's 'people development work' could and should involve (see Table). In response to the review, the Aboriginal members of WAS decided to establish a

completely Aboriginalised organisation to take over the work of WAS, and to wind up the outdated, paternalistic and unsatisfactory existing organisation.

Napranum Aboriginal Corporation - Aboriginalising the relationship

In 1993, Sandy Callope, the Chairperson of WAS, initiated the incorporation of a new organisation, the Napranum Aboriginal Corporation (NAC), and urged Comalco to wind up WAS and hand over its assets and operations to NAC. NAC's membership and decisions-making processes were completely Aboriginalised. In response to recommendations of the review, it added a Cultural Programmes sections to the existing Pre-School, Training Centre, Enterprises and Administration sections (see Figure).

In moving away from the old-style paternalism of WAS, the new organisation faced many difficulties. In particular, the funding base provided by the company meant that "strings" were still attached to money, and rapid development of programmes more in tune with Aboriginal perceptions and priorities was hampered. The winding-up of WAS required the approval of the Comalco Board and was very slow in coming. At the same time, Camalco's involvement in litigation of the Wik claim has meant that many company managers have become more antagonistic to funding "good neighbour" work as, they say, it hasn't been successful in keeping them out of court!

Establishing management and accountability structures which allow NAC to maintain existing operations, including promising enterprises in brickmaking, flyscreen production and sawmilling, is at the same time moving the organisation in entirely new and unfamiliar directions oriented to cultural maintenance, protection of native title and resource rights, and is proving a difficult task for all involved. Developments in late 1994 saw adoption of a constitution which entrenches the area's traditional owners and elders as central to the structure and operations of the NAC[12], and clarification of the balance between the corporation-oriented work in enterprise development and some aspects of training, and the community/consensus oriented work in education and cultural programmes. A central challenge for NAC, however, continues to be the inertia from Comalco.

The other side of the story - changing Comalco's response

Comalco has always accommodated a range of interpretations of its relationship with Aboriginal people at Weipa. Early company visions of the development did not exclude Aboriginal people as beneficiaries, for example. Rather, they often assumed that local Aboriginal people would become a black proletariat, a low-cost local labour force. More recently, in wider public debates about social responsibility in the wake of public criticism of corporate ethics in the 1980s, Comalco management has adopted a range of positions, with one school of thought advocating efficient production of low-cost industrial raw materials as the focus of corporate responsibility to society. In contrast, another school of thought has suggested that corporate responsibility involves mining contributing to a sustainable and equitable regional society after the resource is exhausted. Such ideological divisions are overlaid by personality and market imperatives which Aboriginal people involved in NAC must constantly negotiate. For example, Comalco's parent company CRA Ltd. is involved in the development of a new base metals mine at Century in northwest Queensland, in which Aboriginal issues have merged as a crucial area of conflict, while other CRA affiliates such as Argyle Diamond Mines and Hamersley Iron, have been involved in prolonged disputes with local Aboriginal people over resource development. Another CRA affiliate, Bougainville Copper, was a central player in the early stages of the Bougainville rebellion. Staff from all these affiliates have been involved in various ways with Weipa as they have been transferred and promoted through the company structure. Weipa has variously been used as an exemplar, shielded from interference, and subjected to rigorous critique as various management fashions and personal agendas have influenced internal company dynamics. As already mentioned, the significant investment in legal advice and lobbying on native title in general and the Wik claim in particular, has also affected company views of the WAS-NAC transition, with some company management simply arguing for a withdrawal from anything but a minimal "good neighbour" programme in favour of litigating to establish certainty. The shifting balances and alliances, the slow, often painfully slow, development of culturally sensitive understanding of the Aboriginal views of the situation, and the blatant hostility of some elements of the company have all had to be accommodated by the Aboriginal people and their staff involved in the transition. Our patience, strength and vision have been crucial in sustaining the process to date, although this is, inevitably, not without cost to personal health and family life in some cases.

The Comalco/CRA "culture" has proved particularly resilient and slow to change[13]. Recognising that this "culture" is no more monolithic and homogenous than any other has done a lot to overcome some of the powerlessness so often felt in the face of transnational corporations[14]. Recognition of native title in the *Mabo* case has also been important in allowing local Aboriginal people to begin re-thinking their experience, and displacing Comalco from the centre of their stories about their country and their lives, replacing it with much more culturally-focused readings of their history, and putting Comalco into an Aboriginal context[15].

For some inside Comalco, focus on an Aboriginal agenda is accepted as part of a healthy maturing of the relationship; a movement towards a fully "adult-adult" relationship is one of the ways that it has been described to us. From this position, one of the difficulties has been to accommodate and support the rapid growth in cultural and educational activities which make little obvious sense in the company's model of people development. Even with the best will in the world, it remains easier for people familiar with the corporate world to understand and "add value to" the community-based enterprise development work of NAC than its cultural maintenance and Aboriginal confidence-building work. As a result, NAC's work on enterprise development and industrialtraining continues to receive most attention and obvious support from Comalco, while securing resources and support for other work remains more problematic.

On the other hand, there remains considerable company resistance to any non-compulsory accommodation of Aboriginal concerns. The different approaches to language, for example, are instructive. In discussing the wording of a document for circulation within the company during the WAS review, we were urged to remove the word "negotiate" because the "corporate warriors" treated negotiations as a battleground in which they played to win, not to resolve a conflict fairly or justly. For most of them, it was added, the preferred starting position in a negotiation was with their foot firmly on their opponent's throat. In this world view, "win-win" outcomes are not just unachievable –they are unthinkable. To the extent that this thinking remains entrenched and even dominant within the company culture, the task of securing unconditional company support for community initiatives, and a publicly acknowledged recognition of and respect for the traditional landowners of the company's lease areas remains next to impossible. And yet, despite the odds, there has been movement. As in all cultural change, contradictory tendencies within the corporate culture continue to co-exist and create unexpected opportunities to secure both major and minor progress.

The 'handover' of WAS

In October 1995 amid continuing negotiations over resolution of the Wik native title claim, Comalco finally agreed to NAC's request to wind-up the operations of WAS and to transfer remaining funds, which had effectively been under NAC's control since 1993. In a simple ceremony in the Community Hall at Napranum, Comalco's Chief Executive Officer Terry Palmer handed over two cheques, totalling over $410,000 and a commitment to continue funding NAC until 1999, when another review would be carried out. At the same time, Palmer announced that the company was committed to negotiating with Aboriginal groups to resolve outstanding grievances about the mining lease and mining operations and its effects on their lives. While Aboriginal people celebrated the handover as an historic step in redefining the relationship between the community and Comalco, it is clear that the company has still not completely accepted the need to deal openly with all of the long-standing grievances of traditional landowners and affected community members at Napranum, Weipa and elsewhere on Cape York Peninsula. In our 1994 submission to Comalco on the transition from the old-style paternalism of WAS, we proposed that Comalco should not only hand over money, but also the resources to allow NAC to pursue Aboriginal priorities, including housing to accommodate staff, the salary packages currently paid by Comalco to people working in the programmes run within the old WAS structures, resources for executive training of the newly-Aboriginalised organisation and funds to develop new programmes in areas we give priority to such as cultural programmes and enterprise development. The handover package included none of these additional elements and Comalco continues to refuse to consider dealing with these formal requests, although they may be taken up in a new round of negotiations to commence in July. At the present time, these and many other issues are being discussed in detailed consultations and preparations, partly funded by Comalco and carried out under the guidance of the Cape York Land Council and four community-based steering committees. The extent to which Comalco is ready, willing and able to listen to our concerns in these negotiations remains to be seen.

Conclusion

At Weipa, a location where Aboriginal people have faced some of the worst impacts of rapid resource development on indigenous life, a number of factors have led towards a substantial re-assertion of indigenous culture and priorities, despite continuing dominance of the region by Comalco's mining operations. At present the extent to which these changes secure indigenous rights, or compensate people for past abrogations of rights, is extremely limited. Yet there have been substantial and significant changes in the relationship between the Aboriginal community and Comalco which point to slow changes within the corporate culture which may well create space for greater recognition of indigenous rights, rather than corporate charity, as the foundation for the relationship in the future. Work with NAC continues to target the long-term future of the relationship as the mine seems likely to continue operating for at least 30-50 years or more.

Notes:

1. See Roberts, (ed.) 1975. *The Mapoon People*, International Development Action, Fitzroy, Victoria; Roberts, 1981. *Massacres to mining: the colonisation of Aboriginal Australia*, Dove Communications, Melbourne; Howitt, 1992. "Weipa: industrialisation and indigenous rights in a remote Australian mining locality", *Geography*, 77(3): 223-235.
2. The Wik claim seeks to extend principles established in the 1992 *Mabo* decision and includes areas leased to Comalco, but not yet developed for mining. For example, see Reynolds, 1993. "White injustice throws a shadow over black lands, *The Australian*", August 16, 1993: 9.
3. For discussion of the alumina refinery proposal see Gagnon, Hirsch and Howitt, 1993. "Can S.I.A. empower communities", *Environmental Impact Assessment Review*, 13: 339-253.
4. See O'Faircheallaigh, in press. "Negotiating with resource companies: issues and constraints for Aboriginal communities in Australia", in Howitt, Connell and Hirsch, eds. *Resources, nations and indigenous peoples: case studies from Australia, the Pacific and Southeast Asia* (forthcoming with Oxford University Press, Melbourne).
5. The quotations are taken from an interview with Florence Charger, chairperson of the Weipa Aborigines Society in the mid-1980s and currently a councillor on Napranum Aboriginal Community Council and executive committee member of the Napranum Aboriginal Corporation.
6. The idea of the "geological imperative" was coined by Davis and Mathews (eds. *The geological imperative: anthropology and development in the Amazon Basin of South America*, Anthropology Resource Center, Cambridge, MA, 1976) as a description of the ideology used by mining companies to claim that ex-

ploitation of economically viable geological resources is imperative for the "progress" of humanity. In 1979 Howitt applied this idea to an analysis of the strategies of aluminium companies in the Cape York area (*Beyond the geological imperative?* Research Papers in *Geography* No. 23, Dept of Geography, University of Newcastle, NSW).

7 For discussion of the history of Aboriginal-state relations in Queensland and the impact of the *Aborigines Act* on people's lives see e.g. Evans, Saunders and Cronin, eds. *Exclusion, exploitation and extermination: race relations in colonial Queensland,* ANZ, Sydney, 1975. For specific discussion of the early period of development at Weipa, see e.g. Stevens, 1981, "Weipa: the politics of pauperization", in Stevens, *BlackAustralia,* APCOL, Sydney: 137-161, and Rogers, *The industrialists and the Aborigines: a study of Aboriginal employment in the Australian mining industry,* Angus & Robertson, Sydney, 1973.

8 Stevens' work documented this, and the early work of Rogers provides some explanation of the low levels of Aboriginal participation in the mine workforce related to poor health, poor education and racism.

9 See e.g. Wilson, *Black Death, White Hands,* Allen & Unwin, Sydney, 1982.

10 The review was undertaken by Howitt who reported to the Aboriginal Executive members of WAS in early 1993 and at their request prepared a book manuscript under the title "*Part of the Damage? a review of the relationship between Comalco and the Weipa Aborigines Society*". This manuscript has not been finally revised for publication to date as other matters have taken priority at Weipa.

11 The CRA groups of companies have used "good neighbour" approaches to community relations management in several areas where their mining operations affect local Aboriginal communities. The term most obviously comes from the Argyle Diamond Mine's "Good Neighbour Agreement" with East Kimberley Aboriginal groups, signed under controversial circumstances in 1980 (see e.g. Dillon, 1991, interpreting Argyle: Aborigines and diamond mining in northwest Australia, in Connell & Howitt (eds), *Mining and indigenous peoples in Australasia,* Sydney University Press: 138-152; Dixon and Dillon eds. *Aborigines and diamond mining: the politics of resource development in the East Kimberley,* University of Western Australia Press 1990; Howitt, "A different Kimberly: Aboriginal marginalisation and the Argyle Diamond Mine", *Geography,* 74(3): 232-238, 1989. In the case of the Pilbara iron ore operations of Hamersley Iron, an early period of keeping considerable distance between the company and affected Aboriginal groups (Howitt, "Resource development and Aborigines: the case of Roebourne", *Australian Geographical Studies* 27(2): 155-169, 1989) has been replaced by active engagement with community relations management as a result of controversy over expansion of the operations to the Marandoo deposit. At the Century base metals project currently under development, community relations management and "good neighbour" commitments have been part of the project development programme, but company opposition to the native title claim over Lawn Hill pastoral station have continued to generate considerable community disquiet about the project.

12 NAC is incorporated under the Commonwealth *Aboriginal Councils and Associations 1983* and must have constitutional changes approved by the Canberra-based Registrar of Aboriginal Corporations. It took the registrar over sixteen months and many follow-up actions from NAC to finally approve this change in February 1996.

13 See e.g. Trigger, *Contesting ideologies of resource development in Australia: towards an analysis of pro-development sentiments,* Indian Ocean Centre for Peace Studies Occasional Paper No.42, IOCPS, University of WA, 1995.

14 This is precisely the sort of confidence, self-respect and fearlessness that Galtung refers to as fundamental toresisting ideological power in his "mini theory of power" (Galtung, *The European Community: a superpower in the making, 1972).*

15 See for example Suchet, *Rekindling culture through resources: Aboriginal resource management strategies and aspirations at Weipa,* unpublished BA(Hons) thesis, School of Earth Sciences, Macquarie University, Sydney, 1994 (also Suchet, forthcoming, "Rekindling culture through country: resource management strategies and aspirations of local landowning families at Napranum", *Australian Geographical Studies).* Howitt has written about this displacement of Comalco from the centre of the regional narrative in Howitt. *Developmentalism, impact assessment and Aborigines: rethinking regional narratives at Weipa,* NARU Discussion Paper No.24, North Australia Research Unit, Darwin, 1995.

* *Richie Howitt teaches Geography at Macquarie University in Sydney, Australia and since 1990 has worked closely with community organisations at Napranum on mining, its impact on the community and other issues. Sandy Callope was Chairman of WAS from 1986 until it was wound-up in October 1995, and is currently Chairman of Napranum Aboriginal Corporation. He worked for many years with Comalco as a heavy equipment operator. Bella Savo is a former Executive Committee member of Napranum Aboriginal Corporation and currently works as NAC's Director, Cultural Programs.*

We would like to thank all those people we have worked with at Napranum and Weipa over recent years, particularly Marie Chevathan, Dinny Smith, Joyce Hall, Florence Charger, Thancoupie, Ernest Hall, Roy Jingle and Ron Ngalianetta.

United Nations Commission on Human Rights 52nd Session

April 1996

Four Directions Council Agenda presented by John Hardbattle

Mr. Chairman, Four Directions Council thanks you for the honour of addressing the distinguished members of the 52nd Session of the Commission on Human Rights, Agenda Item number 23.

We, the Khwe of Botswana, also known as Bushman or San, stand before you as an indigenous people. And as such, we are an intrinsic part of our land, just as the trees, the animals and the plants are. And we know the land and the land knows us. And if at sunrise we should begin to call out the names of the plants, the list would still not be exhausted at sunset, for we know our land and the life it can provide.

We are a people whose social, cultural and economic condition distinguishes us from the national community. Our lives are governed by customs –by traditions– and by natural laws of universal truth. We are an Indigenous people from Africa, who have chosen alternative development to mainstream culture. *We, the Khwe, are the indigenous people of Botswana, and we predate all other peoples in the area.*

Beyond our self-identification as indigenous, Khwe people possess a heritage and share a common history that has existed since long before the arrival of any African Tribe.

Native to the Kalahari ecosystem, we Khwe have been able to flourish in one of the worlds most fragile, most hostile and yet most beautiful environments.

Living in balance and harmony in this desert environment for more than 40,000 years has demonstrated our invaluable expertise in conservation and our extensive and profound knowledge of natural resource management. The Botswana Government, having chosen to ignore this, has in only 30 years since independence been responsible for the decline in the Kalahari of up to 98% of the game population in the Desert Basin.

We are Khwe, the People of the Sand Face. The Sand Face is our home. For here our ancestors are buried. Here we have danced around the Sacred fires healed the sick and eaten received nourishment from the land in the way our ancestors did. And in this way, we know where we belong.

Control of our ancestral land is the MOST important issue we face today.

The Khwe must have recognition of the rights of ownership and possession of our traditionally occupied land and territories. ⌟

Statement by Sharon Venne

Mr. Chairman,
Speaking in the name of IWGIA, the International Work Group for Indigenous Affairs, let me first of all express our satisfaction that the Commission has taken the right decision and put Indigenous issues on the agenda as a separate item. IWGIA greatly appreciates the work that has been done to reach this result, and our aspiration supports the statement given by the representative of the Greenland Home Rule on behalf of the Nordic Countries.

Indigenous Peoples are only one disadvantaged group among many that have the rightful attention of this Commission. The current state of Indigenous Peoples in the world represents a decolonisation process that was never fully completed. The consequences of colonisation and the denial of decolonisation have been to create a group of peoples with special problems, who live in constant threat and uncertainty. In this respect, putting Indigenous issues onto the agenda of the Human Rights Commission is an opportunity to be consistent, to fulfil the spirit of the Charter that is the foundation of the United Nations. Mr. Chairman, in 1923, a representative of the Haudonesne tried to get access to the League of Nations. He was denied. Now, in 1996, there is progress with a separate agenda item. For that we are grateful.

The issue of defining Indigenous Peoples continues to be raised by states who aim to limit the scope of the concept and who refuse to recognise the criteria of self-definition as one important basis for identification of Indigenous Peoples. As has been stated repeatedly by Indigenous representatives, there is no need to define who Indigenous Peoples are. We know who we are. Furthermore, international law functions satisfactorily in many ways, and makes use of a number of concepts without rigid definitions, including the concepts of minorities, peoples and states. Secondly, a working definition of Indigenous Peoples already exists in various UN documents. Thirdly, as was documented by the Indigenous representatives in the meeting of the open-ended working group on the Draft Declaration, governments that have raised the issue of definition as an attempt to exempt themselves from the application of a future declaration, have in their own countries laws and policies which refer to peoples as "Indigenous".

Most importantly, as was recently said, and I quote: "any effort to define who or what are Indigenous Peoples is seen as further attempts to dispossess and take away our inherent right to be. Indeed, to assume a right to define Indigenous Peoples is to further deny our right to self-determination, since there can be no more fundamental expression of that right than the ability to determine who one is through self-identification.

In November 1995, the first meeting of the open-ended working group on the Draft Declaration on the rights of Indigenous Peoples was held, in a good spirit of partnership and under the wise guidance of the Chairman-Rapporteur. The Indigenous representatives wish to continue discussions on the Draft Declaration on the Rights of Indigenous Peoples in the same spirit of respect, openness and willingness to learn more about the attitudes and concerns of the involved parties. It was the unequivocal consensus among the Indigenous organisations and representatives in attendance that the Draft Declaration as forwarded by the Sub-Commission to the Commission should be adopted with no changes and amendments. It is the continuous wish of the Indigenous Peoples that while comments to the text and discussions on its implications are valuable, the text should be kept in its present form. At present, we are at the lowest rung of the protection within the United Nations –a declaration. We are not advocating an internationally binding treaty to decolonise ourselves from states who have colonised us.

We are still concerned about the nature of the participation at the open-ended Working Group. The present structure is a denial of our fundamental right to speak on our own behalf. We want access to the Working Group in the same terms which led to the drafting of the Declaration. The Declaration will only have validity if it is generally and widely accepted by Indigenous Peoples. This is not possible when whole nations are denied access. The resolution which permits the next intercessional working group should contain a clause for the full participation of Indigenous Peoples.

The number of activities concerning Indigenous Peoples within and outside the United Nations are increasing. For example, the Indigenous Peoples of Great Turtle Island have convened an International Indigenous Court of Justice to begin to examine the colonisation process of the Americas and the crimes against Indigenous Peoples committed by the colonisation process.

Finally, Mr. Chairman: it is the wish of the Indigenous representatives that 3 days be added to the normal five days of the July's Working Group on Indigenous Peoples, in order to deal with the important issues that are now being processed in the UN. Indigenous Peoples want to have the opportunity to thoroughly discuss the progress of the discussions on the Declaration, the definition of Indigenous Peoples and the implementation of the Draft and for the working group to continue its review of standards which presently exist in other areas of the United Nations. There is still an urgent need to have a review of developments as the Working Group on Indigenous Peoples is the only permanent forum within the UN which permits Indigenous Peoples to speak directly to the UN for our peoples.

The successful outcome of the decade in terms of these results is of extreme importance to Indigenous Peoples who have co-operated with state representatives and representatives of international bodies within the UN since 1977 and not the least of all to the Peoples we represent, who daily struggle for our rights and our lands and very often suffer the consequences of the events that went wrong in world history, the continued colonisation and the denial of the right to decolonise ourselves in a peaceful manner.
Thank you Mr. Chairman. ❑

The Rural Human Rights Situation in Burma

Statement by Kevin Heppner

Mr. Chairman,

Many dictatorial regimes argue that human rights take second place to economic development, that as long as government figures claim some kind of "economic growth" the world should ignore serious and systematic human rights abuses. In reality, economic growth is meaningless without an improvement in the lives of the people, and there can be no such improvement where systematic human rights abuses prevail. Some regimes, claiming to create peace and economic stability, actually carry out abuses which destroy the economic, social and cultural fabric of the country. For several years the International Work Group for Indigenous Affairs has been following the situation in Burma where the ruling military junta, known as the State Law and Order Restoration Council or SLORC, is such a regime.

SLORC claims to be improving the human rights situation by negotiating military cease-fires with ethnic opposition groups, a process it calls "peace". Yet SLORC has secured cease-fires by increasing human rights abuses against ethnic civilians, then refusing to even discuss human rights issues in cease-fire talks. Even after the cease-fires, SLORC continues to commit widespread human rights abuses: extrajudicial executions, arbitrary arrests, detention with torture and widespread forced labour against the civilians. Since its 1995 cease-fire with the Karenni, SLORC has continued taking Karenni civilians by force to carry munitions and forcing them to pay extortion money. When the Karenni organisation protested, SLORC broke the cease-fire with new military attacks. Since the 1995 cease-fire with the Mon, SLORC has been taking Mon civilians for forced labour more than ever before. Every family in the region still has to do labour on projects like the Ye-Tavoy railway, at army camps and as porters.

Thousands of villagers, mainly women, children as young as 8 or 10 and the elderly, are being forced to break rocks and carry dirt for two-week shifts at a time building the Ye-Tavoy railway and the Ye-Tavoy road, unpaid, forced to supply their own food and tools and beaten by armed soldiers if they try to rest. On returning home, they also have to do forced labour at army camps and as army porters, and they must somehow pay the two to three thousand Kyats in extortion money demanded from every family, every month, by the SLORC army battalions in their area.

New forced labour projects are starting all the time, building roads and military infrastructure.[1] SLORC has sent 15 Army battalions to secure a gas pipeline it is building in a joint venture with foreign companies, and these troops are now forcing villagers to build army camps and a pipeline service road from Hpaungdaw to Kanbauk. Villagers are fleeing the area as much as they did before the cease-fire, because they cannot subsist there any more.

Mr. Chairman, how can this be called "peace"? This regime is committing abuses and enslavement to an extent which amounts to making war against its own people to control them. In rural villages throughout the country, anyone who fails to obey orders for forced labour or extortion is subject to arrest, torture, rape, or summary execution by the army.[2] Villages which are difficult for the Army to get to or seen as difficult to control are forced to move at gunpoint to army-controlled sites that act as forced labour camps. In Toungoo and Nyaunglebin Districts, SLORC has destroyed crops and food supplies and executed dozens of villagers at random. In Papun District, up to 100 Karen villages in a 50 by 30 kilometre area have been ordered to move to SLORC Army labour camps since January, where they are being forced to rebuild the 100 kilometre Papun-Bilin car road for military trucks. They receive no food or medicine, nor are they allowed to return home to farm their fields, so once their food supply is depleted, they starve. People still found in these villages can be shot on sight, so thousands are fleeing into hiding in the forests. Some manage to escape to Thailand, but SLORC is actively blocking the escape routes to the border.

Even in the central plains, far from any sign of civil war, SLORC continues to send more Army battalions into rural areas. They confiscate farmland without compensation to build their camps, then force the villagers to build them. The villagers must do rotating shifts of forced labour at the camps, digging trenches, cooking and cleaning for the soldiers. Women are often raped at the camps. Everyone in the village has to go as porters, build roads and do other projects for the Army, including women, children and the elderly.[3] Every family has to pay so much extortion each month that they must sell off their livestock and valuables to get the money. As soon as they are unable to continue paying, they must flee the village for fear of arrest. Armed columns demand food and livestock from the village two to five times a month. Farmers have their land taken and are then forced to farm it for the Army without compensation. The crops are sold or exported for military profit. Even farmers who still have their land are forced to hand over more than a third of their crop to SLORC for only 20 per cent of market price, or

for nothing. Rice farmers throughout the country are surviving on rice gruel because they do not have enough left to feed their families, and malnutrition and mortality among rural children is staggering. The whole country is in a rice crisis, while SLORC has increased rice exports 400 percent this year to over 1 million tonnes, and is pointing to this as evidence of economic improvement.

This is not improvement, but disaster. SLORC is creating a situation where the rural village, the cornerstone of the society, is no longer viable or sustainable. Villagers in many areas have no choice but to flee to towns or neighbouring countries. The rural villages where 85% of Burma's people live are being stripped to finance a facade of "economic improvement" in the cities.[4]

In conclusion, Mr. Chairman, what SLORC is presenting to the world as "peace" and "economic improvement" is, in fact, repression of civilians and the systematic rape of rural villages in order to enrich the urban military. We urge the Commission to act on the recommendations in the report of the Special Rapporteur on Myanmar [E/CN.4/1996/65, 5 February 1996], particularly the recommendation for a team of human rights field officers to assist him in his mandate. This is essential given the worsening human rights situation and SLORC's increasing lack of cooperation with the Rapporteur.

Thank you Mr. Chairman.

Notes

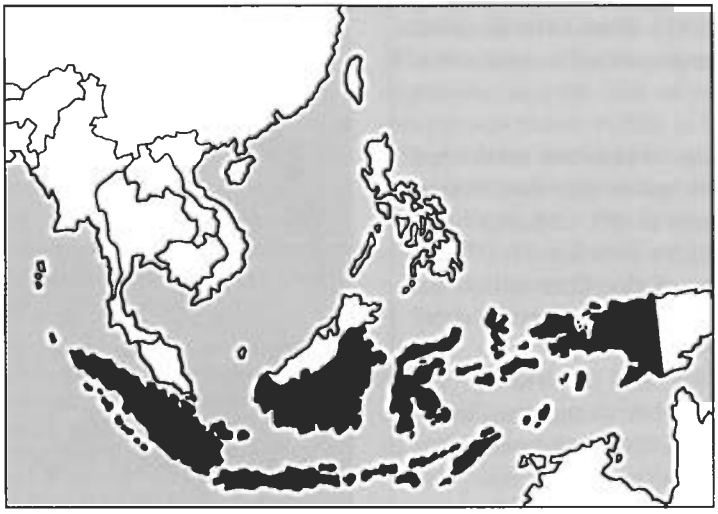
1 SLORC's use of forced labour is in direct violation of its commitments under the International Labour Convention (ratified by Burma in 1955), and it has been repeatedly cited and given special mention by the International Labour Organization for violations of Article 29 of the Convention prohibiting forced portering and forced labour. See ILO Report 3 (Part 4A), "Report of the Committee of Experts on the Application of Conventions and Recommendations", from the ILO 83rd Session, 1996.

2 Even in conflict areas, this behaviour is in direct violation of Universal Declaration of Human Rights Article 5, and SLORC's obligations under Common Article 3 of the Geneva Conventions of 12 August 1949 (ratified by SLORC in 1992). However, SLORC does this in both conflict and non-conflict areas.

3 SLORC's use of children for forced labour and its systematic destruction of villages are in direct violation of its obligations under Articles 32, 37 and other Articles of the Convention on the Rights of the Child, ratified by SLORC in 1991.

4 The World Bank noted this in its Report No.14062-BA, "Myanmar: Policies for Sustaining Economic Reform", which states in its Conclusions: "Substantial gains in economic efficiency would also result if the ban on private-sector exports of paddy and rice were eliminated, and the scope of government paddy procurement were reduced. Reforming these paddy policies would help to reduce poverty and enhance equity because they imply large income transfers from the rural poor to the urban elites (including the military)." ⌟

Politics and Property Loss in Aceh Province



by Stephen R. Morin

Introduction

Common property can be very important in the economic viability of a community dependent upon agricultural production. In Aceh Province, the western-most province in Indonesia, common property is an essential component of the livelihood of Acehnese farmers and their families. The security of their tenure on the commons, nearly always a problem with common property, is currently in question. This paper will outline the ways that Acehnese farmers use the commons and its economic importance. It will also detail the nature of the threats to the commons posed by industry and government and the likely effect of these threats.

The research that this report is based on was conducted at various times in 1990 and 1992, and from October of 1994 to September of 1995. It was funded by the national Science Foundation and Earth Watch. The research focus was two villages in central Aceh Besar, the sub-regency that contains the provincial capital Banda Aceh. One village is roughly 50 kilometres and the other 25 from Banda Aceh. There are roughly 125 households in the first and 35 in the second, most of whom use common property on a regular basis. Because of the sensitivity and political volatility of the issue, I have chosen not to name the village nor any Acehnese personnel involved, although there were many.

The Acehnese

The Acehnese are a fairly large ethnic group, most of whom reside in a broad strip of land approximately 100 kilometres wide along the northern and eastern shores of northern Sumatra. Their distinctiveness as an ethnic group in multiethnic Indonesia is evidenced by their unique language, their sense of Acehnese history as distinct from Indonesian history and their strong identification with Islam, the major religion. Relying on rice, garden products and livestock for their subsistence and cash income, they are a fairly stable and prosperous ethnic group. Acehnese prosperity is due in part to their access to commonly held lands that occupy much of Aceh Besar. Especially important are the common lands that are upslope from villages that are on or near mountains. Both of the villages used in this research are situated near mountains. These common lands are usually very large –many thousands of hectares shared

by numerous villages– and economically very important to community viability.

Until recently the security of the farmers' tenure on their common property has been unchallenged. Under the traditional access scheme all Acehnese were allowed to use the commons for virtually any purpose. The most important criteria for obtaining access was a formal request to village leaders of an intention to use the common land. Lands that had been improved, most commonly through the construction of a fence, were held under permanent use rights which were given up only voluntarily. The underlying principle of Acehnese tenure is that of community authority and individual rights. The community has the authority to limit access to non-villagers, but individuals, once granted access, have powerful claims on what will become of their own property. All this was cast in doubt in 1993 when an Indonesian conglomerate, P.T. Indo Nusa (PTIN), was granted a concession of 165,000 hectares by the national government to be used for an intensive tree farm. The concession included thousands of hectares of traditionally used pasture, forest, *padi* and garden areas (and incidental lands in between these). The product of the tree farm would be used for paper production for export. The granting of the concession has bound the Acehnese into a struggle with local and national political elites, company officials and sometimes each other for rights to the land that was unilaterally given in concession to P.T. Indo Nusa.

The Role of Common Property

The common lands associated with these villages is used for a wide variety of income-generating activities. Among these are livestock pasturing (especially cattle, buffalo and goats), shifting cultivation, permanent gardening, stone collecting, fodder for barn-fed animals, collection of medicinal and herbal plants and hunting. Of these, the most economically valuable are livestock production and gardening. Nearly every household has at least one animal, and a couple of households have as many as 200 animals. Pasturing on the commons is a very efficient use of labour because a large number of animals can manage with little increase in the amount of labour required. There is a steep decline in labour required per animal as numbers increase. Gardening, on the other hand, is less widespread and is used as a source of land for people who do not otherwise have access to private gardens but may have the labour to manage one. The commons in this case is a way for labour-rich households, who are oftentimes resource-poor, to convert labour into cash through shifting cultivation and simple gardening.

The methods used for livestock and gardening on the commons are similar. Because the common lands are usually a fair distance from the village (between two and five kilometres) it takes at least half a day simply to get to and from there. While there, the farmers may pasture animals –or leave them to fend for themselves– or they may work in a garden. In both cases, the farmer spends the bulk of the day's labour there and returns to the village at the end of the day. Because many villages share common lands it can also be a place to make acquaintances or to meet with friends.

The commons is widely used and very beneficial to village farmers and it is integral to the local economy. Without a common pasture, farmers would be forced to raise each animal individually in barns in the village or paddocks on the edge of the village. This would require that fodder, shelter and the other necessities be procured for each animal rather than as a group. For farmers engaged in permanent gardening and shifting cultivation, the commons is a place to open new plots. Because access to the commons is unrestricted it represents an economic opportunity that many households would not have without it. For those involved in incidental practices such as stone or fodder collecting, the loss of access to the commons would mean the outright loss of revenue or ancillary benefits. In all cases, the severity of the loss is dependent upon the depth of reliance. Villagers in Aceh Besar rely to a great degree on the common lands.

Changes in Access to the Commons: Drawing the Border

One of the earmarks of a viable tenure system is its pre-supposition that all competitors are sanctioned and obliged to follow established rules governing resource use. All systems have penalties for people who do not act according to the established cultural norms which form the bulwark of the system itself. That is, the benefits and rules regarding land tenure come as a package, referred to as the traditional tenure system. In many tenure systems indigenous benefits and obligations (rules) are ignored or circumvented because a large and more powerful tenure system supersedes it. Local systems of land tenure can be ignored by elites in part because they contradict laws promulgated at the national level. Indonesia is no exception. The basic rule of Indonesian land tenure is that the state maintains legal jurisdiction over all untitled land (although titled land is subject to imminent domain). Our survey indicated that none of the common land and only a small proportion of other lands have been titled, due primarily to the cost and difficulty of the titling process. Depending on the lens with which this situation is viewed, the land taking in Aceh is either culturally inappropriate (but strictly speaking not illegal since communities have no right to make and enforce laws) or perfectly legal. Because the Indonesian tenure system has the benefit of law and legal force, its associated rules regarding ownership and access will take precedence. The outcome of such an imposition is the redrawing of land ownership and access maps giving benefit to the new owners. In the Acehnese case, which is based on a blending of community and individual ownership, traditional tenure patterns were superseded by state action.

The original concession of 165,000 hectares included a wide range of land types over a broad landscape. The concession

line was so vague, in fact, that it included many residential villages as well as the house of the *bupati* (sub-governor), one of the most important political figures in Aceh Besar. According to the managing director of PTIN, the exact borders of the concession, and the eventual tree plantation, were to be drawn in consultation with affected groups as well as political figures and company management. Ultimately the company has wide discretion in regards to where they can put their plantation within the broad scope defined by the original concession. The concession itself does not include a huge area of *padi*, the basis of Acehnese subsistence, but it does include some.

The relationship between P.T. Indo Nusa leadership and village leadership can best be characterised as confused and disconcerting. The main problem, and the one that is most important from the villagers' standpoint, is the establishment of the borderline between P.T. Indo Nusa and the villages. Under the traditional system the highest part of the mountains, including the crest of the hill, belonged to the state. This was established in the colonial period at the time of the Dutch and has been carried over to include the current government. In a few villages there is even a physical structure that marks the border between the two areas. However, some villages don't recognise this border, stating instead that the village owns the entire side of the mountain on which their village is located (this is apparently more common). Under the traditional system any incursion into commonly owned lands would require the permission of the leaders of the villages affected. The most egregious action to date by PTIN, in the eyes of villagers, has been their failure to consult village leaders when they decided to build a logging road that effectively bisected the community lands. This road is built in the middle of their proposed tree farm and thus represents the heart of the concession and the company's first authentic land grab.

To say that the company has not contacted village leaders does not mean that they have been operating in a political vacuum. The village chief received official notice to cooperate in the designation of the concession line in the form of a letter from the *Camat*. According to another letter the *Bupati* instructed the *Camat* to go forward with plans to draw the concession line. These official letters were received by the village chief we talked to a full three months after negotiations had occurred. In addition, some company management believe, most likely in good faith, that they were consulting with village leaders when they began to draw the concession line. It seems more likely that stand-ins, either purposefully put in the place of the village leaders or inadvertently acting as such, were involved in the drawing of the line. For the future, it appears that village leaders will be consulted, but the new property line has already been drawn in the form of a large new logging road.

Concerns About the Future

The primary focus of farmer concern is the loss of land, but there are also related concerns, such as changes in the supply of water to the village or the limits of government and industry responsibility to affected farmers. There is grave concern about the quality and quantity of water available to the village now and in the future. This is due to an impression by villagers that the river running adjacent to the village has been dammed and/or interrupted (it has been altered by the presence of the logging road which crosses it). The belief that a number of small dams have been built to collect water for the tree plantings is persistent (but not documented here). Their primary concern, however, is that their rice *padi* irrigation system will run out of water during the critical rice-growing season. In a similar vein there is a rumour about pesticide use on P.T. Indo Nusa seedlings as a source of pollution in their water. They are worried that this will cause health problems for humans if they bathe in or drink the water and similar problems for livestock should the animals eat grass or drink water near treated areas. A related concern deals with the division of responsibility for accidents of people or animals. They ask questions such as, who will be responsible if there are problems with the pesticides and the water becomes contaminated? What will happen to villagers who own cattle that graze P.T. Indo Nusa land? Will individual livestock owners be punished?

In addition, there is apprehension among members of the regional state university who are closely watching this issue, of possible dislocation of people from their land and livelihood and the unforeseen consequences of the changes. For instance, it is unclear what effect the change will have on household labour. Based on our research it is clear that women tend to focus their efforts on domestic activities while men spend more time in public and political activities. In this case, men tend to do the buying, tending and selling of livestock raised in the communal pastures (the concession area). Women, on the other hand, tend livestock only if it involves labour that is geographically near the household, including feeding animals kept in barns near the house. Therefore, if the size of these common pastures is reduced, it is likely that livestock will become a more domestic chore, requiring the housing of livestock in village barns and women's contribution to livestock labour will increase.

Another area of concern among university people is the necessity of intensification of the forage production system. Farmers will be forced to make do with less land, forage and water which will have to be accounted for in some way. It is understood that some parts of the pasture will remain accessible to villagers after the concession line has been drawn, but the total amount of land will be greatly reduced. Therefore, it is likely that two strategies will be adopted to compensate for lost land: 1) an intensification of the remaining pasture; and 2) an increase in the frequency of barn or stall feeding. Neither of these strategies can be brought about without dramatic changes in the social structure of livestock management and labour. The effect on the distribution of labour within the household has already been discussed, but other social impacts can be envisioned:

1) an increase in stall-fed animals and thus an increase in the amount of live-

Photo: Stephen R. Morin

stock manure in the village –a threat to community water and subsequently human and animal health;
2) an increase in stocking rates and overgrazing with a subsequent decrease in pasture quality;
3) an increase in the amount of labour required for livestock maintenance;
4) a decrease in the number of livestock owned by villagers or number of people involved in livestock, signalling a decrease in household income and welfare;
5) a decrease in the amount of land available for permanent and shifting gardens; and
6) a decrease in the availability of stones to collect and forest products, such as firewood or deer meat, thus decreasing the already limited number of income generating activities open to villagers.

There are many unintended consequences resulting from the proposed changes and many could be devastating to affected individual households and communities.

The Commons of the Future

The loss of land to the Acehnese is almost inevitable. In fact, some seedlings have already been planted. The impact that this change will have on the quality of life for a typical Acehnese family is less certain. It will no doubt affect some families more than others. Those most involved in permanent and shifting cultivation and livestock will be most likely to suffer severe consequences. The basic subsistence of rice production will be affected as well, primarily in terms of uncertainty regarding water quality and availability.

Farmers will not sit idly by while these changes occur. No one intends to do violence to company people, but the occasional burning of company trees or the incidental grazing of seedlings by village goats is not beyond the scope of a response. Aceh's 30 year war with the Dutch –one that never really ended– and their on-going feud with the central government over education and Islamic ideals is evidence of the animosity many Acehnese feel toward outsiders who violate land boundaries. The future of the plans for the tree farm rest on the company's ability to effectively negotiate with area farmers in defining the concession line as well as ensuring employment opportunities for area workers with the company. It appears that no matter the outcome, the most important commodities in short supply are a spirit of compromise and open communication. ❑

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UNITED STATES

The Apaches from San Carlos and the Mt. Graham International Observatory

by Bernhard Bös

Since 1989, the San Carlos Apache and American environmentalists have been fighting the Mount Graham International Observatory (MGIO), a telescope station on top of the sacred Apache mountain "Dzil nchaa si an". It was illegally remover from the San Carlos reservation and placed under the jurisdiction of the United States Forest Service (USFS) in 1873. Mount Graham is one of four holy mountains of the Apache that are inhabited by the "Ga 'an" ghosts. It is a focal point of religious songs and ceremonies, as well as Apache identity. Medicine men are still gathering herbs and water for healing practices from the summit region, where there are also numerous cult and burial sites. Today, huge concrete observatory buildings and metal telescopes (obstructive to prayers) block Mr. Graham's summit area. For, environmentalists, it is an ecological refuge of ice-age vegetation –i.a. the largest boreal forest in the US Southwest– and unique fauna such as black bear and red squirrel.

Despite the protests, two smaller telescopes, the VATT Vatican observatory and that of the German Max-Planck Society (MPG) were built. Now, the Apache Survival Coalition (ASC), under the leadership of 77-year-old Ola Cassadora Davis, and a coalition of environmental organizations are fighting for their relocation and to prevent the construction of the much larger Larger Binocular Telescope (LBT) by the MGIO under the leadership of the University of Arizona. While most American partners resigned from the project because of irregularities with obtaining the special building permission, another German institution, the Council of German Observatories (RDS), decided to join in November 1995. Only by exemptive legislation from the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA), was special building permission (including the LBT) granted for a defined area. Despite this, in 1993, the University of Arizona engaged in the illegal felling of old growth forest outside this area, which led to a construction stop by US courts.

The Apache Survival Coalition's protests against the telescope site are backed by five resolutions of the Tribal Council (the latest in June 1995), a petition by 15 Apache spiritual leaders, and support from other Tribal Councils such as the Mohawk, the Salt River Pima-Maricopa and the Kaibab-Paiute, as well as the National Congress of American Indians. The latter passed a resolution in November 1995 against new exemptive legislation prepared by the UA and Senator Kolbe. In the meantime, another organisation, the Apaches for Cultural Preservation (AFCP), joined the telescope opponents.

As is usual in Indian land rights cases, the telescope promoters apply the well-known divide and conquer tactic to split the opposition. In 1992, the MPG presented "witnesses" for the alleged harmlessness of the Observatory Project to the German Parliament. The Apache delegation consisted of Buck Kitcheyan's relatives and supporters. He himself had been removed from the presidency of the Tribal Council the year before because of theft and embezzlement of tribal revenue, of which he was later convicted. In 1990, while acting as tribal chairman, Kitcheyan, in an official letter to the U.S. Forest Service, had written that: "Since time immemorial, Mt. Graham has been a sacred mountain to the Apache people", and the proposed construction of an observatory threatened "to destroy Apache ancestral burial grounds, medicine plants.... and other religious sites". He stated in June 1992, before the Arizona Board of Regents, that: "I am here to support the Graham Mountain project," and "that there is absolutely no religious or sacred significance to Mt. Graham." Not surprisingly, it was the Graham County Chamber of Commerce that sponsored the Kitcheyan clan's pro-project European trip to Germany and Italy.

The chamber's contact person, Harrison Talgo, is a turncoat like his fellow-tribesman Kitcheyan: formerly having signed resolutions against the observatory as a tribal councillor and chairman, he now welcomes the project. In August 1995, the Chamber of Commerce also organised the trip of two German scientists of the RDS to the White Mountain Apache Reservation, north of the San Carlos Reserve, which they had visited earlier on their fact-finding mission. In contrast to the San Carlos observatory-opponents, the two delegates found the White Mountain Apache more realistic and not having objections to the MGIO project. One explanation for this observation may be found in a later (private) letter of White Mountain Cultural Resources Director R. Riley to one of the visiting German astronomers, in which he states that: "The elders will not answer you until they know and trust you..."

They have to be approached with respect and not with direct questions on sensible matters. Mr. Riley asked RDS scientist Mr. Kudritzki to protect "the old and endangered culture of the Apache," by immediately "withdrawing the support for the project". It has to be added that speaking of religious matters in public is tabooed in Apache society and that Indian religion was prohibited in the USA until 1924. It was first the Indian Religious Freedom Act (IRFA) of 1978 that guaranteed, at least theoretically, free access to Indian religious sites.

There are numerous testimonies by American anthropologists as to the position of Mount Graham as the central shrine in Apache traditional religion, e.g. in Grenville Goodwin's fundamental works on the Western Apache from the 1920s and '30s, by Prof. Keith Basso, University of New Mexico, leading authority on Western Apache culture and Dr. Elizabeth Brand, anthropologist at Arizona State University, who has worked in San Carlos since 1978. Also of great significance is the fact that numerous documents gathered by G. Goodwin, on demand of his Apache informants, were not published by his widow and only made accessible to serious researchers. In a statement before the Arizona Board of Regents at the UA in 1992, K. Basso said i.a. that: "Having been the victims of religious persecution for well over a hundred years, honoured Apache people are not inclined...to discuss religious knowledge", which would "constitute something close to a sacrilegious act...religious matters are left in the

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hands of a small number of male and female leaders...who have been prepared by years of training." And: "The...notes of G. Goodwin,... clearly established that Mount Graham qualifies as traditional cultural property...There are many other reasons... that invest Mount Graham with compelling religious significance to the San Carlos Apache people...Mount Graham's life is fully active today with spiritual presence as vital and potent in the modern world as it has been in the past."

In November of 1995, vice chairman Marvin Mull of the Tribal Council sent a request to the Attorney General at the US Department of Justice to investigate the following presumed law violations: that in June 1993 Coronado National Forest Supervisor Mr. Tippesonnic had admitted in writing that his office had not gone to the trouble of finding out about the Apache views on the planned observatory construction –while knowing many traditional Apache to hold Mt. Graham sacred– except for a letter to the Tribal Council to announce the opening up of the construction site. In the second case, the US Forest Service had written to the San Carlos Tribe on 1 December 1993, for discussion of the final localisation of the LBT, but had, on 7 December, already started clearing more than 500 old growth trees outside the area provided by special legislation.

Lastly, in 1995, the Apache Survival Coalition informed that on 12 December 1995, Representative Jim Kolbe in the US Congress successfully displaced a Rider that would help prevent AIDS in the Native American community with a Rider to exempt a University of Arizona telescope from all environmental and cultural laws.

But the standpoint of the San Carlos Apache Tribal Council (SCATC) seems clear, as expressed in the resolution of 13 June 1995: "be it resolved: that the SCATC respects the spiritual beliefs of all its tribal members", and "that we...do hereby and wholeheartedly rescind Tribal resolution JY93-130, and thereby state our opposition to the MGIO telescope project".

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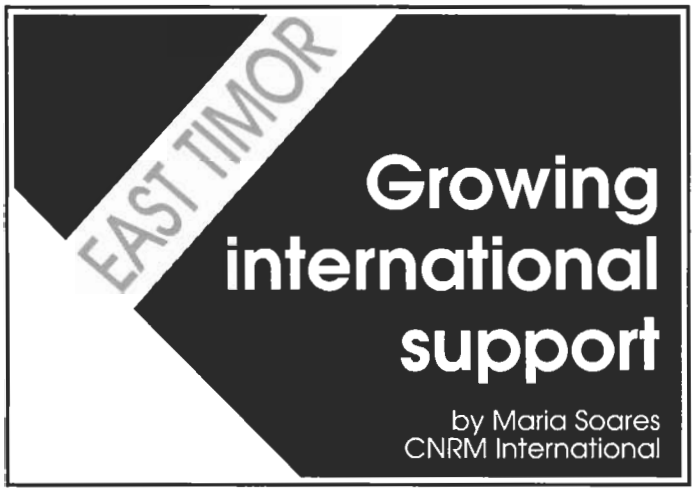

The East Timorese nation, comprising some three quarters of a million people living in a territory between eastern Indonesia and the north of Australia, continue their 20 year resistance against the brutal occupation by Indonesia. East Timor is a vivid example of how oppression and the denial of the right to self determination of indigenous peoples continues in today's world, despite the principles enshrined in the UN Charter. The East Timor issue clearly shows that States only support such principles when it directly benefits their immediate interests, which rarely include those of indigenous peoples.

The case of East Timor is very revealing. On the one hand, international concern - fuelled primarily by non-governmental pressures on generally indifferent governments (with the exception of a select few, such as the governments of Portugal and Ireland) - gives the issue prominence on the international agenda. A global support-movement for East Timor continues to grow and gathers increasing strength. On the other hand, Indonesia continues its attacks against the people of East Timor, in an attempt to break their strength to resist as a nation and a people against foreign subjection, and to abandon their demands for their right to self determination to be respected.

Indonesia is a multi-ethnic state which gained independence 50 years ago following centuries of Dutch colonial oppression. It is ruled with an iron fist by an elite predominantly representing one of its component ethnic groups - the Javanese. These rulers appear to have learned little from their own history as subjects of oppression except, perhaps, how to apply it in even harsher terms to those less powerful who inhabit their region. The indigenous people of East Timor, West Papua (or Irian Jaya as Indonesia calls it) and Borneo (or Kalimantan) are the main victims of the oppressive, often genocidal policies of the dictatorial regime of President Suharto of Indonesia.

Recent visitors to East Timor report that the terror campaigns waged by the occupying Indonesian army against the East Timorese people continues in full force. People continue being arbitrarily arrested on suspicion of opposition to the illegal occupation of their country, and are subjected to torture. Disappearances are common. The most affected targets are the young people of East Timor, who are among the most vocal opponents of the current situation. Ironically, this generation has been raised under Indonesian rule, whose propaganda claims to have 'liberated' the East Timorese from the evils of Portuguese colonialism.

Lack of freedom, persecution by the military and the lack of opportunities for the future in their country, as the few jobs available go to Indonesian immigrants, have led many East Timorese young people to flee, despite their strong attachment to the land, a characteristic of East Timorese culture. Many have had to do so in dramatic ways, such as seeking asylum in foreign embassies in the Indonesian capital Jakarta. Much international publicity has resulted from these risky actions, but despite the clear validity of the young people's requests for protection, not a single country has granted them asylum. Instead, Portugal,still recognised internationally as the administrating power of East Timor, in the absence of a significant move by the East Timorese people to control their future status, has accepted the refugees as Portuguese citizens. Parallel to the exodus of East Timorese from their land, a strong

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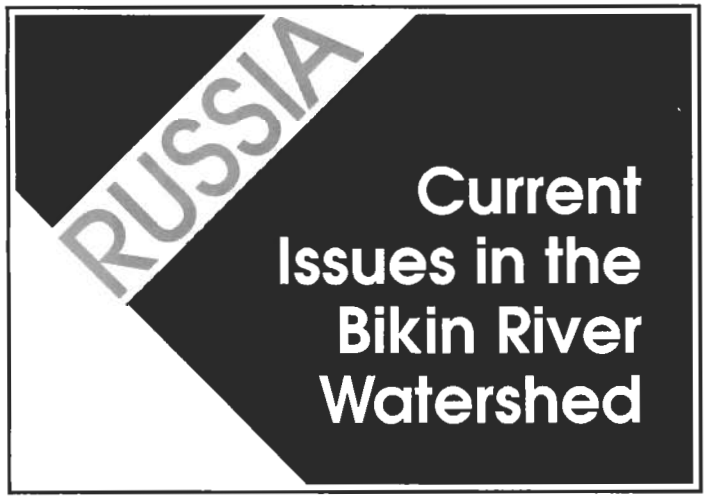
Indonesian immigration flow into East Timor has been taking place, swelling the number of outsiders to well over 100,000 in the last 5 years. It is now clear that these colonial newcomers enjoy positions of economic and professional prominence in the territory. East Timorese indigenous people are marginalised from employment in the public administration, are almost unrepresented in commercial life, are being displaced from the land and play an increasingly modest role in professional activities. Even their predominance in the Catholic Church of East Timor, so far a strong bastion of East Timorese identity, is being undermined by the occupiers.

In addition to the above pressures on the people of East Timor by their neo-colonial masters, there is a birth control programme which only serve to reinforce the widespread perception that the official Indonesian policy is to bring about an end to the East Timorese nation. In a country where over one third of the population has died in the last 20 years as a result of the Indonesian occupation, widespread involuntary birth control is practised. Recent visitors report that women continue being injected contraceptive and sterilising drugs (such as the problematic Depro-provera) without their knowledge under a variety of false claims, such as immunisation campaigns, supply of vitamins etc. As a result, the population is afraid to use the public health facilities, whose staff is almost exclusively Indonesian. This only aggravates the poor public health situation, where tuberculosis, skin ailments and other diseases related to poor nutrition are widespread.

While the above situation continues, international support for East Timor grows. A strong international lobby of non-governmental organisations, including churches as well as some politicians, have vocally taken up the support of the rights of the East Timorese people, so as to defend and protect the fundamental principles being violated by Indonesia with the support of those governments which seek to engage in profitable business deals with the Indonesian elite. Those sacrificed, once again, are the indigenous peoples, considered expendable by those whose unchecked greed is increasingly threatening our planet. East Timor is a clear example.

April 1996

CNRM, the National Council of Maubere Resistance of EastTimor, is the supreme organisation of all East Timoresenationalists struggling for self-determination and independence. ⌟



The Bikin Obshchina is a popularly elected, non-governmental organization (NGO) established to provide local representation on issues of importance in the villages of Krasnyi Yar, Olon and Ulunga. This group was formed in autumn of 1995. At the current time the Obshchina is conducting a needs study in the following areas:

- environmental protection and wildlife protection
- public order
- public education
- cultural development
- public health
- pensioners
- municipal improvements

Once the need assessments are completed in each of these areas, the Obshchina will seek funding in both the government and private sectors.

The Bikin Obshchina will evolve into a government body when in October 1996 representatives are elected to a local self management body as mandated by law of the Russian Federation and Primorskii Krai. This body will have management control over municipal activities in these villages and will work with an elected mayor to carry out government programs.

We see the current efforts of the Bikin Obshchina as a first step in developing a self management body that will ultimately, if we are successful in developing a body law acceptable to the state, manage the resources and territory of the middle and upper Bikin watershed as part of a Territory of Traditional Natural Resource Use.

Some of the issues in the Bikin are:

- Hyundai Corporation. As you know, this South Korean company is a partner in a timber operation in the Svetlaya River watershed that runs to the sea along the eastern slopes of the central Sikhote-Alin. In 1992 an attempt was made by this JV to harvest timber in the headwaters of the Bikin but this attempt was thwarted before any timber was cut. In the interim, however, Hyundai has continued its efforts to acquire a timber base in the headwaters by applying pressure upon Krai and Raion officials, and their most re-

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cent visit to the village is the kernel for the appeal to Governor Nazdratenko.

- Highway construction. A major highway between Khabarovsk and Nakhodka is being built across the Korean Pine Sanctuary just to the north and east of the village. This work is being carried out in compliance with the law, for the people of the village did indeed give their approval of the road in the early 1990's. But this approval came with a set of demands that have been only partially fulfilled. At the current time the village is negotiating with the military contractor in charge of the highway to secure guarantees to certain concessions, this in a contract that will legally bind the contractor to fulfil the obligations or face court sanctions.
- Poaching. In the near future a specially empowered team of wildlife managers will be operating in the middle and upper Bikin to try and combat the ever increasing threats to the biodiversity of the watershed by poachers. This team, consisting of four members, will be part of the Primorskii Krai Department of Hunting Resources and will have the authority to detain and search people in the watershed to ensure that those people are hunting and fishing in compliance with the laws of the land. ⌟

RUSSIA

Property Rights or the Dole?

The Udege of the Bikin watershed are given special attention when it comes to trying to get something for free like timber or a hunting area on their lands, or when it comes to trying to exploit the coal and gold rich portions of the Bikin. Nor are we averse to using the exotica of the Udege, especially when there is a need to indulge visitors. And let us not forget that there is always a special place for our natives in the hearts' of those in the administration who warmly refer to them when trying to draw in the electorate living close to the 'northerners' or when there is a chance to 'assimilate' millions budgeted by the government in support of programmes aimed at reducing poverty in Udege villages.

In short, plenty of parasites exist out there. Just as there is a noticeable lack of people willing to go into the Bikin to provide honest and well intentioned assistance and to work alongside the Udege to develop their region's riches in a civilised way, there seems to be even fewer people ready to provide the indigenous peoples in the Bikin with a land tenure approved by the legislature providing constitutionally guaranteed rights to priority use of the natural resources in an area where the Udege have lived and conducted their affairs for ages.

For over three years now the process begun by the Primorskii Krai Council of Peoples' Deputies to gain legislative relief in the form of a permanent Resolution that would create a territory of traditional natural resource use in the middle and upper portions of the Bikin River has been moving forward at an agonizingly slow pace.

The Appeal is another of the periodic attempts to draw attention of the duly elected governor of the Krai to the urgency of the issue. ⌟

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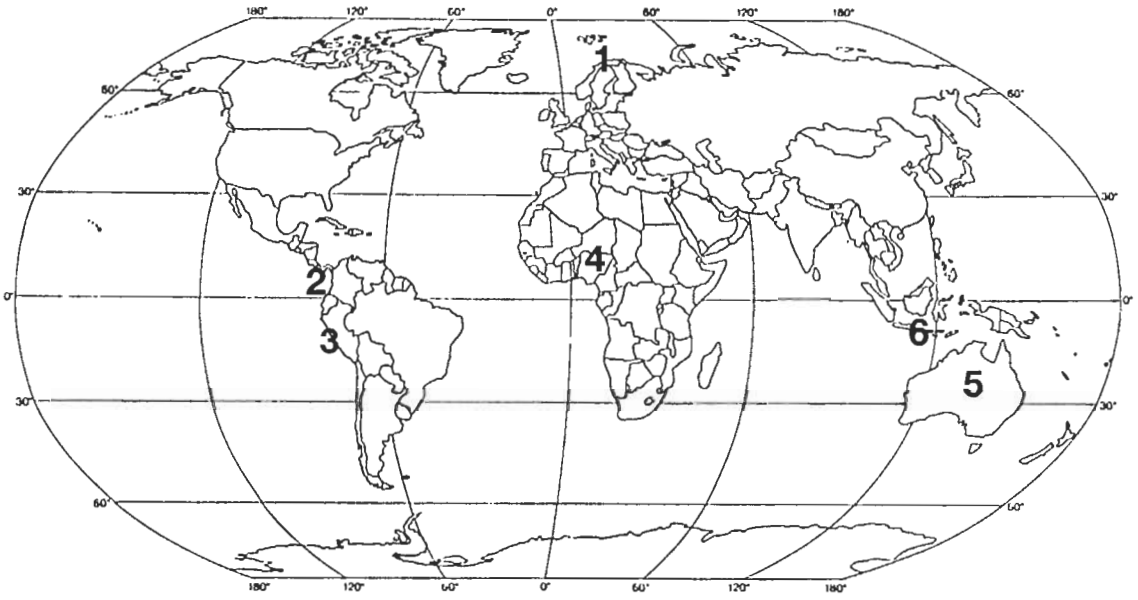

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