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# INDIGENOUS AFFAIRS

SELF-DETERMINATION



IWGIA

## editorial

4

Christian Erni and Marianne Jensen

## international

IMPLEMENTATION OF THE RIGHT  
OF SELF-DETERMINATION  
OF INDIGENOUS PEOPLES

6

John B. Henriksen

## america

FROM SOVEREIGNTY TO FREEDOM:  
TOWARDS AN INDIGENOUS  
POLITICAL DISCOURSE

22

Taiiaki Alfred

LANDMARK VICTORY FOR INDIANS  
IN INTERNATIONAL HUMAN RIGHTS  
CASE AGAINST NICARAGUA

35

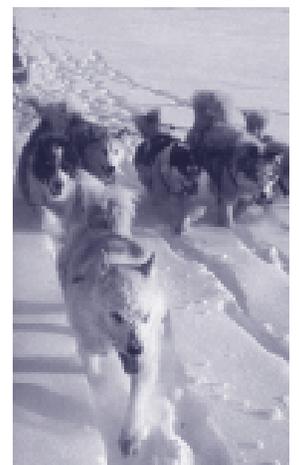
The Indian Law Resource Center

## arctic

SELF-GOVERNMENT IN GREENLAND

36

Jens Dahl



NUNAVUT:  
THE STILL SMALL VOICE OF  
INDIGENOUS GOVERNANCE

42

Peter Jull

A 5-YEAR PLAN TO CREATE  
A PUBLIC GOVERNMENT IN NUNAVIK

52

G rard Duhaime

asia

INDIGENOUS PEOPLES'  
SELF-DETERMINATION  
IN NORTHEAST INDIA

56

Christian Erni

Cover: from the left:

Tom LaBlanc, Sisseton-Dakota from North Dakota. Photo: Helena Nyberg  
Neil Kunnuk in Iqaluit, Nunavut. Photo: Jack Hicks  
Woman from Greenland. Photo: Lisbeth Lyager



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**INTERNATIONAL WORK GROUP FOR INDIGENOUS AFFAIRS**

**International secretariat**

Classensgade 11 E, DK-2100  
Copenhagen, Denmark  
Phone.: (+45) 35 27 05 00  
Fax: (+45) 35 27 05 07  
E-mail: iwgia@iwgia.org  
Website: www.iwgia.org

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By Christian Erni and Marianne Jensen

Self-determination is, to indigenous peoples, the most fundamental of the rights they ask the world and, above all, the State they have been made a part of, to recognize. For all but very few governments, this demand is problematic. Consequently, article 3 of the United Nations Draft Declaration on the Rights of Indigenous Peoples, which deals with self-determination, has become the major bone of contention in the drafting process. Many governments want either to replace the term “self-determination” or to narrowly define it to mean “self-government” and “autonomy”. This demand is raised primarily due to the fear that recognition of self-determination in its widest sense would have the potential of undermining the integrity and stability of the State.

For indigenous peoples, the recognition of the right to self-determination is, however, a question of equity, of being treated like all other peoples. Self-determination is one of the fundamental rights of peoples in international law. It is enshrined in the Charter of the United Nations, the International Covenant on Civil and Political Rights and the International Covenant on

Economic, Social and Cultural Rights. Aware of the inherent link between the concept of peoples and the right to self-determination, many governments also oppose using the term “indigenous peoples” in the Draft Declaration on the Rights of Indigenous Peoples and insist on replacing it with “indigenous people” or “indigenous populations”.

As John Henriksen writes in the introduction to his article in this issue of Indigenous Affairs, the United Nations itself has so far been reluctant to recognize any further extension of the right to self-determination beyond the traditional context of decolonization. He however believes that there are indications in the United Nations process on the rights of indigenous peoples that the understanding of the scope of the right of self-determination may be evolving further. And he points out that the “international process is influenced by national political processes, which often tend to be more pragmatic and flexible”, and that “national experiences of indigenous self-determination... directly influence the international debate and thereby move the discourse forward”.

In addition to John Henriksen’s article, which presents a general discussion of two fundamental questions related to the right of self-determination - the beneficiaries and the scope of this right - this issue of Indigenous Affairs includes four contributions on such national experiences. Peter Jull depicts the Inuit’s decades-long struggle for self-determination in Canada, which finally led to the creation of Nunavut. He believes that the case of Nunavut is important for indigenous peoples throughout the world: “Inuit hunter-gatherers living scattered over a vast, isolated and politically undefined region have created a strong modern government... as a means to strengthen their traditional culture, solve recent social ills, protect the environment and vital resources, and decide their own future in their own language and in their own way.”

G rard Duhaime’s article deals with the ongoing process in the same direction in another region of Canada: in Nunavik, the homeland of the Inuit in Quebec province. The Nunavik Commission was created in 1999 with the mandate to make comprehensive recommendations “on design, operation, and implementation of a form of government in Nunavik”. In April this year, the Nunavik Commission presented its report. G rard Duhaime summarizes the recommendations and provides the readers with an overview of the historical background.

The Greenlandic Home Rule, established in 1979, is often mentioned as an ideal example of indigenous self-determination. Nevertheless, as Jens Dahl describes in his article, two years ago the Home Rule Government established a Commission on Self-Government to look into the future relationship between Greenland and Denmark. The reason is that the current construction is considered to be outdated by many Greenlanders and unable to satisfy their image of self-determination. How-



ever, for a population of only 56,000 people, self-determination is a process filled with many dilemmas not only in relation to Denmark but also internally in Greenland.

While the three articles referred to above deal with national experiences in the Arctic region, the article by Christian Erni gives a critical overview of some of the self-government arrangements made by the Indian state. India's provisions for the protection of the rights of, and for self-rule among, its indigenous peoples - or Scheduled Tribes, as they are officially called - are considered to be among the most progressive in the Asian region, or even the world. Unfortunately, as the article tries to show by focussing on India's north-eastern region, they possess a number of inherent weaknesses, and the wide gap between the laws on paper and their implementation on the ground leaves many indigenous peoples disillusioned. Violent confrontations between the State and indigenous movements are therefore still continuing in what has become one of India's most troubled regions.

In many cases, indigenous peoples are forced to voice their demands for, and design concrete forms of, self-determination within a framework of political-legal and, ultimately, cultural concepts that are not their own. Since these concepts, and therefore the political discourse all over the world, are increasingly dominated by western political-legal thinking, Taiaiake Alfred's article will be relevant to most indigenous peoples even though he elaborates his arguments with reference to North America. Taiaiake Alfred embarks on a fundamental critique of the western concept of sovereignty and an analysis of the implications of its acceptance by indigenous peoples in the United States and Canada. The imposition and later promotion of "sovereignty", he argues, has served to undermine the traditional bases of strength for indigenous communities. The indigenous peoples of North America, he concludes, can truly free themselves from imposed power structures only by rejecting the entire discourse of sovereignty, and promoting a traditionalist revival and a re-formation of imposed colonial structures.

IWGIA considers it important to focus on self-determination in this issue of Indigenous Affairs as it is a key issue for indigenous peoples the world over, both at national and international level. The struggle for self-determination is the fundamental pre-requisite for indigenous peoples to be able to enhance their rights and improve their situation. All the major critical problems that indigenous peoples are facing, such as political marginalization, repression, deteriorating rights and access to land and other natural resources, poverty and economic marginalization, social problems, lack of recognition of indigenous cultures etc. have, to various degrees, their roots in the lack of self-determination.

That the right to self-determination is the major issue for indigenous peoples involved in international hu-

man rights processes was reflected in the most recent international event: the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) held in Durban, South Africa this year. The indigenous caucus focussed its energies on having the final documents of the conference use language that genuinely recognizes the right of self-determination, by using the term "indigenous peoples" without qualification. According to a number of fundamental human rights conventions, all peoples have the right to self-determination. However, some of the paragraphs of the WCAR Declaration severely limited this right for indigenous peoples in particular, stating that:

*"The use of the term 'peoples' in the World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance Declaration and Program of Action cannot be construed as having any implications as to rights under international law. Any reference to rights associated with the term 'indigenous peoples' is in the context of ongoing multilateral negotiations on the texts of instruments that specifically deal with such rights, and is without prejudice to the outcome of those negotiations."*

The indigenous delegates wanted the paragraph to be deleted completely. As this turned out to be impossible, indigenous delegates succeeded, after heavy lobbying, to have the paragraph re-drafted to read as follows:

*"The use of the term 'indigenous peoples' in the Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance is in the context of, and without prejudice to the outcome of ongoing international negotiations on texts that specifically deal with this issue and cannot be construed as having any implications as to rights under international law."*

Although many indigenous delegates (having hoped the paragraph would be scrapped completely) left the conference disappointed, many others agreed that they had made some positive headway - a few tiny steps in this laborious field of international law. The major argument that the indigenous peoples used throughout the process was that denying indigenous peoples' the right to self-determination represented a blatant act of racism and discrimination in international human rights law. This proved to be a very convincing argument, and the WCAR can in this way be seen to have opened up an important argumentative avenue for indigenous peoples to make their point from now on. It is thus hoped that the intense lobbying efforts made by indigenous delegates at the WCAR will significantly influence future discussions on the Draft Declaration on the Rights on Indigenous Peoples in Geneva and the crucial issue of the right to self-determination. □

# Implementation

# of the Right of Self-Determination of Indigenous Peoples

By John B. Henriksen





The principle of self-determination for peoples has been recognized since 1919, when the League of Nations, precursor to the United Nations, was established. At the time of the League

of Nations, the focus was on a “principle” of self-determination and not a “right” of self-determination. Following the creation of the United Nations in 1945, the “principle” of peoples’ self-determination evolved into a “right” under international law and even *jus cogens* – a peremptory norm.

Although the right of self-determination has been a cardinal principle of the United Nations from the very beginning, the United Nations has so far been reluctant to recognize any further extension of this right beyond the traditional de-colonization context (overseas colonization). The question of whether the right of self-determination has been recognized under international law outside the context of traditional de-colonization is still a very controversial matter. However, the United Nations process on the rights of indigenous peoples indicates that understanding of the scope of the right of self-determination may be evolving further.

The international process is influenced by national political processes, which often tend to be more pragmatic and flexible than the international process. National experiences of indigenous self-determination, or self-government as some would call it, directly influence the international debate and thereby move the discourse forward.

The international community needs to continue to take into account the national processes in its search for effective and non-discriminatory implementation of the right of self-determination, in order to ensure that the concept of self-determination is in line with the rightful aspirations of the world’s indigenous peoples, and not only those living under “traditional colonization”.

This article considers two fundamental questions related to the right of self-determination: (1) the beneficiaries of the right of self-determination; and (2) the scope of this right.

## The right of self-determination under international law

The right of self-determination is a fundamental principle and right under international law. The international

legal instruments on self-determination refer to the right of self-determination as belonging to “all peoples”. It is embodied in the Charter of the United Nations plus the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Common Article<sup>1</sup> of these Covenants provides that:

- “1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefits, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”

The right of self-determination has also been recognized in many other international and regional human rights instruments, such as Part VII of the Helsinki Final Act 1975 and Article 20 of the African Charter of Human and Peoples’ Rights as well as the Declaration on the Granting of Independence to Colonial Territories and Peoples<sup>1</sup>. It has been endorsed by the International Court of Justice<sup>2</sup>. Furthermore, the scope and content of the right of self-determination has been elaborated upon by the United Nations Human Rights Committee<sup>3</sup> and the United Nations Committee on the Elimination of Racial Discrimination<sup>4</sup>.

In addition to being a right under international law, peoples’ right of self-determination should also be regarded as *Jus cogens* - a peremptory norm of general international law. Article 53 of the Vienna Convention on the Law of Treaties provides that a peremptory norm of general international law is accepted and recognized by the international community as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law of the same nature. Moreover, it provides that a treaty

is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.

The principle and fundamental right to self-determination of all peoples is firmly established in international law, including human rights law, and it must therefore be applied equally and universally.

### The term “peoples”

The term “peoples” is not defined in international law. The lack of definition is not due to intellectual failure to define the term but reflects the fact that the meaning of the term is closely linked to sensitive political and legal issues, in particular “peoples” right of self-determination.

However, peoples are often described as a group of individual human beings who enjoy some or all of the following common features: (1) a common historical tradition; (2) ethnic identity; (3) cultural homogeneity; (4) linguistic unity; (5) religious or ideological affinity; (5) territorial connection; and (6) common economic life. Moreover, the group should possess the will or consciousness to be a people, and institutions to express the identity of the people. This is widely regarded as being the ordinary meaning of the term “peoples”. This should therefore be the starting point for determining who are the title holders to the right of self-determination. It is a well-established international legal principle, contained in the Vienna Convention on the Law of Treaties, that terms in international legal instruments are to be interpreted according to their ordinary meaning. This maxim of international law has also been affirmed by the International Court of Justice: “If the words in their natural and ordinary meaning make sense in their context, that’s the end of the matter.”<sup>5</sup>

### The concept of “indigenous peoples”

There is no international agreement on the definition of indigenous peoples. In the Draft United Nations Declaration on the Rights of Indigenous Peoples, the term “indigenous peoples” is used, although some governments oppose the usage of the term “peoples” in the indigenous context<sup>6</sup>. Most countries currently seeking to address indigenous issues tend to view such a definition as falling within the context of their national constitutional and historical framework rather than as an issue of universal character. The international discourse related to the concept of “indigenous peoples” has been addressing the two main questions: (1) who should be identified as “indigenous”, and (2) the term “peoples”.

Although, there is no general agreement on the definition, or indeed the need for a definition of indigenous peoples at international level, there have been

several attempts to define or describe indigenous peoples.

The Special Rapporteur of the Sub-Commission, José Martínez Cobo, formulated a “working definition” in his Study of the Problem of Discrimination against Indigenous Populations, which states that:

*“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.”<sup>7</sup>*

Furthermore, the Special Rapporteur outlines a list of factors that may be relevant in defining indigenous peoples and identifying their historical continuity. He expresses the view that such historical continuity may consist of the continuation, for an extended period reaching into the present, of one or more of the following factors: (1) occupation of ancestral lands, or at least of part of them; (2) common ancestry with the original occupants of these lands; (3) culture in general, or in specific manifestations, (4) language; (5) residence in certain parts of the country, or in certain regions of the world; (6) other relevant factors<sup>8</sup>.

The Special Rapporteur also includes self-identification as indigenous as a fundamental element in his working definition: on an individual basis, an indigenous person is one who belongs to these indigenous peoples through self-identification as indigenous (group consciousness) and is recognized and accepted by the group as one of its members (acceptance by the group). This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference.

ILO Convention No. 169 article 1.1 (b) describes indigenous peoples as follows:

*“... peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”*

Article 1.3 specifies that “the use of the term peoples in this Convention shall not be construed as having any

implications as regards the rights which may attach to the term under international law”.

However, the qualification in article 1.3 does not place any limitations on indigenous peoples’ right to self-determination under international law, due to the fact that it is only a statement of coverage for this particular convention. It merely reflects the fact that the ILO’s mandate is social and economic rights and that it falls outside of its competence to interpret the concept of self-determination<sup>9</sup>.

Indigenous peoples satisfy the criteria generally accepted for determining the existence of a people. The plain meaning of the term “all peoples” thus includes indigenous peoples. There is no doubt that indigenous peoples are “peoples” in all senses of the term, including for the purpose of the international law of self-determination of peoples.

### The scope of the right of self-determination

The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States, in accordance with the Charter of the United Nations, recognizes the principle of the equal rights and self-determination of all peoples and provides that every State has the duty to promote this principle<sup>10</sup>. It also recognizes that, in implementing the right to self-determination, there are *various modes* of self-determination which extend beyond the right of secession and which do

not conflict with territorial sovereignty or the political unity of a State. The Declaration provides that, inter alia:

*“The establishment of a sovereign and independent State, the free association or integration with an independent State or emergence into any other political status freely determined by a people constitute modes of implementing the right to self-determination by that peoples.... Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.”*

### External aspects of the right of self-determination

A Non-Self-Governing Territory, listed under Chapter XI of the UN Charter, can exercise the right of self-determination through the creation of an independent state, or through the establishment of an association with an independent state, or integration with an independent state<sup>11</sup>. Furthermore, the right of self-determination must also be regarded as establishing the right to separate from the existing state of which the group concerned is a part, and to set up a new independent state, if the state concerned gravely violates its obligations towards a distinct people<sup>12</sup>.

A State that gravely violates its obligations towards a distinct people or community within its boundaries



loses the legitimacy to rule over that people. Thus, if the State and its successive governments have repeatedly oppressed a people over a long period, violated their human rights and fundamental freedoms, and if other means of achieving a sufficient degree of self-government have been tried and have failed, then the question of secession can arise as a means for the restoration of fundamental rights and freedoms and the promotion of the well-being of the people<sup>13</sup>.

Secession is seen by some as the ultimate realization of the external aspects of the right to self-determination, as the ultimate implementation of a peoples' right to "freely determine their political status". However, secession is not an absolute right and it cannot be invoked unilaterally unless there exists continuing and grave oppression of the people concerned.

The upholding of the territorial integrity of states is one of the most fundamental principles under international law. Acknowledging a peoples' right to self-determination can thus not be construed as authorizing or encouraging any action that would dismember or impair, either totally or in part, the territorial integrity and political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples<sup>14</sup>.

Nobel Laureate José Ramos Horta is of the view that maintaining territorial integrity lies in the hands of the government in power: *"By accepting its obligations, including full respect for the right to self-determination with all its consequences, and engaging in dialogue with all sectors of society, a government can maintain the territorial integrity of the state or ensure that peaceful change occurs in a manner beneficial to the state."*<sup>15</sup>

Finally, it should be noted that there are external aspects of the right of self-determination that do not entail the creation of an independent state. For example, indigenous peoples' participation in political processes relating to issues that transcend state boundaries can be seen as a dimension of the external aspects of their right to self-determination.

### **Internal aspects of the right of self-determination**

The internal aspects of the right of self-determination include the right of the people to freely pursue its economic, social and cultural development. It is often taken to mean participatory democracy. However, it can also mean the right to exercise cultural, linguistic, religious, territorial or political autonomy within the boundaries of the existing state<sup>16</sup>.

#### *Economic or natural resources dimension*

The economic or resource dimension of self-determination, the right to freely dispose of its own natural wealth

and resources, is of crucial importance to indigenous peoples. The issue of land and resource rights is the most important question for the majority of the world's indigenous peoples. They regard their land and resources rights as being an integral part of their right of self-determination.

It is clear that many governments often oppose international recognition of indigenous peoples' right to self-determination more through fear of losing control over indigenous lands and natural resources than fear of losing some of their overall political power.

The economic or resource dimension of the right of self-determination is emphasized in common paragraph 2 of Article 1 of the Covenants:

*"All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefits, and international law. In no case may a people be deprived of its own means of subsistence."*

The Human Rights Committee, which is mandated to monitor the implementation of the Covenant on Civil and Political Rights, has now started to address the right of self-determination in the context of indigenous peoples, with particular focus on the economic or resource dimension of the right of self-determination. In 1999, the Committee requested the governments of Canada and Norway to report on the implementation of indigenous peoples' right to self-determination, including in relation to paragraph 2 of Article 1<sup>17</sup>. Land and resource rights thus cannot be excluded from indigenous peoples' right to self-determination.

#### *Cultural dimensions*

The cultural dimensions of a people's right to self-determination can be seen as its right to determine and establish the cultural regime or system under which it is to live. This implies recognition of its right to regain, enjoy and enrich its cultural heritage, and affirm the right of all its members to education and culture. The Declaration of the Principles of International Cultural Co-operation, adopted by the General Conference of UNESCO, recognizes that every people has the right and duty to develop its culture, and mentions in its preamble the most important United Nations resolutions relating to recognition of the right of peoples to self-determination.

The cultural dimensions, in the broadest sense of the term, of the right of self-determination are identified by indigenous peoples as fundamental to the survival of indigenous peoples. Indigenous peoples attempt to prevent their heritage, values, cultural identity and way of life from being destroyed by external forces.

Moreover, indigenous peoples' relationships to their lands, territories and natural resources are such that

they also cover important cultural aspects. It is not possible to study indigenous peoples' relationships to their ancestral lands without taking into account the cultural aspects of this relationship.

Professor Erica-Irene Daes, in her capacity as Special-Rapporteur on indigenous peoples and their relationship to land, expressed the view that there was an urgent need for developing an understanding, on the part of non-indigenous societies, of the spiritual, social, cultural, economic and political significance of land and resources to the continued survival and vitality of indigenous societies. She stated that, "*indigenous peoples have illustrated the need for a different conceptual framework and the need for recognition of the cultural differences that exist because of the profound relationship that indigenous peoples have to their lands, territories and resources.*"<sup>18</sup>

Indigenous peoples often emphasise that it is essential to the dialogue between governments and indigenous peoples that the authorities understand that the deeply spiritual and special relationship between indigenous peoples and their lands is fundamental to their existence as such and to all their beliefs, customs, traditions and culture. These concerns are taken into account in Article 25 of the draft United Nations Declaration on the Rights of Indigenous Peoples:<sup>19</sup>

*"Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal seas and other resources which they have traditionally owned or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard."*

#### *Social dimensions*

Article 21 of the draft United Nations Declaration on the Rights of Indigenous Peoples addresses the social and economic aspects of their right of self-determination:

*"Indigenous peoples have the right to maintain and develop their political, economic and social systems, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. Indigenous peoples who have been deprived of their means of subsistence and development are entitled to just and fair compensation."*

The World Summit for Social Development, held in Copenhagen in 1995, expressed the view "*that social development and social justice are indispensable for the achievement and maintenance of peace and security within and among our nations. In turn, social development and social justice cannot be attained in the absence of peace and security or in the absence of respect for all human rights and fundamental freedoms.*"<sup>20</sup> The Social Summit also stated that it "*recognizes and supports indigenous people in their pursuit of economic and social development, with full respect*

*for their identity, traditions, forms of social organization and cultural values.*"<sup>21</sup>

#### *Human security dimensions*

The aim of exercising the right to self-determination can also be formulated in terms of human needs and security. Peoples and communities strive to gain control over the means to satisfy their human needs. From this perspective, security includes cultural integrity and respect for human rights and freedoms – for example, in terms of freedom of the people and its members from physical violence. It furthermore encompasses elements such as spiritual, health, religious, cultural, economic, environmental, social and political aspects.

A desirable human security situation exists when the people concerned and its individual members have both verifiable legal and political guarantees for the implementation of their fundamental rights and freedoms, and also feel secure. The need for security is often the prime objective in the struggle for self-determination, when peoples have been facing oppression, deportations, forced assimilation, religious persecutions, etc.

### **The discourse on the right of self-determination in the context of the Draft United Nations Declaration on the Rights of Indigenous Peoples**

Since 1984, the United Nations has been formulating a Draft Declaration on the Rights of Indigenous Peoples. The Draft Declaration was adopted by the Working Group on Indigenous Populations in 1994 and endorsed by its parent body, the Sub-Commission on Prevention of Discrimination and Protection of Minorities the same year. Since 1995, a special Working Group of the Commission on Human Rights has been working on the draft declaration.

17 years on, the Member States of the United Nations are still far from reaching a consensus with regard to the substantive content of the draft. As of August 2001, only two of 45 Draft articles had been adopted by the Commission on Human Rights' Working Group on the draft declaration: one on the right to nationality for indigenous peoples and the other on gender equality - principles which are already enshrined in international human rights treaties.

Although 17 years may not seem a very long time when dealing with such complex issues, one should bear in mind that the Universal Declaration of Human Rights, in comparison, was drafted and adopted within three years of establishment of the United Nations.

The Draft Declaration has already had considerable impact on the lives of indigenous peoples world-wide, even though it is as yet only a draft. The widespread response, including the reaction of indigenous peoples themselves, to the draft declaration is that the principles

*Tukak Theatre, Greenland. Photo: Claus Oreskov*



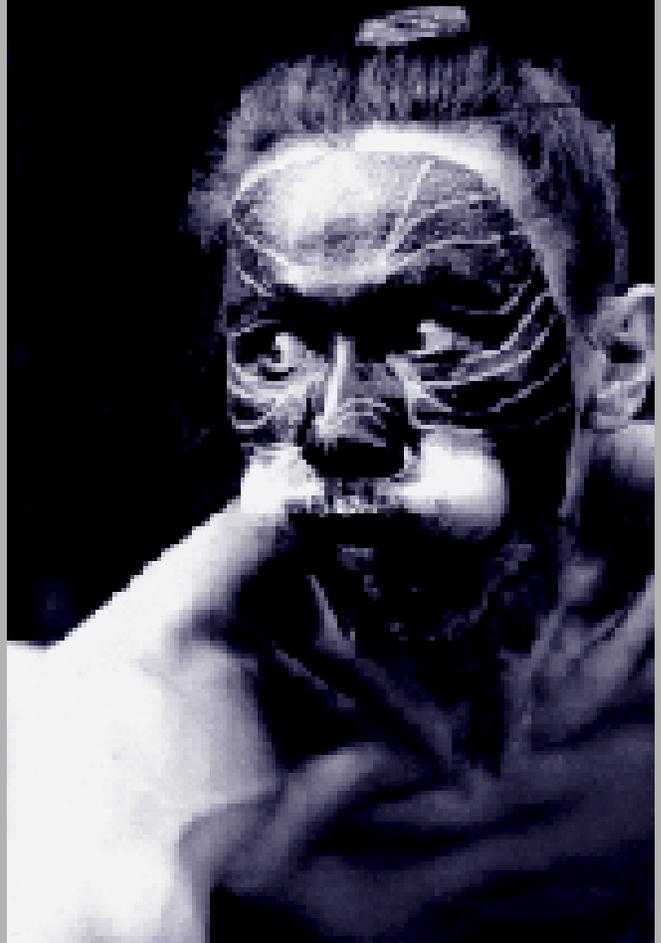
*Buhid girl, the Philippines. Photo: Christian Erni*



*Kuna man, Panama. Photo: Andrew Young*



*Tukak Theatre, Greenland. Photo: Claus Oreskov*



it embodies constitute minimum international standards for the rights of indigenous peoples.

One may ask why it is taking so long to achieve consensus on a declaration on the rights of indigenous peoples. It is clear that it is the concept of collective indigenous rights, in particular the right of self-determination, which is the biggest challenge to this process.

Article 3 of the Draft Declaration, without doubt the most controversial article, addresses the right of self-determination for indigenous peoples. The wording of draft Article 3 is almost identical to common Article 1, Paragraph 1 of the two International Covenants on (1) Civil and Political Rights and (2) Economic, Social and Cultural Rights. The only difference can be found in the first sentence of draft Article 3, in which the group of beneficiaries "All peoples" - as stated in the two Covenants - has been replaced by the term "Indigenous peoples" - an emphasis stating that indigenous peoples are included in the term "all peoples." Article 3 of the draft declaration reads as follows:<sup>22</sup>

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

Many governments are of the opinion that Article 3 should be redrafted in order to strictly qualify indigenous self-determination as meaning arrangements such as self-government and autonomy. The arguments presented against the adoption of Article 3 are founded mainly on the doctrine of sovereignty and the principle of the territorial integrity of States. It is often said that an explicit recognition of the right of self-determination of indigenous peoples could potentially threaten democracy, stability, peace and the political and territorial unity of existing States.

However, a number of governments have expressed support for the underlying principles of this article while some governments, such as Denmark and Fiji, have even publicly expressed their unqualified support for Article 3 as it stands, and urged the Working Group to adopt it without any changes or amendments.

Indigenous peoples argue that their right of self-determination cannot be qualified. Under international law the right of self-determination is a right of "all peoples", therefore indigenous peoples alone cannot be denied this right. Indigenous peoples strongly believe that it would be a discriminatory application of this fundamental principle of international law if it were to be applicable to all peoples other than indigenous peoples.

Indigenous peoples consider the right of self-determination to be a collective human right, and one which is a fundamental condition for the enjoyment of all the individual human rights of indigenous peoples, be they civil, political, economic, social or cultural. As such, the right of self-determination is included in core interna-

tional human rights treaties, which have universal applicability, a fact strongly favoring the position held by indigenous peoples.

A major reason for the impasse on the question of the right of self-determination for indigenous peoples appears to be that many governments view the issue within the traditional de-colonization context, while most indigenous peoples approach this question from an angle that does not correspond to this traditional approach. Indigenous peoples view this matter from a political and philosophical angle founded on the principle of equality and non-discrimination: calling for equality with regard to the right of self-determination - without necessarily wishing to establish their own State. One should bear in mind that the western nation state concept is not the most natural way of implementing or exercising the right of self-determination for the vast majority of indigenous peoples.

Indigenous peoples often emphasize that their understanding of the right of self-determination is that it gives them the right to be in control of their lives and their own destiny. This enables them to remain who they are and to live the way they want to live. The vast majority of indigenous peoples taking part in the United Nations work on the draft declaration emphasise that their goal and motivation for advocating their equal right to self-determination is to gain greater control over their lives and their destiny, not secession and independence through the establishment of independent nation states. On the other hand, it would be misleading to suggest that there are no indigenous peoples seeking independence through sovereign nation statehood, but there are few who aim for this.

The right of self-determination should be regarded as a "process right" rather than a right to a pre-defined outcome. In other words, the outcome of any exercise of the right of self-determination must be individually defined, through a process of dialogue in which the peoples concerned are participating on equal terms. James Anaya approaches this issue by distinguishing the substance of the norm from the remedial prescriptions that may follow a violation of the norm. He exemplifies this by comparing the African de-colonization process with contemporary situations:

*"In the de-colonization context, procedures that resulted in independent statehood were means of discarding alien rule that had been contrary to the enjoyment of self-determination. Remedial prescriptions in other contexts will vary according to the relevant circumstances and need not inevitably result in the formation of new states."<sup>23</sup>*

It would be helpful for the future process at international level if some of the above-mentioned fundamental miscommunications could be addressed with the aim of achieving a greater understanding of the aspira-

tions and fears of indigenous peoples and governments respectively, in order to banish any unnecessary fears or misunderstandings these questions may cause.

### **The relationship between autonomy and self-government and the concept of self-determination**

In the Declaration on Friendly Relations, the alternatives for the exercise of the right of self-determination are expanded beyond secession to also include “any other” political status freely determined by the people. It would thus be natural to include autonomy and self-government arrangements under the category of “any other political status” determined by the people.

As mentioned earlier in this article, the right of self-determination is incorporated in Article 3 of the Draft United Nations Declaration on the Rights of Indigenous Peoples. However, the Draft Declaration also provides for the right to autonomy or self-government in Article 31, which states that:

*“Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resource management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.”*

The right of self-determination embodies *inter alia*, the right of all peoples to determine their own economic, social and cultural development. The International Court of Justice in the *Western Sahara* case defined the principle of self-determination as “the need to pay regard to the freely expressed will of peoples”.<sup>24</sup>

Professors Hurst Hannum and Richard Lillich describe governmental autonomy in the following way:

*“Autonomy and self-government are determined primarily by the degree of actual as well as formal independence enjoyed by the autonomous entity in its political decision-making process. Generally, it is understood to refer to independence of action on the internal or domestic level, as foreign affairs and defence normally are in the hands of the central or national government, but occasionally power to conclude international agreements concerning cultural or economic matters also may reside with the autonomous entity.”<sup>25</sup>*

On the basis of the proceedings of the Meeting of Experts in September 1991 at Nuuk, Greenland, a number of general requirements associated with indigenous self-government can be identified<sup>26</sup>. These include:

- a. the exercise of adequate powers and self-government within the traditional territories of indigenous peoples as a prerequisite for the development and maintenance of traditional indigenous cultures and for the survival of indigenous peoples;
- b. a redefinition of the relationship between indigenous peoples and the States in which they now live, in particular through the negotiation process;
- c. self-government as a means of promoting better knowledge about indigenous peoples vis-à-vis the wider society;
- d. the assumption that the exercise of self-government presupposes indigenous jurisdiction, that is, the right of indigenous peoples to establish their own institutions and determine their functions in fields such as lands, resources, economic, cultural and spiritual affairs;
- e. the possibility to establish relations with other ethnically similar peoples living in a different region or State;
- f. the establishment of mechanisms for joint control by an indigenous autonomous institution and the central government;
- g. the necessity to delimit clearly areas of competence in order to avoid conflict; and
- h. the establishment of conflict resolution mechanisms.

The question as to whether indigenous autonomy arrangements should be regarded as one way of implementing the right to self-determination is one of the difficult issues in the debate pertaining to the relationship between autonomy and self-government and the concept of self-determination. There is no international consensus on this matter.

Professor Miguel Alfonso Martínez, UN Special-Rapporteur on treaties, agreements and other constructive arrangements between States and indigenous populations, elaborates on the relationship between indigenous autonomy and the right to self-determination in a recent report<sup>27</sup>. He is of the opinion:

*“that the type of ‘autonomy regime’ provided for under the [Greenland] Home Rule does not amount to the exercise of the right to self-determination by the population of Greenland. In other countries, discussions are currently taking place with the view to establishing (or implementing) autonomy regimes, or adopting measures to recognize a distinct legal status for indigenous peoples... These autonomy regimes have brought (or may bring) certain advantages to indigenous peoples... The Special-Rapporteur notes, however, that recognition of ‘autonomy’ for indigenous peoples within the State (whatever powers or restrictions thereto are established), most probably will not automatically end State aspirations to eventually exert the fullest authority possible (including integrating and assimilating those peoples), nor, in that case, nullify whatever inalienable rights these people may*

*have as such. Moreover, the mechanisms through which 'autonomy regimes' for indigenous peoples are being formulated and implemented must be assessed, on a case-by-case basis, for proof of free and informed consent of all parties concerned, especially indigenous peoples."*

However, the author of this article is of the opinion that the right to autonomy and the right to self-government must be regarded as emerging principles of customary international law and as falling within the wider framework of the right to self-determination.

Various forms of indigenous autonomy and self-government have been recognized and adopted by different governments, which indicates support for these rights. However, concepts and degrees of indigenous self-government may vary considerably, depending on the actual circumstances and specific aspirations of indigenous peoples. The State practice in these cases could therefore be seen as an expression of an emerging acknowledgement of indigenous peoples' right to self-determination and acceptance of their obligation to secure this fundamental right, as international customary law in the making.

In this context, one should also bear in mind that the United Nations Working Group on Indigenous Populations, and its parent body the Sub-Commission on Prevention of Discrimination and Protection of Minorities, have adopted the principle contained in Article 31 of the Draft United Nations Declaration on the Rights of Indigenous Peoples. This states that "indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government..." Very few governments have expressed opposition with regard to the current wording of Article 31. Furthermore, indigenous peoples themselves, from around the world, have called for speedy adoption of the draft declaration without any changes or amendments, including Article 31.

Although autonomy and self-government may be the principal means through which the right of self-determination may be exercised by indigenous peoples, these should not be interpreted as the only way in which indigenous peoples can exercise their right of self-determination. However, in some cases, indigenous peoples may not be able to accept anything short of full independence and, in these cases, autonomy and self-government will not be an option.

### **Observations of the UN Human Rights Committee in relation to Indigenous Peoples' right of self-determination**

The Human Rights Committee of the United Nations, which is mandated to monitor the implementation of the Covenant on Civil and Political Rights, has recently made some very important observations with regard to indigenous peoples' right of self-determination.

*Photos to the right:*

*No 1: Youth from the Cordillera, the Philippines. Photo: Christian Erni*

*No 2: Legislative Chamber in Nunavut. Photo: Claudette A. Moïse*

*No 3: Legislative Chamber in Nunavut. Photo: Claudette A. Moïse*

*No 4: Saami with reindeer herd. Photo: IWGIA archive*

*No 5: Landscape around Clyde River, Nunavut. Photo: Sandra Inuitiq*

*Buhid woman, the Philippines. Photo: Christian Erni*





In April 1999, the Human Rights Committee considered the fourth periodic report of Canada on implementation of the Covenant. In its concluding observations, the Committee addresses the right of self-determination in the indigenous context, with emphasis on the economic or resource dimension of self-determination (paragraph 2 of Article 1). The Committee's request to Canada to report on the implementation of article 1 as far as indigenous peoples are concerned indicates that the Committee is of the view that article 1 also applies to indigenous peoples.<sup>28</sup>

In October 1999, the Committee followed a similar approach when considering the fourth periodic report of Norway. The Committee stated that "it expects Norway to report on the Sami people's right to self-determination under article 1 of the Covenant, including paragraph 2 of that article [natural wealth and resources]."

These observations are an acknowledgement of the fact that the right of self-determination, as stated in Article 1 of the Covenant, also applies to indigenous peoples. The Committee requests the governments concerned to report on the implementation of indigenous peoples' right of self-determination as part of their international legal obligations. This sets a very important legal precedent, for in this way indigenous peoples' right of self-determination is clearly included within the framework of core international human rights law.

## Case studies

The case studies aim to provide examples of indigenous autonomy and self-government arrangements in various parts of the world. Four main ways of arranging indigenous autonomy and self-government can be identified: (1) indigenous autonomy through contemporary indigenous political institutions, such as the Sami Parliaments in the Nordic countries; (2) indigenous autonomy based on the concept of an indigenous territorial base, such as the Comarca arrangement in Panama; (3) regional autonomy within the State, such as the Nunavut territory in Canada and the indigenous autonomous regions in the Philippines; and (4) indigenous overseas autonomy, such as the Greenland Home Rule arrangement.

Five case studies have been selected with the aim of providing an introduction to and examples of these four main ways of organizing indigenous autonomy and self-government. The author has not, however, examined whether these arrangements are founded on the free and informed consent of the peoples concerned. The aim is simply to provide examples of existing arrangements without taking a position as to whether the criteria pertaining to free and informed consent are met. It should thus also be noted that the author does not suggest that these arrangements are adequate solutions, because such a judgement can only be made by the peoples concerned.

### Case study 1: Indigenous autonomy in the Philippines

In 1997, the Indigenous Peoples Rights Act was adopted by the legislative authorities in the Philippines<sup>29</sup>. The provisions of the Act, and in particular its slow implementation, have been criticized by indigenous representatives from the Philippines. However, one has to recognize that this new Act represents an important development with regard to indigenous self-determination. In Section 13 of the Act, it is stated that:<sup>30</sup>

*"The State recognizes the inherent right of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) to self-governance and self-determination and respects the integrity of their values, practices and institutions. Consequently, the State shall guarantee the right of ICCs/IPs to freely pursue their economic, social and cultural development."*

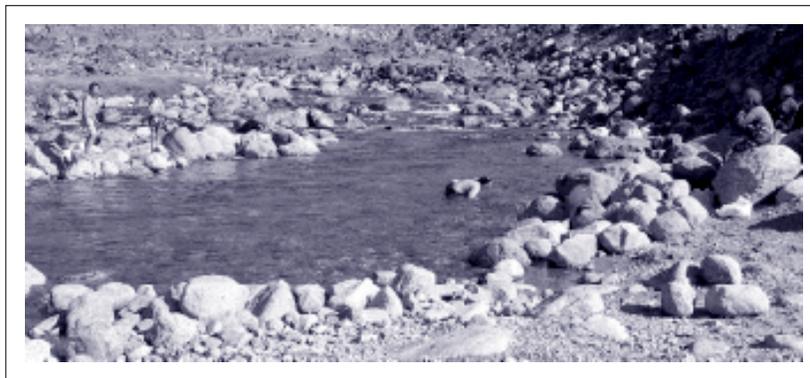
There are many other important provisions of relevance to self-determination, including indigenous peoples' "right to use their own commonly accepted justice system, conflict resolution institutions, peace-building processes or mechanisms and other customary laws and practices within their respective communities".

In Section 16, it is stated, *inter alia*, that indigenous peoples "have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through procedures determined by them as well as maintain and develop their own indigenous political structures".

Section 17 of the Act deals with indigenous peoples' right to determine and decide priorities for their own development. It is stated that indigenous peoples "shall have the right to determine and decide their own priorities for development affecting their lives, beliefs, institutions, spiritual well-being, and the lands they own, occupy or use." Furthermore, that indigenous peoples "shall participate in the formulation, implementation and evaluation of policies, plans, and programs for national, regional and local development which may directly affect them".

The Act contains far-reaching provisions pertaining to indigenous land and natural resource rights. In Section 5, it is stated that the "indigenous concept of ownership sustains the view that ancestral domains and all resources therein shall serve as the material bases of their cultural integrity." Section 8 states that "the right to ownership and possession of the indigenous peoples to their ancestral lands shall be recognized and protected".

Likewise, the Act contains well elaborated provisions on indigenous cultural rights, starting with Section 29, in which is stated that "the State shall respect, recognize and protect the right of indigenous peoples to preserve and protect their culture, traditions and institutions."



Summer at the lake in Pangnirtung, Nunavut. Photo: Jack Hicks

### Case study 2: Cultural autonomy for the indigenous Sami people in Finland

As a result of legal amendments that came into force on 1 January 1996, the Finnish Constitution and the Sami Act establish the legal framework for the cultural autonomy of the indigenous Sami people within a defined Sami Homeland<sup>31</sup>. In Article 51 (a) of the Constitution, it is stated that the Sami as an indigenous people shall be guaranteed cultural autonomy in respect to their language and culture. Through the Sami Act, the publicly elected Sami Parliament (*Sametinget*) is recognized as being the representative Sami body, with a mandate to implement the above-mentioned autonomy.

In accordance with Article 9 of the Sami Act, the State authorities are obliged to negotiate with the Sami Parliament on all far-reaching and important measures that may directly affect the Sami people, or that relate to any of the following matters: (1) community planning; (2) the management, use, leasing and assignment of State land, conservation areas and wilderness areas; (3) applications for mining licences; (4) legislative or administrative changes pertaining to traditional Sami occupations and livelihoods; (5) the development and teaching of and in the Sami language in schools, and in the social and health service; and (6) any other matters affecting the Sami language or culture.

The negotiation clause is an important element of the autonomy arrangement since it obliges the State authorities to enter into negotiations aimed at finding solutions to any issue that does not have the full agreement of the Sami Parliament.

Another interesting and important element of this autonomy arrangement is the role of the Sami Parliament as the representative Sami body. In Article 6 of the Sami Act, it is stated that the Sami Parliament shall represent the Sami people, not only at national level but also at international level. This is an arrangement that includes internal, as well as some of the external, aspects of the right of self-determination<sup>32</sup>.

### Case study 3: Greenland Home Rule

The case of Greenland Home Rule may be the best example of a progressive and far-reaching indigenous self-government arrangement, including both internal as well as external aspects of the right of self-determination.

In the past, Denmark listed Greenland as a non-self-governing territory under Chapter XI of the Charter of the United Nations, and submitted annual reports to the Trusteeship Council as required under the Charter. In 1954, Greenland was declared an integral part of the Danish Kingdom, and thereby removed from the United Nations list of non-self-governing territories. Today, full independence does not seem to be the desired option for most Greenlanders.

In 1979, the Greenland Home Rule Act entered into force. It establishes the political and legal framework for self-government through the Greenland Home Rule Authorities. The Greenland Home Rule Authorities are composed of a publicly elected Assembly (*Landsting*) and an Executive body (*Landsstyre*).

There has been a gradual transfer of power to the Greenland Home Rule Authorities, which gives the Home Rule Authorities extensive power and control over domestic affairs. Although, the Greenland Home Rule Authorities do not have absolute control over land and natural resources, its veto power prevents the Danish Government from carrying out activities against the wish of the Home Rule Authorities. The mandate to conduct foreign affairs is a Constitutional Prerogative of the Danish Government.

However, the Greenland Home Rule Government has been able to reach an agreement with the Danish Government that gives the Home Rule Authorities a special position in relation to the European Union. In 1972, Denmark joined the European Economic Community (EEC), with the consequence that Greenland had to accept the overall Danish positive vote concerning Danish EEC Membership. In 1982, a new advisory referendum was held in Greenland, through which the majority of Greenlanders expressed their opposition to Greenland being part of the European Union (EU). The

Greenland Home Rule Authorities expressed their desire to carry out the wish of the people by seeking withdrawal of Greenland from EU Membership. Therefore, although Greenland is part of the Danish Realm, both the Danish Government and the EU accepted a Greenlandic withdrawal from the EU. The withdrawal took effect on 1 February 1985. Greenland was granted the status of "Overseas Countries and Territories".

As a consequence, the Greenland Home Rule Authorities gained control over their main natural resource - the fisheries. However, despite the withdrawal, the Greenland Home Rule Authorities were able to negotiate free access to the EU market for their sea products, which is crucial for the Greenlandic economy.

#### **Case study 4: The Nunavut arrangement in Canada**

In 1991, the Canadian Government signed a self-government agreement with the Indigenous Inuit people of Nunavut. The agreement provides for self-government extending over a territory of around two million square kilometres.

The agreement provides that the Nunavut Territory and Authorities shall be established as of 1 April 1999<sup>33</sup>. The Federal Nunavut Act establishes the territory and provides for its government<sup>34</sup>. The Nunavut Authorities are composed of a publicly elected Assembly, a Cabinet and a territorial court. Moreover, a Nunavut civil service will form an important element of the self-government arrangement.

The Legislative Assembly can make laws in relation to a number of subjects, *inter alia*, including: (1) the election of members to the Assembly; (2) the establishment of territorial offices; (3) the administration of justice in Nunavut; (4) municipal and local institutions in Nunavut; (5) hospitals; (6) the management of sales of lands; (7) taxation; (8) property and civil rights in Nunavut; (9) education; (10) preservation, use and promotion of the Inuktitut language; (11) agriculture; and (12) entering into inter-governmental agreements.

The Nunavut Act identifies the Supreme Court and the Court of Appeal of Nunavut as the superior courts in Nunavut. The judges are appointed by the Nunavut Authorities.

The Nunavut Act establishes the Nunavut Implementation Commission, with a mandate to monitor and ensure implementation of the agreement.

#### **Case study 5: The Comarca: Kuna Yala in Panama**

Some indigenous communities in Panama enjoy a degree of self-government. The most prominent among these is the Comarca of San Blas (Kuna Yala) arrangement, which encompasses around forty small islands along the Carib-

bean coast as well as a part of the mainland, around 200 km along the Caribbean coast of Panama.

In 1939, the Comarca of San Blas arrangement replaced the indigenous reserve system, which had been created nine years earlier by the authorities in Panama<sup>35</sup>. In 1953, a legal amendment represented by Law No. 16 of 19 February 1953 redefined the legal status of Kuna Yala. It provides for a form of political organization based on traditional Kuna ways of organizing society, including traditional Kuna jurisdiction.

The main indigenous political institution in Kuna Yala - the Kuna General Congress - is mandated to approve or reject development projects in Kuna Yala. Article 12 of Law No. 16 states that lands within the indigenous area cannot be granted to persons who are not part of the indigenous communities unless the application for the allocation has been approved by two different Kuna Congresses.

In Law No. 16, the Republic of Panama acknowledges the existence and the jurisdiction of the General Kuna Congress, other congresses of indigenous peoples and tribes, other traditional indigenous authorities, and the organic charter of the indigenous community of San Blas. Article 13 of the Law states that the State recognizes the existence of the Kuna General Congress and other indigenous authorities as long as they are compatible with the Constitution of the Republic.

The traditional Kuna institutions are based on a structure of village communities and village leaders. The local Kuna assembly is in charge of the economic and administrative affairs of the community.

The Kuna communities are structured into two institutions: (1) the General Congress of Kuna Culture, which has as its main objective the preservation and transmission of the cultural and historical heritage of the Kuna people; and (2) the Kuna General Congress, which deals with economic, political, administrative and judicial matters.

The Kuna General Congress, which is the central governing institution, is presided over by three grand chiefs from different regions of the Kuna territory. The Congress is made up of representatives of each local community, including youth, workers' organizations and urban Kuna communities.

The national government is represented by an appointed government official with the power to approve or veto decisions made by the Kuna General Congress. The government official is normally a Kuna. The government-appointed official is chosen from a list of three candidates nominated by the Kuna General Congress.

At present, the Kuna authorities are seeking a revision of Law No. 16, geared towards a strengthening of Kuna political autonomy in relation to the Constitution of the Republic.

## Conclusions

It is clear that the principle and fundamental right of self-determination for all peoples is firmly established in international law, including human rights law, and that it must therefore be applied equally and universally. Indigenous peoples can thus not be denied this fundamental right.

Although autonomy and self-government may be the principal means through which the right of self-determination will be exercised by indigenous peoples, their right of self-determination cannot be qualified as something less than that of other peoples' right of self-determination. This would be tantamount to saying that there are different classes of "peoples".

The right of self-determination can be implemented through various mechanisms and arrangements within the framework of a nation state. However, in cases where the right of self-determination of indigenous peoples is exercised through autonomy and self-government arrangements, it is crucial that adequate mechanisms are developed at national as well as international level, in order to ensure that these arrangements fulfil the criteria of the free and informed consent of the people concerned.

## Notes

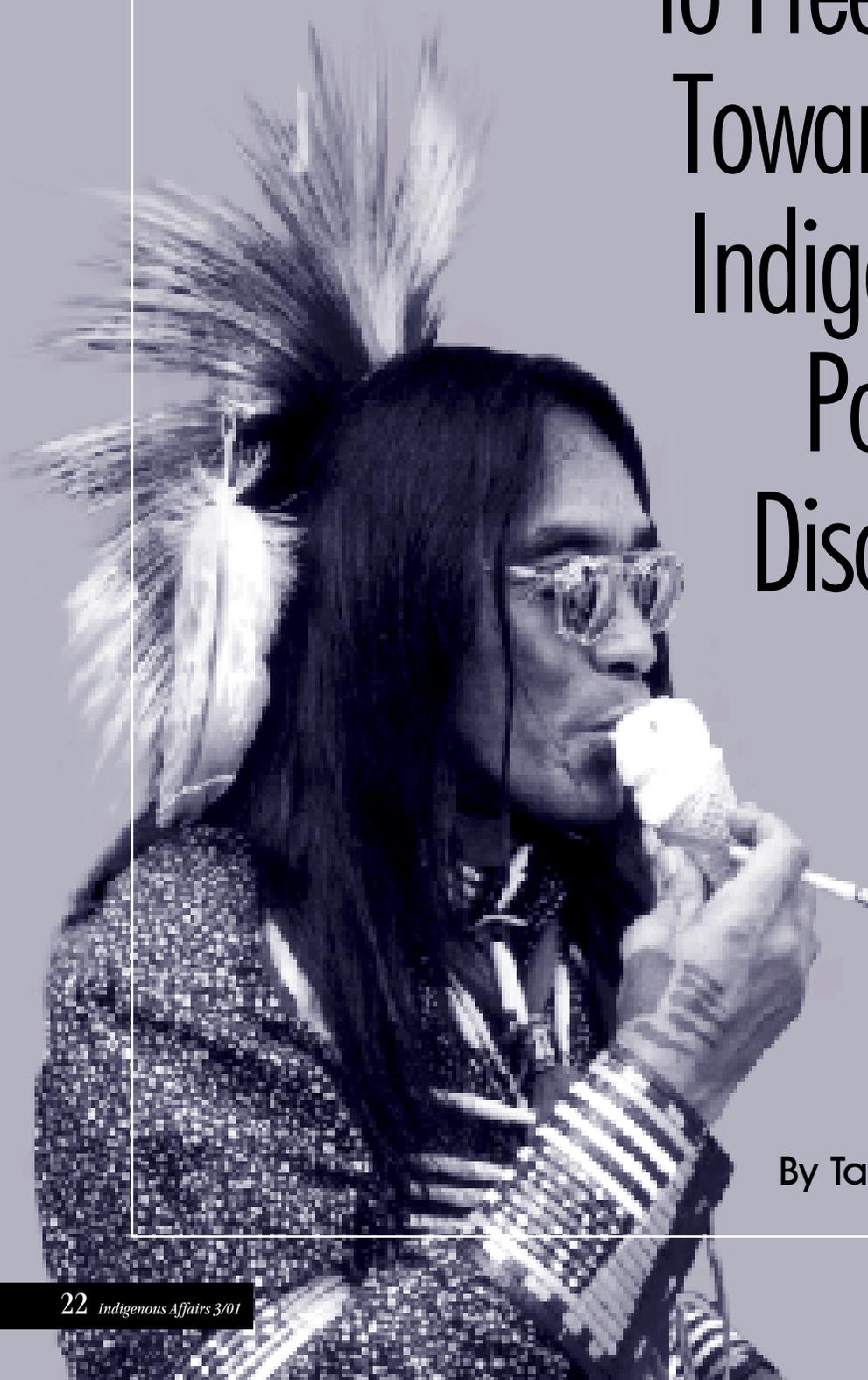
- 1 UN General Assembly Resolution 1514 (XV) of 14 December 1960.
- 2 See *the Namibia case* (1971) ICJ 16 and *the Western Sahara case* (1975) ICJ 12.
- 3 General Comment No. 12 of the Human Rights Committee, made at its twenty-first session, 1984. UN document: HRI/GEN/1/Rev.3.
- 4 UN document: CERD/C/49/CRP.2/Add.7 of 5 July 1996.
- 5 Advisory Opinion, 1950 ICJ 4,8.
- 6 The Draft United Nations Declaration on the Rights of Indigenous Peoples, as agreed upon by the members of the Working Group on Indigenous Populations at its eleventh session in 1994, is contained in United Nations document: E/CN.4/Sub.2/1994/2/Add.1 of 20 April 1994.
- 7 José Martínez Cobo, *Study of the Problem of Discrimination Against Indigenous Populations*, E/CN.4/Sub.2/1986/7/Add.4, para 379.
- 8 *Ibid*, para 380.
- 9 International Labour Office (2000), "ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169) – A Manual".
- 10 UN General Assembly Resolution 2625 (XXV) of 24 October 1970.
- 11 See General Assembly Resolution No. 1541 (XV).
- 12 UNESCO Division of Human Rights (1999), "Report of the International Conference of Experts on the Implementation of the Right to Self-determination as a Contribution to Conflict Prevention".
- 13 *Ibid*.
- 14 The Declaration on Friendly Relations (1970), UN GA resolution 2625 (XXV), 24.10.1970.
- 15 *Ibid*.
- 16 UNESCO Division of Human Rights (1999), "Report of the International Conference of Experts on the Implementation of the Right to Self-determination as a Contribution to Conflict Prevention".
- 17 UN Doc: CCPR/C/79/Add.105, April 1999 (Concluding observations related to the Canadian periodic report) and UN Doc CCPR/C/79/Add.109, October 1999 (Concluding observations related to the Norwegian periodic report).

- 18 Erica-Irene Daes, *Preliminary Working paper on indigenous peoples and their relationship to land*, contained in UN document: E/CN.4/Sub.2/1997/17.
- 19 UN document: E/CN.4/Sub.2/1994/2/Add.1.
- 20 The Copenhagen Declaration and Programme of Action, from the World Summit for Social Development, contained in UN document: A/CONF. 166/9.
- 21 See the Copenhagen Declaration on Social Development, Section B - Principles and goals, (m).
- 22 Draft Declaration on the Rights of Indigenous Peoples as agreed upon by the members of the Working Group on Indigenous Populations at its eleventh session, contained in UN document E/CN.4/Sub.2/1994/2/Add.1.
- 23 S. James Anaya (1996), *Indigenous Peoples in International Law*, Oxford University Press.
- 24 *Western Sahara*, Advisory Opinion, (1975) ICJ Reports 12 at 33.
- 25 Hurst Hannum & Richard B. Lillich, *The Concept of Autonomy in International Law*, p. 218.
- 26 UN Expert meeting on Indigenous Self-Government.
- 27 Miguel Alfonso Martínez, Special-Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on treaties, agreements and other constructive arrangements between States and indigenous peoples (1998) - unedited final report, distributed by the Special-Rapporteur at the sixteenth session of the Working Group on Indigenous Populations in July 1998.
- 28 UN Doc: CCPR/C/79/Add. 105, para. 7.
- 29 Republic Act No. 8371. In Section 1 of the Act, it is stated that it shall be known as "The Indigenous Peoples Rights Act of 1997."
- 30 Official Gazette of the Philippines, Vol. 94, No 13, March 30, 1998.
- 31 The Sami Act of 17 July 1995 (Finnish Act No. 974).
- 32 John B. Henriksen, "Betenkning om samisk parlamentarisk samarbeid" - *DIEDUT*, No. 2, 1998, Nordisk Samisk Institutt.
- 33 The Nunavut Land Claims Agreement Act. Bill C-133 of 4 June 1993 reaffirms the agreement between the indigenous Inuit of the Nunavut Settlement Area and the Government of Canada.
- 34 Bill C-132, adopted by the House of Commons on 4 June 1993.
- 35 Law No. 59 of 12 December 1930, of the Republic of Panama, created the reserve system (*reserva indigena*). Law No. 2 of 16 September 1939 created the Comarca de San Blas arrangement, which replaced the reserve system. Law No.16 of 19 February 1953, which strengthened the legal status of Kuna Yala. Another relevant law is Law No. 20 of 31 January 1957.

**John B. Henriksen** is an indigenous Saami from Gouvdageaidnu, which is situated in the Norwegian part of the traditional Saami territory. He is a lawyer by profession and has been working on indigenous issues for many years. He was formerly a member of the Legal Committee of the Saami Council, and was for many years the legal advisor and representative of the Saami Council within the United Nations system. He later worked as an advisor to the indigenous Saami Parliament in Norway, with special emphasis on legal and international issues. In 1995, he undertook a study that constitutes the foundations for the establishment of the Saami Parliamentary Assembly - covering Finland, Norway, Russia and Sweden. He later worked for three years as a staff member with the United Nations Secretariat in Geneva, in the Office of the UN High Commissioner for Human Rights, dealing with the rights of indigenous peoples. For the time being he works as Attorney at Law in Oslo. He also serves the Saami Council as its Human Rights Coordinator. □

# From Sovereignty to Freedom: Towards an Indigenous Political Discourse

By Taiaiake Alfred



Typical home of a self-sufficient Lil'wat family denying to accept welfare money. Photo: Helena Nyberg



**S**overeignty. The word, so commonly used, refers to supreme political authority, independent and unlimited by any other power. Discussion of the term “sovereignty” in relation to indigenous peoples, however, must be framed differently, within an intellectual framework of internal colonisation. Internal colonisation is the historical process and political reality defined in the structures and techniques of government that consolidate the domination of indigenous peoples by a foreign yet sovereign settler state. While internal colonisation describes the political reality of most indigenous peoples, one should also note that the discourse of state sovereignty is and has been contested in real and theoretical ways since its imposition. The inter/counterplay of state sovereignty doctrines - rooted in notions of dominion - with and against indigenous concepts of political relations - rooted in notions of freedom, respect and autonomy - frames the discourse on indigenous “sovereignty” at its broadest level.

The practice of history cannot help but be implicated in colonisation. Indeed, most discussions of indigenous sovereignty are founded on a particular and instrumental reading of history that serves to undergird internal colonisation. Fair and just instances of interaction between indigenous and non-indigenous peoples are legion; yet mythic narratives and legal understandings of state sovereignty in North America have consciously obscured justice in the service of the colonial project. From the earliest times, relations between indigenous peoples and European newcomers vacillated within the normal parameters that characterise any relation between autonomous political groups. Familiar relations - war, peace, cooperation, antagonism and shifting dominance and subservience - are all to be found in our shared history. Yet the actual history of our plural existence has been erased by the narrow fictions of a single sovereignty. Controlling, universalising and assimilating, these fictions have been imposed in the form of law on weakened but resistant and remembering peoples.

European sovereignties in North America first legitimated themselves through treaty relationships entered

into by Europeans and indigenous nations. North American settler states (Canada and the United States, with their predecessor states Holland, Spain, France, and England) gained legitimacy as legal entities only by the expressed consent through treaty of the original occupiers and governors of North America. The founding documents of state sovereignty recognise this fact: all Dutch and French treaties with indigenous peoples, the Treaty of Utrecht, the Articles of Capitulation and the Royal Proclamation (made in a context of military interdependency between the British and indigenous nations) all contain explicit reference to the independent nationhood of indigenous peoples. As the era of European exploration and discovery gave way to settlement, with its concomitant need for balanced peaceful relations with indigenous nations, the states’ charter documents made clear reference to the separate political existence and territorial independence of indigenous peoples.

None of this historical diversity is reflected in the official history and doctrinal bases of settler state sovereignty today. Rather, Canada and the United States have written self-serving histories of discovery, conquest and settlement that wipe out any reference to the original relations between indigenous peoples and Europeans. This *post-facto* claim of European “sovereignty” is limited by two main caveats. The first is factual: the mere documentation of European assertions of hegemonic sovereignty does not necessarily indicate proof of its achievement. European control over actual territory was tenuous at best; and the political existence of European settler states was a *negotiated* reality until well into the nineteenth century (and not completely achieved, even in colonial mythology, until the end of the nineteenth century in the United States and to this day in Canada).

The second limitation is theoretical: the discourse of sovereignty upon which the current *post facto* justification rests is an exclusively European discourse. That is, European assertions in both a legal and political sense were made strictly *vis-à-vis* other European powers, and did not impinge upon or necessarily even affect in law or politics the rights and status of indigenous nations. It is only from our distant historical vantage point, and standing upon a counterfactual rock, that we are able to see European usurpation of indigenous sovereignty as justified.

If sovereignty has been neither legitimized nor justified, it has nevertheless limited the ways in which we are able to think, suggesting always a conceptual and definitional problem centred on the accommodation of indigenous peoples within a “legitimate” framework of settler state governance. When we step outside this discourse, we confront a different problematic, that of the state’s “sovereignty” itself, and its actual meaning in contrast to the facts and the potential that exists for a nation-to-nation relationship.

## The critique from within

Indigenous scholars have focused on this problematic to profound effect. Russel Barsh and James Henderson, for example, explored the process of intellectual obscurantism in close detail in *The Road: Indian Tribes and Political Liberty*. Barsh and Henderson concentrated on the United States and the creation of an historical narrative that completely ignored basic principles of natural law and the philosophical underpinnings of American notions of liberty and equality. They trace the evolution of the doctrine of tribal sovereignty in United States law through judicial decisions, and demonstrate the ways in which the process misrepresented the true potential of liberal principles - and even the United States Constitution - to accommodate notions of indigenous nationhood.

*The Road* is a landmark work. It embarked on a critique from within, arguing for recognition of indigenous peoples' rights *within* the historic and legal frame of state sovereignty. Ultimately, Barsh and Henderson subjected the rationale for indigenous or "tribal" liberty to criteria defined by the framers of the United States Constitution. The problem, they argued, was the subjection of principle to politics, and unprincipled decisions by the state judiciaries. Barsh and Henderson designed a "theory of the tribe in the American nation" (205), and, in so doing, advanced the theoretical notion of a coexistence of indigenous and state sovereignty that was hamstrung as a conceptual tool by the weight of skewed legal precedent and the reality of the political context. In this sense, *The Road* follows the trajectory - native sovereignty within and in relation to state sovereignty - first set forth in the 1830s in the Cherokee decisions, which suggested that tribes were "domestic dependent nations".

The entanglement of indigenous peoples within the institutional frame of the colonial state of course went beyond legal doctrines. The practice of sovereignty in the structures of government and the building of institutional relationships between indigenous governments and state agencies offered another forum for the subordination of principle. In two volumes, *American Indians*, *American Justice* and *The Nations Within*, Vine Deloria Jr. and Clifford Lytle first outlined how the legal denial of indigenous rights in the courts was mirrored in governing structures that embedded the false notion of European superiority in indigenous community life. The example of the United States' usurpation of indigenous nationhood clarified how the state generally uses not only political and economic but also certain intellectual strategies to impose and maintain its dominance. Such linking of the intellectual and structural forms of colonialism have produced some of the deepest analyses of the issue.

In considering the question of the "sovereignty" of indigenous peoples within its territorial borders, the state takes various positions: the classic strategies include outright denial of indigenous rights; a theoretical

acceptance of indigenous rights combined with an assertion that these have been extinguished historically; and legal doctrines that transform indigenous rights from their autonomous nature to contingent rights, existing only within the framework of colonial law. Scholars have fully documented the manifestation of these strategies in the various policies implemented by settler states in the modern era: domestication, termination, assimilation.

With the minor concession that in both Canada and the United States the federal government itself has maintained and defended its powers over indigenous peoples vis-à-vis states and provinces, the potential for recognition of indigenous nationhood has gone unrealized. There has been a total theoretical exclusion and extinguishment of indigenous nationhood, leading to what a recent United Nations Human Rights Commission study labelled the unjust "domestication" of indigenous nationhood.

Indigenous peoples nonetheless struggled to achieve a degree of freedom and power within the intellectual and political environment created out of the colonial domestication project and settler state sovereignty. For generations, indigenous peoples fought to preserve the integrity of their nations and the independent bases of their existence. They were successful in countering the colonial project to the extent that they survived (a monumental human achievement given the intensive efforts of two modern industrial states to eradicate them). Yet by the late 1980s, the increasing erosion of tribal governing powers in the United States and failed attempts to enshrine a recognition of indigenous nationhood in the Canadian constitution made it clear that the governments of Canada and the United States were incapable of liberalizing their relationships with "the nations within".

## The new approach: deconstructing the architecture of colonial domination

As they regained their capacity to govern themselves and began to re-assert the earlier principles of the nation-to-nation relationship between indigenous peoples and states, indigenous people began to question seriously the viability of working within the system, of considering themselves "nations within". The questioning often came out of models - tribal and band councils dependent upon and administering federal funds, for example - that recognized indigenous sovereignty yet always subsumed it to that of the state. A new intellectual approach began to emerge in the critique of the fundamental pillars by which the United States and Canada claimed legal authority over indigenous peoples and lands. Reflecting critical trends in other academic disciplines, legal scholarship began the project of deconstructing the architecture of colonial domination.

Perhaps the two most important strategies to re-achieve a political plurality in the face of the dominance of state sovereignty have been woven together: On the one hand, the assertion of a prior and coexisting sovereignty and, on the other, the assertion of a right of self-determination for indigenous peoples in international law.

The most thorough and illuminating of the critical legal studies of the indigenous-state relationship is Robert Williams' *The American Indian in Western Legal Thought*. Its description of how law - embodying all of the racist assumptions of medieval Europe - has served as the European colonisers' most effective instrument of genocide destroys the arguments of those who would defend the justice of the colonial state. Williams shows how the deep roots of European belief in their own cultural and racial superiority underlie all discussions of the interaction between whites and indigenous peoples on the issue of sovereignty. After Williams' critique, any history of the concept of sovereignty in North America must trace the manipulation of the concept as it evolved to justify the elimination of indigenous peoples. By examining the deep history of European thought on indigenous peoples - what he calls the "discourse of conquest" - Williams showed how the entire discussion of sovereignty in North America represents the calculated triumph of illogic and interest over truth and justice.

After the end of the imperial era and the foundation of the North American states, in no instance did principles of law preclude the perpetration of injustice against indigenous peoples. In Canada, the rights of indigenous peoples were completely denied in the creation of the legal framework for the relationship. And the United States Supreme Court's definition of tribal sovereignty - made by Chief Justice John Marshall in a series of nineteenth-century decisions centered on *Johnson v. McIntosh* - merely gave legal sanction to the unilateral abrogation of treaties by the United States and denial of the natural law rights of indigenous peoples. As Williams argues:

*Johnson's acceptance of the Doctrine of Discovery into United States law preserved the legacy of 1000 years of European racism and colonialism directed against non-Western peoples (317).*

Recent assertions of prior and persistent indigenous power have come from two places: first, the intellectual and historical critiques of state legitimacy and, second, the revitalisation of indigenous communities. Using "remnant recognitions" in colonial law, Indian critics have sought to deconstruct the skewed legal and institutional frame and to focus directly on the relationship between indigenous peoples and state sovereignty.



Core to this effort is the theoretical attention given to the entire notion of sovereignty as the guiding principle of government in states. What the Canadian philosopher James Tully calls the “empire of uniformity” is a fact-obliterating mythology of European conquest and normality. Tully recognises the ways in which injustice toward indigenous peoples is deeply rooted in the basic injustice of normalised power relations within the state itself. In his *Strange Multiplicity*, Tully considers the intellectual bases of dominance inherent in state structures, and he challenges us to reconceptualize the state and its relation with indigenous people in order to accommodate what he calls the three post-imperial values: consent, mutual recognition and cultural continuity.

Taiaiake Alfred, in his *Peace, Power, Righteousness*, has engaged this challenge from within an indigenous intellectual framework. Alfred’s “manifesto” calls for a profound reorientation of indigenous politics, and a recovery of indigenous political traditions in contemporary society. Attacking both the foundations of the state’s claim to authority over indigenous peoples and the process of cooptation that has drawn indigenous leaders into a position of dependency on and cooperation with unjust state structures, Alfred’s work reflects a basic sentiment within many indigenous communities: “sovereignty” is inappropriate as a political objective for indigenous peoples.

David Wilkins’ *American Indian Sovereignty and the United States Supreme Court* amply illustrates the futility and frustration of adopting sovereignty as a political objective. Wilkins traces the history of the development of a doctrine of Indian tribal sovereignty in the United States Supreme Court, demonstrating its inherent contradictions for Indian nationhood. From the central Marshall decisions in the mid-nineteenth century through contemporary jurisprudence, Wilkins reveals the fundamental weakness of a tribal sovereignty “protected” within the colonizer’s legal system.

Wilkins’ exhaustive and convincing work draws on post-modern and critical legal studies approaches to the law. Examining the negative findings of the Court, he deconstructs the façade of judicial objectivity, demonstrating that in defining sovereignty, the “justices of the Supreme Court, both individually and collectively have engaged in the manufacturing, redefining, and burying of ‘principles’, ‘doctrines’, and legal ‘truths’ to excuse and legitimize constitutional, treaty, and civil rights violations of tribal nations” (297). In the United States, the common law provides for recognition of the inherent sovereignty of indigenous peoples but simultaneously allows for its limitation by the United States Congress. The logic of colonisation is clearly evident in the creation of “domestic dependent nation” status, which supposedly accommodates the historical fact of coexisting sovereignties but does no more than slightly limit the hypocrisy. It accepts the premise of indigenous rights while at the

same time legalising their unjust limitation and potential extinguishment by the state.

## Rejecting sovereignty - regaining nationhood

Scholars and indigenous leaders, in confronting the ignorance of the original principles in politics today and in the processes that have been established to negotiate a movement away from the colonial past, have usually accepted the framework and goal of “sovereignty” as core to the indigenous political movement. New institutions are constructed in communities to assert indigenous rights within a “tribal sovereignty” framework. And many people have reconciled themselves to the belief that we are making steady progress toward the resolution of injustices stemming from colonisation. It may take more energy, or more money than is currently being devoted to the process of decolonisation but the issue is always framed within existing structural and legal parameters.

But few people have questioned how a European term and idea - sovereignty is certainly not Sioux, Salish or Iroquoian in origin - came to be so embedded and important to cultures that had their own systems of government long before the term sovereignty was invented in Europe. Fewer still have questioned the implications of adopting the European notion of power and governance and using it to structure the post-colonial systems that are being negotiated and implemented within indigenous communities today.

These are exactly the questions that have become central to current analyses of power within indigenous communities. Using the sovereignty paradigm, indigenous people have made significant legal and political gains toward reconstructing the autonomous aspects of their individual, collective and social identities. The positive effect of the sovereignty movement in terms of mental, physical, and emotional health cannot be denied or understated. Yet this does not seem to be enough: the seriousness of the social ills, which do continue, suggests that an externally focused assertion of sovereign power vis-à-vis the state is neither complete nor in and of itself a solution. Indigenous leaders engaging themselves and their communities in arguments framed within a liberal paradigm have not been able to protect the integrity of their nations. “Aboriginal rights” and “tribal sovereignty” are in fact the benefits accrued by indigenous peoples who have agreed to abandon autonomy to enter the state’s legal and political framework.

Yet indigenous people have successfully engaged western society in the first stages of a movement to restore their autonomous power and cultural integrity in the area of governance. The movement - referred to in terms of “aboriginal self-government”, “indigenous self-determination”, or “Native sovereignty” - is founded on an ideology of indigenous nationalism and a rejection of

the models of government rooted in European cultural values. It is an uneven process of re-instituting systems that promote the goals and reinforce the values of indigenous cultures, against the constant effort of the Canadian and United States governments to maintain the systems of dominance imposed on indigenous communities during the last century. Many communities have almost disentangled themselves from paternalistic state controls in administering institutions within jurisdictions that are important to them. Many more are currently engaged in substantial negotiations over land and governance, hoped and believed to lead to significantly greater control over their own lives and futures.

The intellectuals' rejection of the cooptation of indigenous nationhood and the creation of assimilative definitions of "sovereignty" in Canada and the United States followed years of activism among indigenous peoples on the ground. That activism was the direct result of the retraditionalization of segments of the population within indigenous communities - rejection of the legitimacy of the state and recovery of the traditional bases of indigenous political society. In Canada, the movement has taken the form of a struggle for revision of the constitutional status of indigenous nations, focused on forcing the state to break from its imperial position and recognize and accommodate the notion of an inherent authority in indigenous nations. In the United States, where a theoretical, redefined and arbitrarily limited form of "sovereign" authority still resides with Indian tribes, the movement has focused on defending and expanding the political and economic implications of that theoretical right. In comparison, the struggles can be seen as philosophical *vis-à-vis* Canada and material *vis-à-vis* the United States.

There has been a much more substantive and challenging debate in Canada (linked to the struggles of indigenous peoples confronting the Commonwealth legal tradition in Australia and New Zealand) where actual political and legal stature is being contested, as opposed to the United States where indigenous peoples tend to rely implicitly upon the existing legal framework. In Canada, more than any other country, indigenous peoples have sought to transcend the colonial myths and restore the original relationships. It is this effort to transcend the colonial mentality and move the society beyond the structures of dominance forming the contemporary political reality that will drive future activism and scholarship on the question of indigenous peoples' political rights and status in relation to states.

In spite of this progress - or perhaps because of it - people in many Native communities are beginning to look beyond the present, envisioning a post-colonial future negotiated at various levels. There are serious problems with that future in the minds of many people who remain committed to systems of government that complement and sustain indigenous cultures. The core problem for both activists and scholars revolves around

the fact that the colonial system itself has become embedded within indigenous societies. Indigenous community life today may be seen as framed by two fundamentally opposed value systems, one forming the undercurrent of social and cultural relations, the other structuring politics. This disunity is the fundamental condition of the alienation and political fatigue that plagues indigenous communities. A perspective that does not see the ongoing crisis fuelled by continuing efforts to keep indigenous people focused on a quest for power within a paradigm bounded by the vocabulary, logic and institutions of "sovereignty" will be blind to the reality of a persistent intent to maintain the colonial oppression of indigenous nations. The next phase of scholarship and activism, then, will need to transcend the mentality that supports the colonisation of indigenous nations, beginning with the rejection of the term and notion of indigenous "sovereignty".

### **A post-sovereign future?**

Most of the attention and energy thus far has been directed at the process of de-colonisation—the mechanics of escaping from direct state control and the legal and political struggle to gain recognition of an indigenous governing authority. There has been a fundamental ignorance of the end values of the struggle. What will an indigenous government be like after self-government is achieved? Few people imagine that it will be an exact replica of the pre-colonial system that governed communities in the past. Most acknowledge that all indigenous structures will adapt to modern methods in terms of administrative technique and technology. There is a political universe of possibility when it comes to the embodiment of core values in the new systems.

The great hope is that the government systems being set up to replace colonial control in indigenous communities will embody the underlying cultural values of those communities. The great fear is that the post-colonial governments being designed today will be simple replicas of non-indigenous systems for smaller and racially-defined constituencies; oppression becoming self-inflicted and more intense for its localisation, thereby perpetuating the two value systems at the base of the problem.

One of the main obstacles to achieving peaceful coexistence is of course the uncritical acceptance of the classic notion of "sovereignty" as the framework for discussions of political relations between peoples. The discourse of sovereignty has effectively stilled any potential resolution of the issue that respects indigenous values and perspectives. Even "traditional" indigenous nationhood is commonly defined relationally, in contrast to the dominant formulation of the state: there is no absolute authority, no coercive enforcement of decisions, no hierarchy, and no separate ruling entity.

In his work on indigenous sovereignty in the United States, Vine Deloria, Jr. has pointed out the distinction between indigenous concepts of nationhood and those of state-based sovereignty. Deloria sees nationhood as distinct from “self-government” (or the “domestic dependent nation” status accorded indigenous peoples by the United States). The right of “self-determination,” unbounded by state law, is a concept appropriate to nations. Delegated forms of authority, like “self-government” within the context of state sovereignty, are concepts appropriate to what we may call “minority peoples” or other ethnically-defined groups within the polity as a whole. In response to the question of whether or not the development of “self-government” and other state-delegated forms of authority as institutions in indigenous communities was wrong, Deloria answers that it is not wrong, but simply inadequate. Delegated forms do not address the spiritual basis of indigenous societies:

*Self-government is not an Indian idea. It originates in the minds of non-Indians who have reduced the traditional ways to dust, or believe they have, and now wish to give, as a gift, a limited measure of local control and responsibility. Self-government is an exceedingly useful concept for Indians to use when dealing with the larger government because it provides a context within which negotiations can take place. Since it will never supplant the intangible, spiritual, and emotional aspirations of American Indians, it cannot be regarded as the final solution to Indian problems. (Deloria, 1984: 15)*

The challenge for indigenous peoples in building appropriate post-colonial governing systems is to disconnect the notion of sovereignty from its western, legal roots and to transform it. It is all too often taken for granted that what indigenous peoples are seeking in recognition of their nationhood is, at its core, the same as that which countries like Canada and the United States now possess. In fact, most of the current generation of indigenous politicians see politics as a zero-sum contest for power in the same way that non-indigenous politicians do. Rather than a value rooted in a traditional indigenous philosophy, indigenous politicians regard the nationhood discourse as a lever to gain bargaining position. For the politician, there is a dichotomy between philosophical principle and politics. The assertion of a sovereign right for indigenous peoples is not really believed, and becomes a transparent bargaining ploy and a lever for concessions within the established constitutional framework. Until “sovereignty” as a concept shifts from the dominant “state sovereignty” construct and comes to reflect more of the sense embodied in western notions, such as personal sovereignty or popular sovereignty, it will remain problematic if integrated within indigenous political struggles.

One of the major problems in the indigenous sovereignty movement is that its leaders must qualify and

rationalise their goals by modifying the sovereignty concept. Sovereignty itself implies a set of values and objectives that put it in direct opposition to the values and objectives found in most traditional indigenous philosophies. Non-indigenous politicians recognise the inherent weakness of a position that asserts a sovereign right for peoples who do not have the cultural frame and institutional capacity to defend or sustain it. The problem for the indigenous sovereignty movement is that the initial act of asserting a sovereign right for indigenous peoples has structured the politics of decolonisation since, and the state has used the theoretical inconsistencies in the position to its own advantage.

In this context, for example, the resolution of “land claims” (addressing the legal inconsistency of Crown or state title on indigenous lands) is generally seen as a mark of progress by progressive non-indigenous people. But it seems that without a fundamental questioning of the assumptions that underlie the state’s approach to power, the bad assumptions of colonialism will continue to structure the relationship. Progress toward achieving justice from an indigenous perspective made within this frame will be marginal and, indeed, it has become evident that it will be tolerated by the state only to the extent that it serves, or at least does not oppose, the alter indigenously defined interests of the state itself.

In Canada - to note a second example - recognition of the concept of “aboriginal rights” by the high court is seen by many to be such a landmark of progress. Yet those who think more deeply recognize the basic reality that even with a legal recognition of collective rights to certain subsistence activities within certain territories, indigenous people are still subject to the state’s controlling mechanisms in the exercise of these inherent freedoms and powers. They must conform to state-derived criteria and represent ascribed or negotiated identities in order to access these legal rights. Not throwing indigenous people in jail for fishing is certainly a mark of progress, given Canada’s shameful history. But to what extent does that state-regulated “right” to fish represent justice when you consider that indigenous people have been fishing on their rivers and seas since time began?

There are inherent constraints to the exercise of indigenous governmental authority built into the notion of indigenous sovereignty, and these constraints derive from the myth of conquest that is the foundation of mainstream perspectives on indigenous-white relations in North America. The maintenance of state dominance over indigenous peoples rests on the preservation of the myth of conquest, and the “noble but doomed” defeated nation status ascribed to indigenous peoples in the state sovereignty discourse. Framing indigenous people in the past allows the state to maintain its own legitimacy by disallowing the fact of indigenous peo-

ples' nationhood to intrude upon its own mythology. It has become clear that indigenous people imperil themselves by accepting formulations of nationhood that prevent them from transcending the past. One of the fundamental injustices of the colonial state is that it relegates indigenous peoples' rights to the past, and constrains the development of indigenous societies by only allowing that activity which supports its own necessary illusion - that indigenous peoples do not today present a serious challenge to the legitimacy of the state.

Indigenous leaders have begun acting on their responsibility to expose the imperial pretence that supports the doctrine of state sovereignty and white society's dominion over indigenous nations and their lands. State sovereignty can only exist in the fabrication of a truth that excludes the indigenous voice. It is in fact anti-historic to claim that the state's legitimacy is based on the rule of law. From the indigenous perspective, there was no conquest and there is no moral justification for state sovereignty, only the gradual triumph of germs and numbers. The bare truth is that Canada and the United States "conquered" only because indigenous peoples were overwhelmed by imported European diseases, and were unable to prevent the massive immigration of European, African, and Asian populations. Only recently, as indigenous people have learned to manipulate state institutions and have gained support from others oppressed by the state, has the state been forced to incorporate any inconsistencies.



*Kili Radio in South Dakota is one of the first independent radios run by Lakota, transmitting in both Lakota and English. Photo: Helena Nyberg*



*Royal Canadian Mounted Police stopping Lil'wat spiritual leaders on their way to sacred lands. Photo: Helena Nyberg*



*Oglala Lakota College is the first self-ruled native college in the US. Photo: Helena Nyberg*



Recognising the power of the indigenous challenge and unable to deny it a voice, the state's response has been to attempt to draw indigenous people closer. It has encouraged indigenous people to re-frame and moderate their nationhood demands, to accept the *fait accompli* of colonisation, to help create a marginal solution that does not challenge the fundamental imperial premise. By allowing indigenous peoples a small measure of self-administration, and by forgoing a small portion of the moneys derived from the exploitation of indigenous nations' lands, the state has created an incentive for integration into its own sovereignty framework. Those indigenous communities that cooperate are the beneficiaries of a patronising *faux* altruism. They are viewed sympathetically as the anachronistic remnants of nations, the descendants of once independent peoples who, by a combination of tenacity and luck, have managed to survive and must now be protected as minorities. By agreeing to live as artefacts, such co-opted communities guarantee themselves a mythological role, and thereby hope to secure a limited but perpetual set of rights.

## An indigenous alternative

Is there a Native philosophical alternative? And what might one achieve by standing up against the further entrenchment of institutions modelled on the state? Many traditionalists hope to preserve a set of values that challenges the destructive, homogenising force of western liberalism and materialism: they wish to preserve a regime that honours the autonomy of individual conscience, non-coercive forms of authority, and a deep respect and interconnection between human beings and the other elements of creation. The contrast between indigenous conceptions and dominant western constructions in this regard could not be more severe. In most traditional indigenous conceptions, nature and the natural order are the basic referents when thinking of power, justice, and social relations. Western conceptions, with their own particular philosophical distance from the natural world, have more often reflected different kinds of structures of coercion and social power.

Consider these different concepts of power as they affect one's perspective on the relationship between the people and the land, one of the basic elements of a political philosophy, be it indigenous nationhood, or state sovereignty. Indigenous philosophies are premised on the belief that the human relationship to the earth is primarily one of partnership. The land was created by a power outside human beings, and a just relationship to that power must respect the fact that human beings did not have a hand in making the earth, therefore they have no right to dispose of it as they see fit. Land is created by another power's order, therefore

possession by man is unnatural and unjust. The partnership principle, reflecting a spiritual connection with the land established by the Creator, gives human beings special responsibilities within the areas they occupy, linking them in a natural and sacred way to their territories.

The form of distributive or social justice promoted by the state through the current notion of economic development centres on the development of industry and enterprises to provide jobs for people and revenue for government institutions. Most often (and especially on indigenous lands) the industry and enterprises centre on natural resource extraction. Trees, rocks and fish become resources and commodities with a value calculated solely in monetary terms. Conventional economic development clearly lacks appreciation for the qualitative and spiritual connections that indigenous peoples have to what developers would call "resources".

Traditional frames of mind would seek a balanced perspective on using land in ways that respect the spiritual and cultural connections indigenous peoples have with their territories, combined with a commitment to managing the process respectfully, and to ensuring a benefit for the natural and indigenous occupants of the land. The primary goals of an indigenous economy are the sustainability of the earth and ensuring the health and well-being of the people. Any deviation from that principle—whether in qualitative terms or with reference to the intensity of activity on the land—should be seen as upsetting the ideal of balance that is at the heart of so many indigenous societies.

Unlike the earth, social and political institutions were created by men and women. In many indigenous traditions, the fact that social and political institutions were designed and chartered by human beings means that people have the power and responsibility to change them. Where the human-earth relationship is structured by the larger forces in nature outside of human prerogative for change, the human-institution relationship entails an active responsibility for human beings to use their own powers of creation to achieve balance and harmony. Governance structures and social institutions are designed to empower individuals and reinforce tradition to maintain the balance found in nature.

Sovereignty, then, is a social creation. It is not an objective or natural phenomenon but the result of choices made by men and women, indicative of a mindset located in, rather than a natural force creative of, a social and political order. The reification of sovereignty in politics today is the result of a triumph of a particular set of ideas over others - no more natural to the world than any other man-made object.

Indigenous perspectives offer alternatives, beginning with the restoration of a regime of respect. This ideal contrasts with the statist solution, still rooted in a classical notion of sovereignty that mandates a distribu-

tive re-arrangement but with a basic maintenance of the superior posture of the state. True indigenous formulations are non-intrusive and build frameworks of respectful coexistence by acknowledging the integrity and autonomy of the various constituent elements of the relationship. They go far beyond even the most liberal western conceptions of justice in promoting the achievement of peace because they explicitly allow for difference while mandating the construction of sound relationships among autonomously powered elements.

For people committed to transcending the imperialism of state sovereignty, the challenge is to de-think the concept of sovereignty and replace it with a notion of power that has at its root a more appropriate premise. And, as James Tully has pointed out, the imperial demand for conformity to a single language and way of knowing has, in any case, become obsolete and unachievable in the diverse (ethnic, linguistic, racial) social and political communities characteristic of modern states. Maintaining a political community on the premise of singularity is no more than intellectual imperialism. Justice demands a recognition (intellectual, legal, political) of the diversity of languages and knowledge that exists among people—indigenous peoples' ideas about relationships and power holding the same credence as those formerly constituting the singular reality of the state. Creating a legitimate post-colonial relationship involves abandoning notions of European cultural superiority and adopting a mutually respectful posture. It is no longer possible to maintain the legitimacy of the premise that there is only one right way to see and do things.

Indigenous voices have been consistent over centuries in demanding such recognition and respect. The speaker of the Rotinohshonni Grand Council, Deskaheh, for example, led a movement in the 1920s to have indigenous peoples respected by the members of the League of Nations. And more recently, indigenous leaders from around the world have had some success in undermining the intellectual supremacy of state sovereignty as the singular legitimate form of political organisation. Scholars of international law are now beginning to see the vast potential for peace represented in indigenous political philosophies. Attention focused on the principles of the Rotinohshonni *Kaienerekowa* (Great Law of Peace) in the international arena, for example, suggests the growing recognition of indigenous thought as a post-colonial alternative to the state sovereignty model. James Anaya, author of the most comprehensive and authoritative legal text on indigenous peoples in international law, writes:

*The Great Law of Peace promotes unity among individuals, families, clans, and nations while upholding the integrity of diverse identities and spheres of autonomy. Similar ideals have been expressed by leaders of other indigenous groups in contemporary appeals to interna-*

*tional bodies. Such conceptions outside the mold of classical Western liberalism would appear to provide a more appropriate foundation for understanding humanity... (Anaya, 1996: 79)*

But the state is not going to release its grip on power so easily. The traditional values of indigenous peoples constitute knowledge that directly threatens the monopoly on power currently enjoyed by the state. Struggle lies ahead. Yet there is real hope for moving beyond the intellectual violence of the state in a concept of legal pluralism emerging out of the critiques, and reflected in the limited recognition afforded indigenous conceptions in recent legal argumentation. In a basic sense, these shifts reflect what many indigenous people have been saying all along: respect for others is a necessary precondition to peace and justice.

Indigenous conceptions, and the politics that flow from them, maintain in a real way the distinction between various political communities and contain an imperative of respect that precludes the need for homogenisation. Most indigenous people respect others to the degree that they demonstrate respect. There is no need, as in the western tradition, to create a political or legal hegemony to guarantee respect. There is no imperial, totalising, or assimilative impulse. And that is the key difference: both philosophical systems can achieve peace; but for peace the European demands assimilation to a belief or a country, while the indigenous demands nothing except respect.

Within a nation, one might even rethink the need for formal boundaries and precedents that protect individuals from each other and from the group. A truly indigenous political system relies instead on the dominant intellectual motif of balance, with little or no tension in the relationship between the individual and the collective. Indigenous thought is often based on the notion that people, communities, and the other elements of creation co-exist as equals—human beings as either individuals or collectives do not have special priority in deciding the justice of a situation.

Consider the indigenous philosophical alternative to sovereignty in light of the effect sovereignty-based states, structures, and politics have had on North America since the coming of the Europeans. Within a few generations, Turtle Island has become a land devastated by environmental and social degradation. The land has been shamefully exploited, indigenous people have borne the worst of oppression in all its forms, and indigenous ideas have been denigrated. Recently, however, indigenous peoples have come to realise that the main obstacle to recovery from this near total dispossession – the restoration of peace and harmony in their communities and the creation of just relationships between their peoples and the earth – is the dominance of European-derived ideas such as sovereignty. In the past two or three generations, there has been movement for

*Lubicon children. Photo: Helena Nyberg*





*Alcatraz during take over of indians. Photo: Michelle Vignes*

the good in terms of rebuilding social cohesion, gaining economic self-sufficiency and empowering structures of self-government within indigenous communities.

There has also been a return to seeking guidance in traditional teachings, and a revitalisation of the traditions that sustained the great cultural achievement of respectful coexistence. People have begun to appreciate that wisdom, and much of the discourse on what constitutes justice and a proper relationship within indigenous communities today revolves around the struggle to promote the recovery of these values. Yet there has been very little movement towards an understanding or even appreciation of the indigenous tradition among non-indigenous people.

It is, in fact, one of the strongest themes within indigenous American cultures that the sickness manifest in the modern colonial state can be transformed into a framework for coexistence by understanding and respecting the traditional teachings. There is great wisdom coded in the languages and cultures of all indigenous peoples - this is knowledge that can provide answers to compelling questions if respected and rescued from its status as cultural artefact. There is also a great potential for resolving many of our seemingly intractable problems by bringing traditional ideas and values back to life. Before their near destruction by Europeans, many indigenous societies achieved sovereignty-free regimes of conscience and justice that allowed for the harmonious coexistence of humans and nature for hundreds of generations. As our world emerges into a post-imperial age, the philosophical and governmental alternative to sovereignty, and the central values contained within their traditional cultures, are the North American Indian's contribution to the reconstruction of a just and harmonious world.

## References

- Alfred, T.**: 1999 - *Peace, Power, Righteousness: an indigenous manifesto*. Toronto: Oxford University Press.
- Alfred, T.**: 1995 - *Heeding the Voices of Our Ancestors: Kahnawake Mohawk Politics and the Rise of indigenous Nationalism*. Toronto: Oxford University Press.
- Anaya, S.J.**: 1996 - *Indigenous Peoples in International Law*. New York: Oxford University Press.
- Asch, M., ed.**: 1997 - *Aboriginal Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference*. Vancouver: University of British Columbia Press.
- Barsh, R.L. & J.Y. Henderson**: 1980 - *The Road: Indian Tribes and Political Liberty*. Berkeley: University of California Press.
- Bartelson, J.**: 1995 - *A Genealogy of Sovereignty*. Cambridge: Cambridge University Press.
- Biersteker, J. & C. Weber, eds.**: 1996 - *State Sovereignty as a Social Construct*. Cambridge: Cambridge University Press.
- Clark, B.**: 1990 - *Indigenous Liberty, Crown Sovereignty: The Existing Aboriginal Right of Self-Government in Canada*. Montreal: McGill-Queen's University Press.
- Cornell, S.**: 1988 - *The Return of the Native: American Indian Political Resurgence*. New York: Oxford University Press.
- Deloria, V., Jr.**: 1970 - *We Talk, You Listen*. New York: Macmillan.

- Deloria, V. Jr.**: 1988 - *Custer Died For Your Sins: An Indian Manifesto*. Norman: University of Oklahoma Press, 1988.
- Deloria, V., Jr. & R.M. Lytle**: 1983 - *American Indians, American Justice*. Austin: University of Texas Press.
- Deloria, V., Jr. & R.M. Lytle**: 1984 - *The Nations Within: The Past and Future of American Indian Sovereignty*. Austin: University of Texas Press, 1984.
- Fleras A. and J.L. Elliott**: 1992 - *The 'Nations Within': Aboriginal-State Relations in Canada, the United States, and New Zealand*. Toronto: Oxford University Press, 1992.
- Foucault, M.**: 1980 - *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*, C. Gordon, ed. & trans. New York: Pantheon Books.
- Foucault, M.**: 1997 - *The Politics of Truth*. S. Lotringer, ed. New York: Semiotext(e).
- Lyons, O. et. al.**: 1992 - *Exiled In the Land of the Free: Democracy, Indian Nations, and the U.S. Constitution*. Santa Fe: Clear Light Publishers.
- Patton, P., ed.**: 2000 - *Political Theory and Indigenous Rights*. Cambridge: Cambridge University Press.
- Rotman, L.L.**: 1996 - *Parallel Paths: Fiduciary Doctrine and the Crown-indigenous Relationship in Canada*. Toronto: University of Toronto Press.
- Royal Commission on Aboriginal Peoples (Canada)**: 1996 - *Report*, 5 Vols. Ottawa: Canada Communication Group.
- Spinner, J.**: 1994 - *The Boundaries of Citizenship: Race, Ethnicity, and Nationality in the Liberal State*. Baltimore: John Hopkins University Press.
- Tully, J.**: 1995 - *Strange Multiplicity: Constitutionalism in an Age of Diversity*. Cambridge: Cambridge University Press.
- Wilkins, D.E.**: 1997 - *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice*. Austin: University of Texas Press.
- Wilkinson, C.F.**: 1987 - *American Indians, Time, and the Law: Indigenous Societies in a Modern Constitutional Democracy*. New Haven: Yale University Press.
- Williams, R.A. Jr.**: 1990 - *The American Indian in Western Legal Thought: The Discourse of Conquest*. New York: Oxford University Press.

*Dr. Taiiaki Alfred is a Kanienkehaka (Mohawk) from Kahnawake. He is the Director of the Indigenous Governance Program of the University of Victoria in Canada. This paper was delivered at the International Political Science Association Congress in Quebec City, Canada, August 2000. It has been published as "Sovereignty", in the Blackwell Companion to Native American History, P. Deloria and N. Salisbury, eds. (Blackwell, 2000).* □



# Landmark Victory for Indians in International Human Rights Case against Nicaragua

By the Indian Law Resource Center

The Mayagna Indian Community of Awas Tingni has won a major legal battle against the government of Nicaragua.

On Monday, September 17, 2001, the Inter-American Court of Human Rights released its decision declaring that Nicaragua violated the human rights of the Awas Tingni Community and ordered the government to recognize and protect the community's legal rights to its traditional lands, natural resources, and environment.

The Court's decision has far-reaching implications.

"It is precedent-setting internationally," said James Anaya, special counsel to the Indian Law Resource Center, which represents the Awas Tingni Community and which has taken a leading role in assisting the Inter-American Commission on Human Rights in prosecuting the case before the court. "Members of the community have fought for decades to protect their land and resources and against government neglect and encroachment by loggers," said Anaya. "This decision vindicates the rights they have struggled so long to protect."

There are many similar land and resource disputes across the Americas. This case is the first such dispute ever to be addressed by the Inter-American Court.

Under international law, governments must respect indigenous peoples' rights to their traditional land. But if a government does not demarcate indigenous peoples' land, their territorial rights remain uncertain.

The Nicaraguan government has "exploited that confusion in its own favor," said Anaya, also a Professor of Law at the University of Arizona. The government granted foreign companies licenses to log much of the tropical forest where the community resides. "But now the hemisphere's highest human rights court says that Nicaragua and other countries must protect indigenous rights."

Although the Nicaraguan Constitution nominally recognizes that indigenous communities have rights to their lands, the Nicaraguan government has not respected those rights.

With the help of the U.S.-based Indian Law Resource Center, the Awas Tingni Community fought for years in Nicaraguan courts to protect their lands and resources. But the Nicaraguan legal system failed to address the community's concerns. "We tried all the remedies

available in Nicaragua, including the Supreme Court," said Armstrong Wiggins of the Indian Law Resource Center in Washington, DC. "Meanwhile, the indigenous peoples' lands and resources remained unprotected."

Then, in 1995 the Indian Law Resource Center filed a petition before the Inter-American Commission on Human Rights against the government of Nicaragua on behalf of the Community of Awas Tingni. The commission is an independent body of the Organization of American States, which is located in Washington, DC. The petition denounced the Nicaraguan government's practice of granting logging licenses to foreign companies on indigenous communities' ancestral lands without consulting the communities. The commission found in favor of the community, but the government ignored the commission's requests for remedial action. In June of 1998, the commission brought the case before the Inter-American Court.

The Court applies and interprets human rights law that is binding on countries throughout the Americas.

In its decision, the Court stated that Nicaragua violated international human rights law by denying the community its rights to property, adequate judicial protection, and equal protection under the law. The court ruled that Nicaragua's legal protections for indigenous lands were "illusory and ineffective". It ordered the government to demarcate the traditional lands of the Awas Tingni Community and to establish new legal mechanisms to demarcate the traditional lands of all indigenous communities in Nicaragua. The court also ordered payment of \$50,000 in compensation to the Awas Tingni Community and \$30,000 for attorney fees and costs.

"With this decision, the struggle of a single indigenous community along the Atlantic Coast of Nicaragua has become a victory for all indigenous peoples of the Americas. This ruling requires every country in the Americas to rethink the way it deals with indigenous peoples within its borders," said Armstrong Wiggins.

*Press release of September 18, 2001 issued by the Indian Law Resource Center. For further information see: [www.indianlaw.org](http://www.indianlaw.org)*



# Self-Government in Greenland

By Jens Dahl





In late 1999, the Greenland Home Rule government announced the appointment of a self-government commission. The mere establishment of this commission is a strong indication of Greenland's wish to re-evaluate its relationship with Denmark in order to become more independent than the existing Home Rule structure allows.

When Home Rule was introduced in 1979, few people anticipated that Greenland would, in many respects, develop a *de facto* self-governing system of government in such a short time. However, responsibilities were swiftly assumed from the Danish authorities and, within a few years, Greenland had established its own parliamentary system. This system has a functioning administration which, in many respects, has the character of a mini-state. However, gradually, the establishment of this mini-state revealed the limitations of authority of the Greenland Parliament and government to take autonomous decisions without getting permission from the Danish authorities. The existing Home Rule type of autonomy is therefore seen by many as an obstacle to the further development of the present system in accordance with their aspirations<sup>1</sup>. Many Greenlanders have reflected upon the desire for changes to the constitutional system. As expressed by one of the members of the Greenland government: "The intentions in the Home Rule Act 20 years ago have, by and large, been fulfilled. It is from this understanding that we talk about a change or reform of Greenland's provisional status [Home Rule] within the Kingdom of Denmark .."<sup>2</sup>

Matters of special concern are defence, security and foreign relations. In particular, the focus has been on the continued existence of a US military base at Thule in northernmost Greenland. Closely associated with the presence of the base are three issues. First of all, the forced relocation of the Inughuit people of northernmost Greenland when the base was established in the early 1950s. This problem has been dealt with in several court cases. Secondly, there was the misinformation of the public and of the Greenlandic authorities on the part of Danish governments with regard to the presence of nuclear weapons in Thule, which has given rise to much anger in Greenland. Finally, the prospect of a possible placement of NMD (National Missile Defence) facilities by the US has created tension between the Greenlandic and the Danish governments.

These and other issues demonstrate that the Home Rule authorities must have a new role in foreign affairs if Greenland is to achieve its aspirations in economic and political matters<sup>3</sup>. Although international relations is a matter of national concern, the Home Rule government has been able to negotiate directly with foreign partners on a number of occasions; but only with the prior authorisation of the Danish (national) Government. In other cases, Greenland has its own representative within the Danish (national) delegation. Furthermore, under cover of the Danish embassies, Greenland has its own representation in Brussels (EU) and in Canada. The nature of Greenland's right of self-determination and the nature of its autonomy becomes even more complex when one considers that Denmark has

accepted the fact that Greenland voted itself out of the EU in 1982 as an independent part of the Danish realm and also that Greenland has its own delegations in Nordic cooperation. There is, indeed, a discrepancy between Greenland's political aspirations to enhance its autonomy, on the one hand, and the actual tools available in the Home Rule arrangement, on the other. This was the primary moving force behind the creation of the Self-Government Commission.

Some background information may aid an understanding of the scope and the perspectives for the work of the Commission on Self-Government.

## General

More than 3,000 km from Denmark, Greenland is considered to be the largest island in the world. However, the whole of its interior is covered by a huge ice cap and only the coastal zone is free of ice. The long winters and cold summers do not allow much vegetation and only in the southern part of the country do we find some petty farming. Even the sea is frozen for some months of the year and the only practical way to enter the island is by air. The life of the Greenlanders is oriented towards the sea, with industrialised fishing and hunting of sea mammals being the mainstay of the economy.

Greenland's 56,000 inhabitants live in more than 80 towns and settlements but 50% live in the three major towns of Nuuk, Sisimiut and Ilulissat. About 12 percent of the total population are ethnic Danes while 88 percent are ethnic Greenlanders (Inuit)<sup>4</sup>. An estimated 10-12,000 Greenlanders live in Denmark, either permanently or as students in higher education.

## History

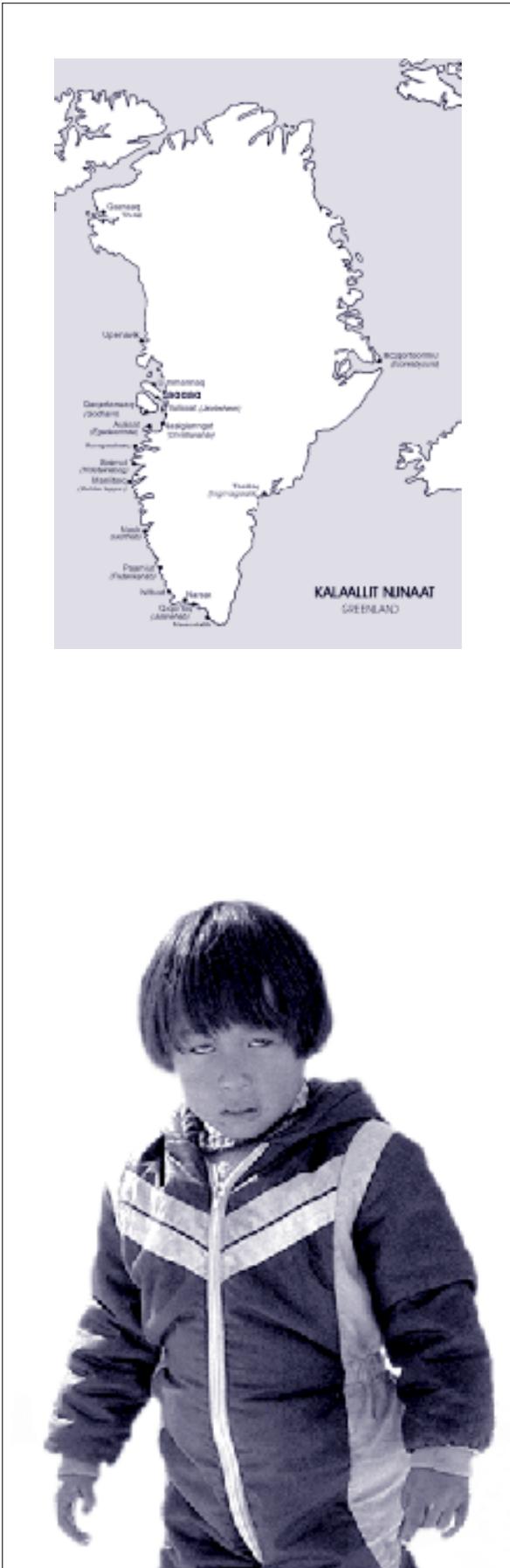
The Danish-Norwegian missionary, Hans Egede, established the first lasting colonial settlement in Greenland in 1721 and, during that century, a number of colonial settlements were established along the West Coast of Greenland. The Danish colonists were traders and missionaries and their number never became more than a small minority. Heavy investment programmes in the fishing industry and housing during the 1950s and 1960s had the demographic implication of causing the presence of Danes to reach about 20 per cent of the total population by the 1970s. Today the figure has fallen to about 12 per cent.

Greenland has a long tradition of political decolonisation. The first advisory councils were set up in the middle of the 19<sup>th</sup> Century and a number of reforms were initiated that gradually increased the involvement of Greenlanders in local and regional bodies. The colonial authorities instigated most of these reforms but, in the 1970s, the initiative was turned around and from then on the lead was in the hand of the Greenlanders.

This followed significant changes in the attitude of the Greenlanders towards the Danish presence in Greenland, and the relationship to Denmark was questioned by stressing cultural affiliation to other Inuit societies, specifically in today's Canada. At the same time, the close relationship to Denmark became more apparent.

Greenland achieved Home Rule within the realm of Denmark in 1979, following four years of negotiations. Basically, Home Rule implies that all internal political matters are decided upon by a Greenlandic parliament and a government, elected by all permanent inhabitants irrespective of their ethnic affiliation. Greenland is thus governed by a public government. The operations of the parliament and the government are, however, restricted by a number of factors. One of the most important is the economy, where about 60 per cent of all public expenditure comes from block grants from Denmark and 40 per cent from locally-raised taxes. In practice, this implies a degree of dependency on the Danish government, a dependency that is considered by many to be a legacy of colonialism. However, more important is that all major sectors of the economy outside fishing and hunting proper rely upon the recruitment of personnel from Denmark. Many teachers are non-Greenlandic-speaking Danes, the administration is often dominated by Danish people and traditions, and most doctors, engineers, lawyers, etc. come from Denmark. For more than 20 years, Greenland has tried to deal with the paradox that the more independent the country wants to be (taking over areas of responsibility from Danish authorities) the more dependent it becomes on experts from Denmark and, subsequently, on Danish ways of thinking.

Greenland is, in many respects, a modern welfare society based upon a European model that is without cultural or economic foundation in Greenlandic society. (The Greenlanders preferred a quick handover instead of slow development along the lines of the colonial history. This is also an important break with earlier history). This has resulted in a number of dilemmas that are now facing the Greenlandic politicians, and to which we will return when we look into two other matters of great significance to our understanding of the scope of the work of the Self-Government Commission. One of these relates to areas that were never transferred to Home Rule authority, including defence and foreign relations. The other is subsurface resources, which are under common Danish-Greenlandic decision-making; although potentially an explosive issue it has not developed into a conflict area to the extent feared when Home Rule was established. Other areas that remain under Danish supremacy seem not to have impacted upon the current process to the extent that defence and foreign relations have.



## The Commission on Self-Government

The Commission was established by the Greenland Government in 1999 and its members are all prominent Greenlandic politicians. The Commission's task "is to prepare a report on the possibilities for expanding Greenland's autonomy within the Danish Commonwealth based on the principle of conformity between rights and responsibilities"<sup>5</sup>. The main responsibilities of the Commission are to "explore the possibilities for expanding Greenland's authority, role and ability to act in the foreign and security policy areas", to "consider possibilities for the transfer to Greenland in whole or part of the judicial system in Greenland", to "consider the need and feasibility of transferring other areas of responsibility to the Home Rule", and the Commission shall put forward proposals "for moving Greenland further in the direction of economic self-sufficiency"<sup>6</sup>.

The main focus of the Commission is exposed in the way it will reach to its conclusion. It will "consider Greenland's role in security policy from the standpoint of its geographical situation", "consider the need and potential for independent Greenlandic representation in international fora at which Greenlandic representatives currently form part of Danish government delegations" and "explore and assess possibilities for Greenlandic participation in assertion of sovereignty and fisheries inspection"<sup>7</sup>.

It is important to note that the mandate given to the Commission by the Home Rule Government is that of investigating Greenland's autonomy *within* the Danish Commonwealth (realm). The Commission will not investigate independence as an option. With regard to the 150<sup>th</sup> anniversary of the Danish constitution, the chairman of the Commission expressed his view on this issue: "A country like Greenland, with its geographical location and with such a small population base, will always be dependent on other countries. The question should rather be which dependency we wish to have"<sup>8</sup>. And he continued "For my part, I believe that Greenland can preserve its greatest possible relative independence as long as the country is in a community of the realm with a small, militarily weak nation like Denmark..."<sup>9</sup>. Whatever independence means for a population of 56,000 persons, and although it might be that there is no general wish in Greenland to become independent of Denmark, this does not disguise the fact that the Greenlanders aim to achieve the highest possible degree of self-determination. This is the really important point felt by all, whatever constitutional, financial or other arrangements are being negotiated by politicians and authorities in Greenland and Denmark.

It should not be forgotten that a vast number of relationships have developed that bind Denmark and Greenland together, ranging from family ties and personal relationships to practical (i.e. economic, educational, health and other matters) and political matters.

*“Even though Denmark and Greenland have two widely differing backgrounds, the fact cannot be avoided that the two countries have shared a kind of destiny for more than 275 years. Especially the social development in Greenland over the last 40 years should be mentioned, where dealings between Denmark and Greenland have experienced a different intensity compared with conditions in the colonial period.”<sup>10</sup>*

The Commission is expected to deliver its final report to the Greenland government in late 2002. To promote its work, the Commission established four working groups. One group will look into foreign relations and security; another group into economic and business issues; one group focuses upon constitutional and international laws; and finally human resources (labour market) is the responsibility of a separate group. Given that the educational system seems to be the most debated issue among the public and also that it is in what is often said to be a critical situation, it is surprising that it is not in itself being considered by any of the working groups. This can be seen as part of the above mentioned paradox, since the present system of self-government and the possible future political scenarios are highly dependent upon well-educated personnel.

In general, the work of the Commission as such has perhaps not been subject to as much public debate as expected or hoped by the commission members. For example, when the working group on foreign relations and security held a public meeting in Greenland’s second largest town, Sisimiut, only one person showed up, even though the meeting was held in Greenlandic. However, some of the controversial issues that are indirectly linked to the public view on autonomy and self-determination are constantly being scrutinized and dissected in the media, most often under the cover of use of the Danish or Greenlandic language. It is maybe characteristic that most public interest was shown when the Commission, at public meetings in Nuuk in February 2001, initiated a discussion on the use of the two languages, Danish and Greenlandic<sup>11</sup>. At the level of political decision-making, two trends have been noticed. One group of people are of the opinion that Home Rule in its current form should be revised and brought up-to-date, given the fact that no substantial changes have been made since its establishment more than 20 years ago, and another group advocate completely discarding the current model as outdated and discussing a completely new structural arrangement.

## **The political reality**

There is no simple answer to the question as to whether Home Rule in Greenland has been a success or not and there are – not surprisingly – various opinions about this in the country. There seems, however, to be a general agreement that changes are needed due to social, cultural and economic developments and proc-

esses that would have taken place with or without Home Rule.

In the 1970s, the quest for home rule was driven by a craving for a ‘Greenland on Greenlandic conditions’, in other words terminating Danish colonial hegemony and Danish ways of thinking in Greenland. The Home Rule Agreement as negotiated between Greenland and Denmark should be seen as a compromise between various wishes and diverging interests between Denmark and Greenland but also internally in the two countries. The latter is important in order to understand the situation today. The major advantage of the Home Rule Agreement was that it was endorsed by an overwhelming majority in both countries when it was adopted by the Danish Parliament and endorsed in a referendum held in Greenland. This should not be underestimated and when the Home Rule authorities acted swiftly to implement the agreement at a much quicker pace than anticipated, it was generally endorsed in both countries. One possible conclusion is that Home Rule has been an overwhelmingly successful achievement, politically. The Home Rule government has full responsibility for the educational system, economic policy is decided upon in Nuuk and so is language policy, social policy, wildlife management, cultural affairs, etc, and decisions are being taken in Nuuk. Home Rule has been a *political* success unmatched anywhere else in the world, to the extent that it sometimes seems as if it is drowning in its own success. The increase in political aspirations and the development of a modern welfare society have outgrown the possibilities embedded in the present political, administrative and economic system. This is important background to the establishment of the Commission on Self-Government, and in order to understand its social and political setting in Greenland we must look into some of the current issues.

## **Issues**

Over the past two to three years, the media in Greenland (TV, newspapers, radio) have given much coverage to two issues in particular: economic reform and the position of the Greenlandic Inuit language.

The language question appears time and again. It was the cause of a ruthless debate when a member of the parliament suggested that Greenlandic should be the only language spoken in that body. At that time, in early 2000, there was only one Danish and non-Greenlandic speaking member of the parliament (he has since left the country) but obviously the suggestion might have had a number of political ramifications and was not adopted. This question of the working language of the parliament has often merged with the much broader issue of the position and use of Danish in all corners of the society and many, primarily but not exclusively Danes, have taken this as a frontal attack against the Danish minority.

However, in this as in many other cases, decisions cannot be taken without asking the Danish authorities – a point of natural irritation among Greenlanders.

The language of the administration is often Danish due to the substantial number of people recruited in Denmark. It is often a focal point of criticism and frustrations that a criterion for getting a job is fluency in Danish but it is never a demand of Danish personnel that they get by in Greenlandic. It does not add to the integration of the Danish personnel when we also consider the high turnover rate among this group. To this should be added the cultural dominance that follows the preferential use of a certain language. To some, this has become a symbol of Home Rule failure to terminate Danish dominance and to implement the promised Greenlandisation.

The most heated and longstanding dispute, however, concerns the integrated primary schools. The first language of instruction is Greenlandic, which is not usually mastered by Danish children, who often only stay in Greenland for a limited number of years. The lack of a proper language policy only adds to the feeling of being unwanted in Greenland and it makes living and working difficult for some Danes. When administered in an inflexible manner, of which some municipalities are criticised, it only adds to the high turnover rate of Danish personnel.

The language debate reveals a number of dilemmas that all small-numbered indigenous groups might face during a self-determination process. It has always been a prominent goal of Home Rule Greenland to promote the indigenous Greenlandic language and, subsequently, way of thinking in all aspects of life. However, this easily collides with the need to increase the educational standard of all Greenlanders, a goal that can only be achieved through increased knowledge of foreign languages, in this case Danish, and by allowing students access to specialised education outside Greenland. This dilemma becomes even more acute because there are, specifically among the group of well-educated Greenlanders, a substantial number of persons that do not have a perfect grasp of Greenlandic. Although being a small minority they are in possession of much needed skills and in a stressful situation they might feel marginalized due to lack of language abilities. Whatever the reason may be, the fact is that many Greenlanders do not return home after having finished higher education in Denmark.

Another dilemma is structural as well as economic. In order to be able to govern society's development, the Home Rule authorities took control of vast sectors in a comparatively short period. This did not leave much time or room for developing procedures, structures and traditions alternative to those that had developed under Danish rule. The developmental level was based on economic transfers (block grants) from Denmark. This creates not only economic but also structural dependency (manpower, procedures) and not least a feeling of

psychological inferiority. This situation is only exacerbated by the need to abide by international standards and the wish to develop local procedures instead of relying on Danish models.

It is important to note that changing the legal relationship between Greenland and Denmark alone cannot solve such dilemmas. Changing the framework of self-government should enhance the abilities of Home Rule to strengthen its external negotiating positions (trade, multinational agreements, setting of standards, etc) and a restructuring of Greenland's national and international position is much needed and desired. Greenland is becoming increasingly dependent upon decisions taken in international fora (such as the EU) and there is an obvious need for Greenland to be able to directly participate in such settings as a negotiating partner. The Commission on Self-Government was established in order to improve the Greenland authorities' ability to govern their own country although dilemmas such as those mentioned above are only indirectly the product of such structural and legal arrangements.

The Commission on Self-Government will report on the possibilities for increased Greenlandic autonomy. Based upon the political, economic and social realities of life, the Commission is expected to draft a report that can be used to find new political solutions, but they are not expected to solve problems that are internal to everyday life in Greenland. This might be one factor explaining the fairly limited interest in its work in Greenland. However, the Commission may focus upon some of the dilemmas mentioned and thus further a discussion with regard to the interplay between political aims and means. In a way, this is not a specific Greenlandic discussion but something of concern to all indigenous peoples claiming the right of self-determination.

## Notes

- <sup>1</sup> *The Indigenous World* 1999-2000. IWGIA 2000.
- <sup>2</sup> Joseph Motzfeldt in *Atuagadliutit/Grønlandsposten* no. 18, 5 May 2000 (jd-transl.).
- <sup>3</sup> See *The Indigenous World* 1999-2000, 2000-2001.
- <sup>4</sup> *Statistisk Årbog: Grønland* 2000 [Statistical Yearbook 2000]. Grønlands Statistik [Statistics Greenland].
- <sup>5</sup> From the "Terms of reference for the Commission on Self-Government." [www.selvstyre.dk](http://www.selvstyre.dk)
- <sup>6</sup> *Ibid.*
- <sup>7</sup> *Ibid.*
- <sup>8</sup> Jacob Janussen "The Constitution 150 years: The Community of the Realm viewed from a Greenland aspect". 1999. [www.selvstyre.dk](http://www.selvstyre.dk)
- <sup>9</sup> *Ibid.*
- <sup>10</sup> *Ibid.*
- <sup>11</sup> The meetings are referred to in *Atuagadliutit/Grønlandsposten* no.12, 13 February 2001.

*Jens Dahl is an anthropologist and the director of IWGIA. He has taught Inuit Studies at the University of Copenhagen, Denmark.* □



Nunavut:

# The Still Small Voice of Indigenous Governance

By Peter Jull

## The setting

**N**unavut, 'our land' in the Inuit language, is 2,000,000 sq. km. of treeless tundra, coasts and islands occupying one-fifth of all Canada's land area. Approximately 29,000 people, 85% of them Inuit, make up the population. Most of the non-Inuit are short-term residents, e.g., teaching and technical staff. Caribou are important food in many areas, especially the south-west mainland where great herds migrate from south to north and back annually from their winter range. No less important is the land-fast sea ice on which Inuit hunt, travel and camp for much of the year, and the floe edge rich in food species. The seas of Nunavut include a large portion of Hudson Bay, together with many straits, gulfs, channels, and part of the north-west Atlantic. The Northwest Passage creates problems – the American navy abuses Canadian public opinion regularly by insisting on rights of passage for its ships, notably submerged nuclear submarines.

Canada 'discovered' Nunavut and other far northern regions and their peoples in the early 1950s (Robertson 2000) but, through the Cold War, 'two separate worlds' existed. One was a Northern or Arctic policy centred on future technology (especially the extraction and transport of natural resources), economics, international law, military systems and strategies, and Utopian fantasies. The other was the daily North of inadequate housing, alcohol problems, social welfare, racial discrimination and, later, indigenous self-government and land/sea rights movements – a North of angry and semi-literate Inuit youths in torn T-shirts. The end of the Cold War was a spring thaw in virtually all aspects of Arctic life.

Other divisions and distinctions were the split between 'native' and non-native in the Northwest Territories (NWT). Whether Inuit in Nunavut, or Dene or Métis in the Western NWT (i.e., the Mackenzie Valley with its great lakes and rivers), or the Inuvialuit Inuit of the Arctic coasts west of Nunavut, non-whites were second-class citizens in every sense but one: they had general hunting rights that were denied to others. As hunting peoples, this was no small item. Another split was world mining and hydrocarbon economics *vs.* subsistence hunting, gathering, and fishing. The furs traded by all indigenous peoples and seal-skins hunted by Inuit have been prey to world markets, too. Under-estimated until recently was a third surging Northern economy: services, notably in the public sector. Finally, there was the division between those who wished to *administer* the North in someone or other's best interests, and those who wished to *practise politics* to determine the Northern future.

Nunavut since the 1960s has been a world of modern villages, mostly of between a few hundred and 1500 people, yet no villages connected by road with anywhere else. They are supplied by sea in the brief weeks



Skimming a seal, Clyde River. Photo: Sandra Inuitiq

of late summer and rely on aircraft for urgent needs. All villages now have a small supermarket or two, and a snack bar or two. Modern suburban bungalows are surrounded by snow most of the year, and mud or rock in summer. Houses have a busy clutter of scooters and skidoos around them but tell-tale cultural items are animal skins stretched and drying, and the remains of land and sea mammals. There are modern well-equipped schools and offices, and art and craft co-operatives, as well as other co-operative work sites and government offices. The 'Mounties', i.e., the federal police, are present. A substantial nursing station or small hospital is where the real problems of the North become known but the nurses would be too discreet to speak, even if they were not working virtually 24 hours per day.

Before this recent modern Nunavut, there were seasonal gatherings around Anglican or Catholic missions, and the Hudson's Bay Company trading posts. Housing and schooling brought permanence to a seasonal hunting camp society, and brought in the contemporary world with a rush. There is a very long journey from the Nunavut of the 1920s described by Rasmussen (1927) to the late 1960s of Brody (1975) and to that now reflected weekly in *Nunatsiaq News*, surely the most responsible newspaper that any new self-governing jurisdiction could have.

## Building Nunavut

The national annual Inuit Tapirisat assembly of local, regional, and organisational representatives from across Inuit Canada, long the source and central clearing house of Inuit politics, approved and released a policy paper for Nunavut self-government at Igloolik in 1979. It called for an essentially familiar Canadian and Northern territorial model with a few special features to meet Inuit needs. The very small non-Inuit population in Nunavut and the familiarity of Inuit with Canadian meeting formats thanks to the co-operative movement and local councils allowed for such a conventional model. This approach was also strategic. Inuit had seen how Canadian governments and public whipped themselves into a hostile and shameful frenzy in 1975 over the newly named 'Dene Nation', formerly NWT Indian Brotherhood, and over Dene talk of 'nationhood', despite the Dene assembly's discussion being fully reported in *The Native Press*. The whole modern indigenous policy reform era in Canada has taken place against a background of public and official anxiety about the 'separatism' of ethno-cultural or regional groups, notably the Francophone province of Quebec, something which has made indigenous political achievements all the more remarkable.

Inuit wanted to avoid unnecessary conflict. As long as their basic needs were met for Inuit-run government and maximum control of land and sea territory, they

could be flexible about the details. One weak indigenous affairs minister attacked the Nunavut concept very publicly. However, Inuit generally presented their demands in a positive way and in non-threatening language. They would gently tell fretful parliamentarians and sceptics, 'We are trying to join Canada, not separate.' They were astute with national audiences and élites in explaining themselves. Finally they went on national television, sitting with Prime Minister and Premiers in televised multi-day national constitutional conferences along with Indian and Métis leaders. By turns articulate, witty, and charming, Inuit spokespersons like John Amagoalik (the recognised 'father of Nunavut'), Mark R. Gordon, Rosemarie Kuptana and Mary Simon made an impression. Prime Minister Trudeau had told Inuit leaders it was unnecessary to discuss Nunavut in such fora (because it was already being negotiated bilaterally by the Inuit and the Trudeau government), but others raised it and soon Trudeau himself was talking about it in such conferences. Premiers were as intrigued by positive and cooperative Inuit approaches as they were afraid of some of the angry rhetoric of indigenous leaders closer to home. Of course, these others had much more to be angry about but, being lesser-known, quieter, and second to national indigenous peoples was unquestionably a political resource for Inuit (as for Torres Strait Islanders in Australia).

There was excitement in Canada about 'patriation' of the Constitution in 1982, the televised committee hearings having encouraged public demands for rights recognition with indigenous peoples as prominent players. In the early months of 1982, too, an NWT plebiscite on Nunavut was held. With a low turnout in the Western NWT, where Dene and Métis communities supported Nunavut, and the massive 4-1 'yes' vote and high turnout in Nunavut, Inuit won the day. The federal governments had not wanted to recognise the vote but such a clear result could not be ignored. Now the creation of Nunavut became policy in Ottawa and Yellowknife. A Nunavut Constitutional Forum (NCF) of elected leaders from both the Legislative Assembly and the Inuit political organisations was set up. It hired full-time staff and was supported helpfully by the NWT government, rather less so by Ottawa (who nevertheless set up an office to keep an eye on it!). The operating principles of NCF were to show responsible stewardship of Arctic Canada; positive arguments only; ostentatious openness in consensus-building; passionate commitment to Canadian unity; and modest pride in conducting the first truly popular (i.e., 'of the people') constitution-making in Canada's European history. The Inuit and their friends showed that they were better Canadians than most, and were showing national leadership in citizenship. Not only would this disarm many non-indigenous fears but it would undermine the silent anxiety of many European-descended Canadians about handing over part of the country to an exotic or 'primi-

tive' people who might harbour dangerous or 'savage' ways.

NCF and the broader Nunavut group were a mixed team, both Inuit and non-Inuit. The Inuit were young, with at least some high school or higher education; non-Inuit were older and all had worked long with Inuit organisations or communities. There were lawyers and other skills. Three elements were crucial to success: the team was well-grounded in Inuit local opinion. It could also communicate effectively with both the Canadian public and government. And despite federal insistence that Nunavut claims and Nunavut government processes were separate, neither Inuit nor their white staff acknowledged such distinctions – the Nunavut team was one, even if dealing with two different tables. While Canadians were talking about a new constitutional culture, Inuit in Nunavut, then the least-educated regional population in Canada, were using modern communications to devise their constitution-in-progress. There were studies and discussion documents prepared, leading to the most important, *Building Nunavut*. One was on human rights in order to reassure whites. Two dealt with fiscal mechanisms and the division of constitutional powers between Canadian governments. There was an elegant argument for Inuit official language rights. One small item was instructive. A preamble to a Nunavut constitution, despite the likelihood that Department of Justice lawyers would sniff at anything they had not devised, could be printed and dis-

tributed widely for public relations, to help focus attention outside Nunavut and pride within it. The Inuk head of the Inuit language association was recruited. She consulted Inuit elders, looked at preambles of various types around the world, and presented a neat draft preamble. There was uproar. Everyone around NCF seemed upset. Despite prior approval of the idea, there had been no discussion of expectations. Everyone had different ideas for a preamble's style, purpose, and tone. The draft was set aside. On the other hand, a draft 'history' of Nunavut red by NCF members as their plane flew to Tuktoyaktuk in January 1983 resulted in no word of advice – although much political and diplomatic energy of members went into deciding which photos should illustrate the book. Later, another mess saw a poster illustrating Nunavut history in the hands of a new printer. Eager to please, he filled in the multi-period historical scene with extra Vikings! And only intuition and a phone call from the airport prevented the dreaded sea goddess, Takannaaluk, from being portrayed as a long-haired blonde bombshell.

The critical point was tabling *Building Nunavut: A working document with a proposal for an Arctic Constitution* in the NWT legislature on May 17, 1983. A fine 4-language printed version was taken around to all communities for discussion, eliciting many views. One hunter in Coral Harbour wanted a guaranteed right to hunt one bowhead whale as the price for supporting Nunavut, while another community wanted a constitutional right



to visit family in hospital. Hospital separations, like residential school experiences, are the most bitter of Inuit grievances with the white man's rule. Many people in the communities wanted maximum Inuit control and protection of the marine environment and marine mammals, while the other overwhelming issue was worry about lack of training of Inuit to run the new government.

## Crucial innovations

Inuit were not only negotiating land and sea claims, a political identity and self-government for their huge region but they were also negotiating national indigenous policy, in effect, with the Government of Canada. Their persistence and frequent mulishness resulted in Canada adopting various new policies, as well as politico-administrative concepts and structures. There was no adequate or relevant government policy in place, so governments had the uncomfortable experience of 'learning on the job' and having many pompous assumptions challenged and overturned. These various breakthroughs now benefit all other indigenous groups who negotiate claims and, in some cases, have much wider application. The master concept for an indigenous policy for Canada contained in the report of the Royal Commission on Aboriginal Peoples (1996) is essentially an extrapolation of the success stories of Nunavut and other Northern claims to proposals for locking an overall constitutional framework in place.

Two critical battles won were the Inuit demand that marine areas be included in 'land' claims and fall under Inuit management rights (yielded by Ottawa after a federal task force report on that and other issues in 1985) and Inuit insistence that management boards (see next paragraph) have *decision-making*, and not merely advisory, power. The claims settlement, like other Northern agreements, provides for mostly local decision-making and control of lands within the broader Nunavut-wide framework. The full agreement is on the Internet.

The agreement's main feature is widely misunderstood outside Nunavut. Although there are land selections for exclusive permanent Inuit ownership – including many chosen for their mineral potential – it is the power to manage the entire territory along with Ottawa's environmental experts and make the decisions with only very narrow scope for federal cabinet interference under very special circumstances that is the key innovation. Inuit saw that they could gain the *de facto* power to manage what went on in their vast territory by apparently yielding on some points in law. Unlike some other groups, Inuit have turned their backs on the language of full ownership and sovereignty, and have gained the benefits of ownership and sovereign political jurisdiction.

## Three contexts

Three background contexts were relevant. First, post-war anti-racism feeling in Canada and support for United Nations ideals – the sense of breaking with an old world of ultra-nationalism and racist or cultural triumphalism. This was evident as Canadians watched the end of the British Empire when country after country was handed over to its non-European population. This was followed by the American civil rights movement, and racial violence and social disparity in American cities shocked Canadians. Canadians at home, having survived Depression and War, were humiliated that indigenous non-European peoples in Canada should live segregated by race and poverty amid white affluence. National intentions were assimilation – pumping in funds and schools and clinics and housing to brown-skinned communities – until Northern peoples first and southern ones later showed that this was not the answer. The Alaska indigenous claims settlement of 1971, with its apparently huge compensation pay out, transfer of millions of acres of land, and creation of strong and funded regional corporations with governmental powers for Inuit, Dene, and Aleut, weakened Canadian resistance. Later, Greenland's home rule provided more inspiration for many.

A second less tangible context was a growing anxiety in Canadian society. Among Francophones this was often a desire to break up the Anglophone-dominated federation and set up a new country, together with a rush to education, urbanisation and secularism from church-dominated old Quebec. Among Anglophones, a breakdown of faith in post-war materialism, its damaging social and environmental effects, and the lack of a clear or 'Canadian' alternative to failing American industrial society, so long admired, demanded new answers. The discovery of another kind of wisdom, culture, environmental know-how, humour, and inclusive social ethics among the abused and despised 'natives' all around us, not to mention distinctive art forms from Inuit carvings and graphics to Iroquois and Pacific coast masks, made national indigenous rebirth a vicarious national awakening. Many people recognised that Canada's white-indigenous history was being relived in the North – whites searching for saleable resources, settling, meeting opposition from tribal peoples, trying to survive hostile climate and isolation, while establishing organised societies and towns. Now the whites had a chance to 'do it right' and negotiate fair outcomes with indigenous peoples. Canadians could re-write history, and in the early 1980s they re-wrote the Constitution to prominently include Inuit, Indians, and Métis.

Third was the national search for new hydro-electric power (Canada's main energy source), pulp logs, minerals, and oil and gas across the country reaching north from the cities. This was confronted by new indigenous confidence, resulting in great environmental conflict.

These conflicts were not between idealistic urban youth and their fathers in company offices but poor, often desperate, indigenous villagers trying to catch enough fish and small game to live. Environmentalists joined later, but a wide gap opened in environmental politics across the mid-North and far North between indigenous peoples and white businessmen, the latter backed by provincial and territory governments eager for 'development'. The federal government was more complex – while resource industries usually won policy battles within officialdom, there was a strong 'conscience' faction concerned about indigenous well-being and saving Northern Canada from the past ravages of the South. However hypocritical, romantic, foolish, or misinformed they were, ordinary Canadians had a large emotional stake in the North, its peoples and polar bears. Inuit and other Northern peoples were seen increasingly as 'the good guys'.

Industry and politicians attempting to paint indigenous peoples as trouble-makers or dreamers met a growing public view that Inuit and other peoples stood for worthy things, the lost conscience of the country, brave in the face of tedious officials and greedy developers. Canadians allow romanticism towards the Northern *territories* which they deny the provincial northlands. Nonetheless, the Nunavut case was argued for decades before it succeeded.

## Implementation

From mid-1993 on, when the Nunavut land claims and new territory laws were passed by Canada's national government, the details, processes and politics of implementing the Nunavut arrangements became a story in themselves. Nunavut paid more attention to training and preparation than previous agreements. A major reason for this concern was the experience of other regions. In Northern Quebec, for example, Inuit had spent many years and all their claims body's annual income fighting with governments to carry out obligations agreed during the negotiations of the land claims agreement.

NTI, or Nunavut Tunngavik Inc., is the novel feature of the Nunavut constitution. As the Inuit 'birthright corporation', to which all Nunavut Inuit present and future belong, it safeguards and manages the Nunavut claims agreement, works with the Nunavut government to implement it, manages the huge compensation fund that was part of the settlement to generate employment and economic development for Inuit, and attends to the various Inuit-specific aspects of the claims settlement. This settlement went deep into political and administrative matters normally left to governments alone such that Nunavut is a truly dual government made up of the 'public' government of Nunavut open to all residents and the Inuit-only claims settlement. NTI

is the guarantor of the Inuit character of Nunavut but Premier Paul Okalik, a former claims negotiator himself, feels no less an Inuk for running what almost everyone regards as an Inuit government, and no less Inuk for working to reconcile the races and their creative energies in the new Nunavut. Indeed, Premier Okalik's speeches in August 2001 in Australia and his question-and-answer sessions had the feel of the inspired and expanded civility we have come to associate with leaders like Mandela and Gusmao.

Most pressing of implementation issues was preparing young Inuit to fill the jobs and take on the roles required of Inuit self-government. There were two basic concerns:

- that the severe under- and unemployment of the Inuit young would be addressed, and
- that Nunavut should not become another case, like the federal and NWT governments before it, of white outsiders shaking up an already badly shaken Inuit society.

Nunavut inherited the NWT government system, itself a system created by the national government and later by Inuit, Dene and Métis and white political leaders elected in the NWT to deal with indigenous communities scattered across a huge and difficult terrain. That system was far advanced compared with any other Canadian administration for indigenous peoples, and now Nunavut Inuit have set up special bodies to study its laws and practices in order to reform them to suit Inuit culture and Nunavut needs even better. The NWT system, for all its good intentions, made too many compromises with expediency, usually by copying some Southern Canada model in order to write new laws or set up new programs quickly. Too often, NWT ministers wanted their programs to be accepted as equal and worthy by the governments of Southern Canada instead of recognising that their first priority was to suit Northern cultures and conditions.

The NWT-Nunavut system differs in other ways from the usual Canadian provinces' government. It relies much more on government intervention and leadership in economic, social, and cultural matters. While NWT heads of government and ministers mouth the typical North American rugged enterprise talk, they have in fact run a total welfare state system with large sums of tax dollars generously provided by Canadian taxpayers through the federal government. (With federal cost-cutting, those days are now over such that Nunavut and the other Northern territories have real, urgent and deep needs which even some Right-wing Southern premiers acknowledge.) It was not possible to rely on private business to operate viably in the North, nor were indigenous peoples there familiar with the administrative or political cultures of Canada. So public administration has always had a leading role, rather

than simply acquiring local roles incrementally as local people did elsewhere in Canada. Furthermore, in the post-war era, governments had money and were prepared to spend it to overcome the more obvious Northern blights of Depression-style poverty and the racial attitudes associated with defeated wartime fascism. Nothing was simple, however. Ottawa wanted Inuit to be self-reliant, but also wanted to spend enough money and pay enough attention so that they would not suffer or starve like during the 1950s famines at Garry and Ennadai Lakes. Scattered hunting camps were rounded up and centralised into new villages at which typical Canadian-style housing, social programs, citizenship rituals and, eventually, community ice hockey were directed. A doll's house, indeed. It took rather longer – here, as in Greenland – for governments to see that such 'solutions' were generating new problems on a wide scale.

However, Inuit, like white officials, were convinced of the power of government, whether for good or ill. The Nunavut government has wide powers and programs in virtually every area of life. Running schools and developing school courses, local government, small business regulation, hunting and fishing livelihoods (shared with NTI and Ottawa), health, social programs, justice and much else come under the new government. Nunavut Inuit long ago mastered the arts of meeting and deliberation, without need of the white man, and

will now face the challenges of executive power in a modern setting. The federal government has not finalised the handover and revenue sharing of Northern lands and resources, long withheld to ensure that indigenous claims were not pre-empted by development-minded white-controlled governments, but the principles are clear enough and the timing right for these reforms now. Nunavut now has the means and expertise under Inuit control to shape, with the Canadian government, the big contextual issues of the future – sea management, resource extraction, and development transport and infrastructure. The Nunavut government and NTI have tremendous potential in power and funds to concert and coordinate their efforts to achieve almost anything. Alaska's North Slope Borough and Greenland's Home Rule government have already demonstrated the capacity and verve of strong Inuit government.

### **What has been learned?**

The Norwegian sailor, Leif Eriksen, concluded in AD 1000 that Nunavut was 'good for nothing'. Although Canadian governments in the 20<sup>th</sup> century have tried to think of some use, their ideas rarely went past extracting resources and an empty reference to 'Canada, an Arctic nation' in speeches for foreign audiences. In the last few decades of the millennium, however, Inuit have





Girls with ice creams in Pangnirtung, Nunavut. Photo: Jack Hicks

redefined Canada, the North, and the Arctic through their political energies and renewed stewardship of their traditional homelands.

Inuit, like other peoples (e.g., Torres Strait Islanders and Aborigines in Australia's north, centre, and west), view regional autonomy as both desirable in itself and necessary for participating equally in national society. This is not separatism. Many non-indigenous Canadians (and Australians) realise that their own nationhood cannot be authentic or even legitimate without political accommodation of – or *reconciliation* with– indigenous peoples. This is a sign of national maturity. There is an implicit exchange. The majority European culture converts garrison sovereignty into domesticated and recognised forms of organised society, while those recognised forms are based on the physical occupation, customary rights, and culture of ancient non-European inhabitants. Major Nunavut advice to other indigenous peoples may include:

- to make indigenous self-determination a 'good news story' for the general public, no less than a private indigenous project;
- to make the moral high ground of practical, even homely, concerns understandable and understandably fair to any outside observer;
- to have a clear and consistent storyline and presence for informed publics, media, and élites, and
- to place priority on gaining tangible power ahead of grand appearances or distant hopes.

The corollary is that while angry assemblies and clenched fist salutes are inevitable, they may be pre-political –

that is, one must move beyond them in order to achieve serious political goals, or leave them as noisy background on the street while leaders meet quietly indoors to negotiate substance.

Nunavut was fought for on many levels at once, notably:

- international articles and lectures;
- national constitutional and political reform processes (most obviously the First Ministers Conferences on the Constitution);
- national policy reform discussions (such as the Royal Commission on Canada's Future, Northern foreign policy discussions, the work of special inquiries on, e.g., visible minorities);
- Northern constitutional reform (generally quite separate from the national process, although Nunavut leaders brought both processes together at times);
- the work of the NWT legislature (where the Nunavut caucus was the principal NWT 'party' and used its power);
- regulatory board and environmental panel processes dealing with proposed mega-projects, this being *the principal forum* in which Inuit fought their long battle for land/sea rights and self-government (apart from direct high-level political negotiations on Nunavut itself);
- court cases (e.g., the Baker Lake land rights case);
- the animal rights, sealing, and whaling debates in Canada and internationally (remote indigenous livelihood *vs.* urban non-indigenous sentiment); and

- other opportunities suddenly available, such as American maritime intrusions into Canadian Arctic seas where Inuit could take a lead in outraged Canadian feelings (and give governments some environmental substance to that outrage).

In other words, Nunavut activists were not only highly visible but visibly responsible for the health and future of their Arctic region. Nunavut was a moral and political fact long before it was a practical jurisdictional one.

Now a new phase has opened. The old battles and landmarks are gone. New and greater responsibilities have changed Inuit public standards and ideas about personal conduct and public accountability. Some of the long-time notables and activists have not survived among a younger generation for whom early Nunavut movement ideals and heroes seem remote. Inuit are now debating social issues very publicly, and solving things in their own way – surely the whole point of creating Nunavut! The Nunavut young are Canadians in every sense and will demand the best that Canada can provide, but Canada does not know how to ‘fix’ Nunavut – that, after all, is what the Inuit political movement fought for the right to do itself.

## Reconciliation in practice

Nunavut exemplifies a form of racial and regional reconciliation underway across Canada and in various other countries:

1. Central political authority is rescuing deteriorating hinterland race relations and environment from settler bloody-mindedness to broker new politico-administrative arrangements.
2. Substantial indigenous-government co-management of environment, renewable resources, development planning, and territory being adopted pragmatically to accommodate traditional livelihoods and lifestyles alongside industrial world hunger for commodities and energy.
3. Formal recognition and support for indigenous cultural collectivities is being given in place of an ‘equality’ that is usually understood as uniformity.
4. National capitals are recognising that large territories with few people can no longer be deemed too poor to justify decent public services while their resources remain ‘too rich’ to benefit the locals.
5. The long-running failure of outsider-designed public services in areas like health, education, welfare, culture and community affairs is giving way to substantial indigenous operation and control, producing more accepted and appropriate outcomes.
6. Ways to compensate indigenous peoples for legal and physical dispossession are being found, e.g.,

transfer of some land and resource rights, resource revenue-sharing, capital funds, etc.

7. Regional agreements are being designed to accommodate existing non-indigenous communities and land ownership (although a feature little needed in Nunavut).
8. Hinterland settlers appealing to national majoritarian tradition to maintain dominance over indigenous peoples are being overruled and obliged to share power with them.
9. Government if not the general public is being shamed into treating indigenous fellow citizens as the political and socio-economic equals official rhetoric says they are.
10. Governments are dithering about how to square publicly the obvious moral imperatives of marginal peoples and regions with pretensions of national sovereign uniformity, but when they finally make adjustments they are finding the experience refreshing and worth boasting about abroad.

In practice the main items are a package, not separate items. Whether ethno-political mobilisation of contemporary sorts begins with housing discrimination or oil spills, the other demands come quickly into play. The package is finite and predictable, not whimsical, but if major elements are withheld by governments the fight continues.

It is worth stating that indigenous self-government such as Nunavut or any number of other models contributes to social peace, economic benefit and regional equity in any contemporary nation-state. This unexceptional realisation has been accepted by liberal, conservative, ultra conservative, labour, and other political parties in government around the ‘first world’, with debate having usually moved on to the practical details of implementing reform.

## Nunavut – a still small voice

Nunavut is important to indigenous peoples everywhere. Inuit hunter-gatherers living scattered over a vast, isolated and politically undefined region have created a strong modern government there with all the latest gadgets and fashions of contemporary ‘first world’ countries as the means to strengthen their traditional culture, solve recent social ills, protect the environment and vital resources, and decide their own future in their own language and in their own way. Despite the incredulity of many, including the world news media, since Nunavut’s launch in April 1999, the reality of many serious social problems at family and community levels, and the lack of a resource export or secondary economy, were actually reasons for Inuit wanting to establish their government as quickly as possible. Canada’s political principles of sharing financial resources

with 'have-not' regions and of rejecting 'user pay' notions for political rights meant that economic issues were not a major obstacle. Nevertheless, Inuit only succeeded because of a generation-long determination and patience in the face of changing governments and ministers, and a few all too unchanging officials, forever ready to forget or defeat Nunavut.

Former Inuit negotiator and first Nunavut premier, Paul Okalik, visited Australia and spoke at public fora in Sydney, Brisbane and Canberra during August 2001 as a contribution from the Canadian government to Australia's Federation year celebrations. For two months, Australia had been whipped into a frenzy by accusations and revelations of endemic violence against Aboriginal women so that even the usual unhelpful indigenous policy rhetoric of the federal government had been blown away by something unpredictable and wilder. Intelligent discussion and serious proposals seemed impossible, while the media and audible public had embarked on a shrill blaming of Aborigines for all their problems past and present. It was a rich demonstration of how liberal democracy without moral leadership quickly descends to frightening depths. Okalik's quiet charisma surprised many Australians used to decibels as the measure of politicians, but those who attended his talks were all the more impressed and inspired by his account of progress across a range of difficult social, cultural, and justice areas in the mere 28 months since the Nunavut government took office. This was particularly touching in Brisbane where he spoke of his own early problems and some bitter contacts with 'the law' before these provided motivation to turn his life around. He had become a lawyer and, now, as Premier and justice minister was implementing important justice reforms to reconcile Inuit and European systems to avoid similar pain for others. His presence and overall visit were truly 'a still small voice' amid the earthquake, wind and fire of public opinion gone mad.

The quiet hope, the negotiations between aggrieved indigenous people and reasonable governments, the long-term commitment to achieving solutions rather than the mere bombastic advantages of the moment, the vision of indigenous and non-indigenous people working harmoniously together now creating a new or renewed 'frontier' society, the practical programs and reforms now being put in place, and practical benefits beginning to appear were what Australians needed to hear. They also needed to believe in the possibility of such things amid the choreographed uproar of Australian policy since 1996.

*An earlier, longer, and somewhat different version of this paper, exhaustively referenced, is available from IWGIA or the author, Indigenous Autonomy in Nunavut, June 29, 1998, 30 pages.*

## References

The best recent Nunavut source is Dahl J, Hicks J & Jull P (eds), 2000: *Nunavut – Inuit regain control of their lands and their lives*, International Work Group for Indigenous Affairs, Copenhagen. See especially that book's central chapter by Hicks and White.

For Nunavut and Inuit politics in national Canadian and historical context see also Jull P, 2001: *"Nations with whom We are connected": Indigenous Peoples and Canada's Political System*, Discussion Paper, School of Political Science and International Studies, University of Queensland, Brisbane, March 31, 2001, 54 pages. (Revised and expanded version of paper with same title in *Challenging Politics: Indigenous Peoples' Experiences with Political Parties and Elections*, ed. Kathrin Wessendorf, International Work Group for Indigenous Affairs, Copenhagen, 2001, 192-244.)

The Nunavut government website also has news and documents, <http://www.gov.nu.ca/gnmain.htm>

Other materials include:

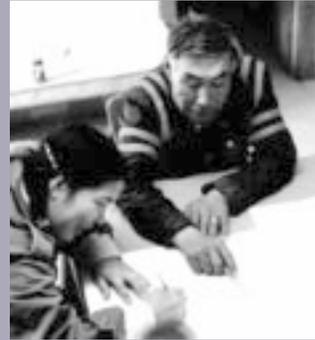
- Brody H:** 1975 - *The People's Land: Whites and the Eastern Arctic*, Penguin, Harmondsworth.
- Cameron K & White G:** 1995 - *Northern Governments in Transition: Political and Constitutional Development in the Yukon, Nunavut, and the Western Northwest Territories*, Institute for Research on Public Policy, Montreal.
- CARC:** 1984 - *National and Regional Interests in the North: Third National Workshop on People, Resources, and the Environment North of 60°*, [ed. D Leamann], Canadian Arctic Resources Committee, Ottawa. [Includes *Building Nunavut*.]
- Jull P:** 1992 - *An Aboriginal Northern Territory: Creating Canada's Nunavut*, Discussion Paper No. 9, Australian National University North Australia Research Unit, Darwin.
- Jull P:** 1999a. - 'New Deal for Canada's North', *North*, 1/1999, Vol. 10 (Stockholm), 5-10.
- Jull P:** 1999b. - 'Reconciliation & Northern Territories, Canadian-Style: The Nunavut Process and Product', *Indigenous Law Bulletin*, Vol. 4, No. 20, 4-7.
- Jull P:** 2000 - 'Indigenous "Self-Government" in Canada: The Bathurst Mandate', *Indigenous Law Bulletin*, Vol 4., No. 27, 14-18.
- Purich D:** 1992 - *The Inuit and Their Land: The Story of Nunavut*, Lorimer, Toronto.
- Rasmussen K:** 1927 - *Across Arctic America*, Putnam, New York.
- RCAP:** 1996 - *Restructuring the Relationship*, Volume 2 (published in two parts), Report of the Royal Commission on Aboriginal Peoples, Ottawa. [available online]
- Robertson RG:** 2000 - Chapters 6-9 [on Northern Canada], *Memoirs of a Very Civil Servant: Mackenzie King to Pierre Trudeau*, University of Toronto Press, Toronto, 107-208.
- Soublière M & Coleman G (eds):** 1999 - *Nunavut '99: Changing the Map of Canada*, Nortext Multimedia & Nunavut Tunngavik Inc., Iqaluit.  
Online: <http://www.nunavut.com/nunavut99/english/index.html>
- Tester FJ & Kulchyski P:** 1994 - *Tammarniit (Mistakes): Inuit Relocation in the Eastern Arctic, 1939-63*, University of British Columbia Press, Vancouver.

*Peter Jull researches, teaches, writes, and advises on indigenous politics in the School of Political Science & International Studies, University of Queensland, Brisbane, Q. 4072, Australia. He has worked for Inuit on the creation of Nunavut for many years.* □

*Inuit children playing.  
Photo: Ludger Müller-Wille*



*Inuit elder recording place names,  
Kangirsualujjuaq, Nunavik.  
Photo: Ludger Müller-Wille*



# A 5-year plan to create a public government in Nunavik

By Gérard Duhaime



A form of public government elected by the universal suffrage of residents, the powers of which would extend over an extremely vast area and all its inhabitants, indigenous or not; a government de facto run by the 90% Inuit majority in the region and endowed with far-reaching legislative powers, in particular, exclusive powers in the areas of Inuit language and culture. Such are the key recommendations of the Nunavik Commission report, presented in April 2001 after almost one and a half years of work.

The Nunavik Commission was created in 1999 following a Political Accord between the governments of Canada and Quebec and the Inuit of Nunavik, represented by the Makivik Corporation. Its mandate was to propose a form of government for the Arctic region of Quebec province in Canada and, more specifically, to “ make a comprehensive set of recommendations on the design, operation, and implementation of a form of government in Nunavik “, in particular with regard to the powers of such a government, the election process, the selection of leader and executive members, relationships with other governments, budgets, measures to promote and enhance Inuit culture (including the use of Inuktitut in the Nunavik Government) and transitional measures. The Commission comprised 3 members appointed by the Quebec government, 3 appointed by the Inuit and 2 appointed by the Canadian federal government. It was chaired by two of its co-presidents, one appointed by the Inuit representatives and the other by the Quebec representatives.

Nunavik is a huge region covering one third of the area of the Canadian province of Quebec. The population of approximately 10,000 people, in the vast majority Inuit, is settled in 14 coastal villages. The area has good potential for economic development as it possesses significant mineral, wildlife and hydroelectric resources.

The Nunavik Commission was not the first stage in achieving self-government in Nunavik. In fact, the Inuit of Nunavik have been making known their desire to regain an appropriate form of self-government for more than 30 years. The signing of the James Bay and Northern Quebec Agreement granted them a form of administrative autonomy and, in certain specific fields such as education, fairly widespread powers. But discussions on this



subject never truly came to an end; the Inuit have tried to create a consensus amongst themselves with regard to the type of government they desire. The Nunavik Commission's report forms one more stage in this historical process, since its recommendations should serve as a basis for the commencement of negotiations between the three parties involved.

### **A new distribution of the proposed powers**

In its trilingual report, the Nunavik Commission outlines a complete transformation of the political landscape. It recommends the creation of a legislative assembly elected by the universal suffrage of residents, with the power to adopt laws in the areas of Inuit language and culture, education, health, environment, public security, land and resources, economic development, justice etc. The creation of other institutions is also recommended, such as a consultative council of elders, a Nunavik court, and tripartite commissions (Canada, Quebec, Nunavik) to deal with the issues of wildlife and the environment.

The Commission made clear recommendations with regard to the area of public finances. It proposes that the Nunavik government should receive a substantial reimbursement of the taxes and royalties collected in the region by the Canadian and Quebec governments, and that it should be empowered to intervene in the income tax and sales tax rates in order to be able to support its own policies. It suggests that all the multiple funding agreements currently underway, which have unanimously been denounced as overly complex, should be replaced by two block funding agreements, one with the Quebec Government and the other with the Federal Government. These agreements would cover all the grants to be provided to Nunavik, and would include provisions for upgrading services in order to face up to the increasing needs and to exceptional situations. All this income would be made available to the Nunavik Assembly, which would have the power to adopt its own budget.

Finally, the report proposes a timetable for implementation. It suggests that the results of the negotiations, which are soon to commence on the basis of the report itself, should be submitted to a referendum by the year 2003. It then provides for a transitional period leading to the election of the Nunavik Assembly in 2005.

### **A difficult mandate**

The Nunavik Commission's mandate was fraught with pitfalls. Given the complexity of the issues it had to tackle, the Commission was given only a relatively short period of time in which to do so. It has had to face up to several pockets of resistance.

In order to accomplish its mission, the Nunavik Commission undertook widespread consultations. All the communities in Nunavik were visited, where the Commission held public hearings, meetings with municipal councils, with secondary school students and with local and regional organisations. A number of the concerns raised during these meetings touched upon related issues, such as Quebec's secession or the dispute relating to the coastal islands under the jurisdiction of Nunavut. The Commission considered these issues in depth before concluding that they were beyond the scope of its mandate.

It also held consultations with the organisations of neighbouring indigenous peoples and peoples with interests in Nunavik, such as the Cree, the Naskapi and the Innu. In general, the neighbouring indigenous peoples were sympathetic to the Inuit's desires for self-government. Nonetheless, they were hostile to the idea that a public government should be established over the area in question. In fact, the Cree of James Bay, the Naskapi and the Innu have an interest in this territory as they claim parts of it as their ancestral lands.

In addition, the Commission received reports from organisations involved in the administration of Nunavik, and consulted the relevant Canadian and Quebec ministries. In some instances it became aware that there was resistance to change, resistance that could resurface during possible negotiations.

Finally, the Commission's report bears only six signatures out of the anticipated eight. Two commissioners refused to endorse the report's content. One Inuit commissioner, who had undertaken a press campaign denouncing the report before it had even been made public, considered it unfavourable to Inuit interests because it failed to recognise ethnic rights. Another commissioner appointed by Quebec arrived at diametrically opposing conclusions. Nonetheless, the report was accepted by all three parties involved. The president of the Makivik Corporation, representing the Inuit, along with the ministers responsible for indigenous issues at both the level of the Quebec and the federal governments, recognised that the report formed an acceptable basis for negotiation.

### **The historical process**

Opposition to the report, both internal and external, is understandable. It is based, however, on complex debates that are intertwined with the issue of the self-government of Nunavik. Opposition to a public form of government, rather than the ethnically-based form of government the Inuit would otherwise have had the option of, is fuelled by the territorial claims of the indigenous peoples of Canada. Amerindian groups are demanding self-government within their ancestral lands. In other words, they are seeking to obtain political

control on the part of their members over the so-called « Crown » lands. In line with the mandate it was given, the Nunavik Commission recommends giving self-government over the whole continental territory to the north of the 55<sup>th</sup> parallel of latitude to an eventual public government. But the demands of neighbouring indigenous groups focus, at least partially, on the same lands. This situation fuels their dissatisfaction, all the more so as this type of government would be elected by the suffrage of the residents, which clearly excludes indigenous people living outside the territory, despite the fact that they claim some of it as their ancestral lands. Besides, the plan for Nunavik would scarcely be applicable to the situation of other indigenous groups. A non-ethnic public government, as controversial a pattern of arrangements for Nunavik as it was for Nunavut, does not correspond to what other indigenous groups are demanding: they are, first and foremost, seeking political autonomy for the members of their nation. This difference in outlook has, moreover, been made quite clear by opponents to the Nunavik project.

The refusal of one of the commissioner's to ratify the report was based partially on a reticence with regard to this very type of government: this commissioner would have preferred the Nunavik government to be a form of ethnic government, the control of which would have been guaranteed by law, rather than by the weight of the Inuit's demographic majority, as expressed through democratic institutions.

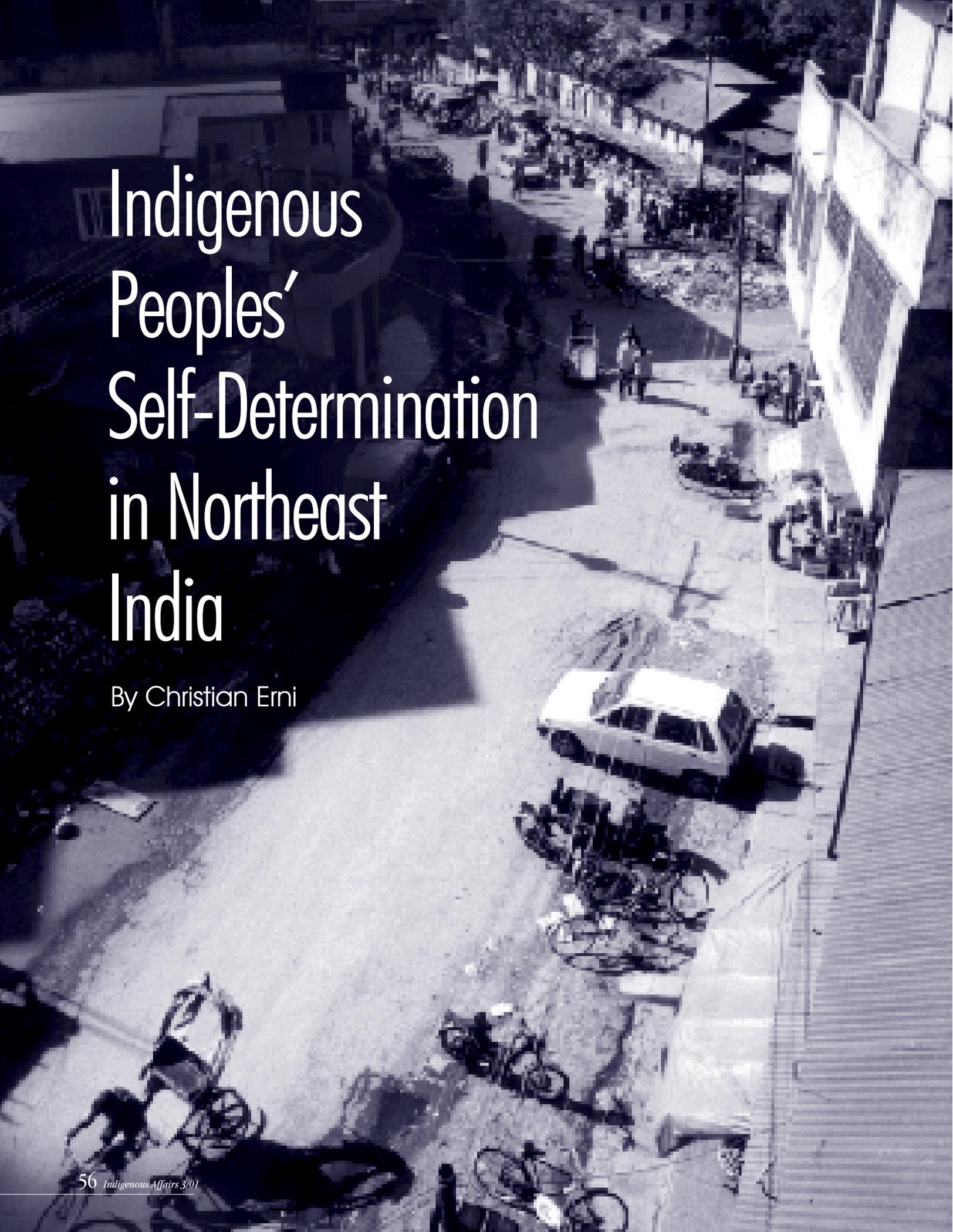
This toing and froing between public or ethnic forms of government is not new in Nunavik, as it has been discussed for as long as the question of self-government itself. The Inuit representatives have been in favour of a

public form of government ever since the signing of the James Bay Agreement in 1975 and they have since then repeated this preference on several occasions, including at the signing of the Political Accord that created the Nunavik Commission. Their decision is equally understandable: whilst a public government effectively controlled by the Inuit majority will have jurisdiction over the whole 500,000 square kilometre territory in question, an ethnic government would have had to content itself with extensive powers but over a far smaller area, an area of only a few thousand square kilometres, in fact, and of limited potential for development. Nevertheless, the opposition expresses a current of thought that does exist within Inuit society, and which would be sympathetic to the Amerindian perspective.

*The Report of the Nunavik Commission is available through the website of the Makivik Corporation at [www.makivik.org](http://www.makivik.org), or through the website of the Quebec Government at [www.mce.gouv.qc.ca](http://www.mce.gouv.qc.ca). The illustrations in this article are from the report.*

*G rard Duhaime is a sociologist and professor at Laval University (Quebec, Canada) where he holds the Louis-Edmond-Hamelin Chair. He is in charge of multidisciplinary research into development in indigenous regions and, in particular, in the Circumpolar Arctic. The author of many works and articles, he has recently edited *Le Nord. Habitants et mutations, an historical atlas written by some ten authors focussing on the changes experienced over the centuries by the Inuit, the Cree, the Naskapi and the Innu, along with the inhabitants of the north coast of Saint Lawrence.* □*





# Indigenous Peoples' Self-Determination in Northeast India

By Christian Erni



India often calls itself the largest democracy in the world. Certainly, with a population of just over one billion people, India ranks right after China as the second most populous country in the world. And since China is neither generally considered, nor claims to be, a democracy while India, according to its Constitution, is a “sovereign, socialist, secular, democratic republic”, this claim is legitimate. At least, there is no doubt that the founding fathers of independent India wanted to build the foundations of the new Nation on the principle of parliamentary democracy. However, and India does not stand alone in this, there is often a yawning gap between the noble principles of democracy and the political reality. The contradiction between its commitment to democracy and the actual practice of governance, the gap between existing legal provisions and their implementation, along with the central government’s unwillingness to devolve power, are probably nowhere more evident than in the way it deals with its indigenous peoples. This is particularly pronounced with respect to the demand for self-determination of the indigenous peoples in India’s north-eastern region; in this regard, legislation is in place that, at first glance, appears to be amongst the most progressive in the world.

### Reluctant federalism

Indian society is of a bewildering complexity and heterogeneity. The heritage of thousands of years of movements of people, goods and ideas in and out of the Subcontinent is reflected in the presence of hundreds of languages and distinct cultures. To integrate such a culturally heterogeneous population of one billion peo-

ple undoubtedly poses a formidable challenge to the State. India’s way of tackling this is through a federal system of government. At present, it consists of 28 states (three new states were created in 2000), six Union Territories and the National Capital Territory of Delhi. In spite of initial resistance from the centre, and against the recommendation of a commission set up to deal with the issue shortly after independence, strong demands from several regions led to the reorganisation of many states along linguistic lines in the ensuing years. The result was the creation of “nation-provinces”<sup>1</sup>, “where particular nationalities - speakers of particular languages with established literatures and histories - constituted majorities capable of defining the public identity of the states”<sup>2</sup>. This, as some authors argue, has decisively contributed to the preservation of national unity rather than to its disintegration, as many feared<sup>3</sup>. However, as Baruah writes, “...India’s commitment to federalism has also been rather tame. Indeed, India’s Constitution-makers even shied away from actually describing the polity as federal and settled for a phrase they found safer: the Union of India.”<sup>4</sup> Compared to other federal republics, the central government of India retains extensive power over the union states, and even more over the union territories. This is reflected in the very fact that the Indian Constitution bestows on the national parliament the power to form new states, to change their boundaries or their names. Furthermore, the centre has the right (and regularly makes use of it, as could be seen recently in the case of Manipur) to dismiss elected state governments “in certain situations of instability”<sup>5</sup>. It retains ownership of sub-surface resources, and controls almost all financial resources. Baruah further argues:

*In the area of control over fiscal resources, Indian federalism is probably at its weakest. If the concern for Indian unity made India's constitution makers reluctant federalists, their enthusiasm for national development turned them into central planners keen on grabbing as much control over resources and powers of economic management as possible.<sup>6</sup>*

## India's indigenous peoples

The government of India adamantly rejects the discriminative use of the term "indigenous" for any of the people living within its boundary. It is argued that the complex and age-old history of migration and exchange and mixing of cultural and physical traits makes it impossible to distinguish any group as "indigenous" in relation to other groups; therefore everyone in India has to be considered indigenous<sup>7</sup>.

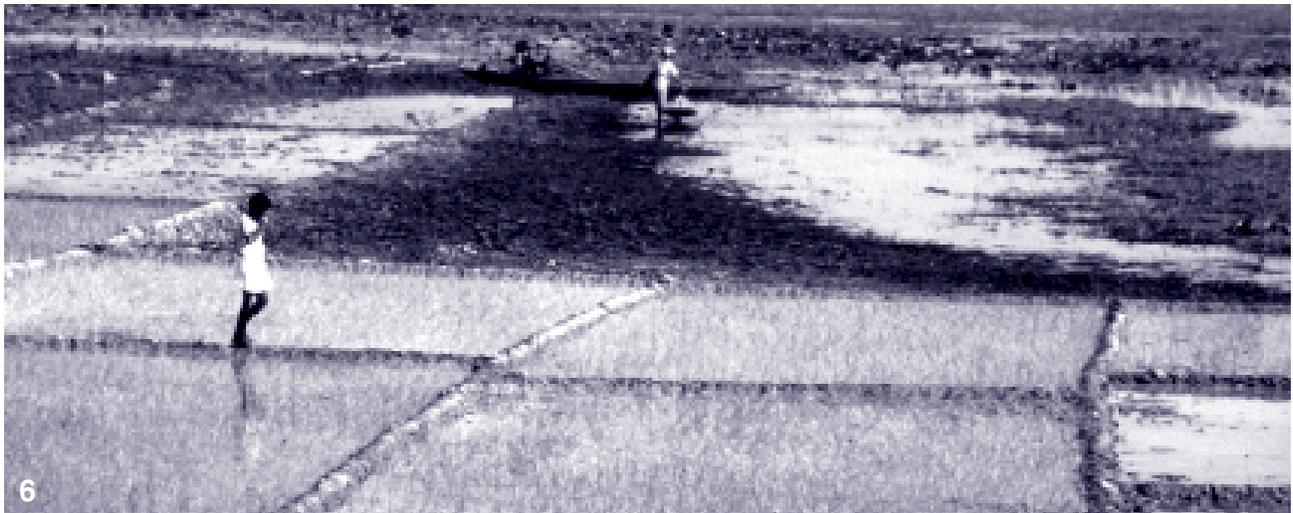
What indigenous activists in India, their local and outside supporters, some Indian and foreign academics as well as overseas development agencies like the World Bank refer to when they speak of indigenous peoples in India roughly corresponds to what, in official parlance, are called "Scheduled Tribes"<sup>8</sup>. Contrary to the government's position, the so-called "Scheduled Tribes" possess many characteristics which, according to internationally accepted definitions (such as ILO Convention 169, the Martínez-Cobo report or World Bank Operational Directive, No. 4.20) sufficiently qualify them to be called "indigenous peoples". More important, and still not recognized by the Indian state, is what Karlsson has stressed in a recent article: that "the concept 'indigenous peoples' is clearly a political fact in India today. Tribal communities increasingly identify and mobilize as indigenous peoples (or as *adivasis*) to claim rights over land and resources. The global discourse on indigenousness apparently resonates with or captures central features of tribal predicaments and aspirations"<sup>9</sup>.

According to the 1991 census, 8.08% of the total population, which today corresponds to more than 80 million people, were classified as members of Scheduled Tribes. The census lists 461 groups recognised as tribes<sup>10</sup>, while estimates of the number of tribes living in India are as high as 635<sup>11</sup>. The population of the largest indigenous peoples, like the Gonds, Santals, Oraon, Bhils or Nagas, lie in the millions while others, like the Onge or the Great Andamanese are on the brink of extinction. Only in the states and Union Territories of Haryana, Punjab, Delhi and Pondichery have no Scheduled Tribes been officially registered. And the percentage of tribal people in the other states varies considerably. While in the north-eastern state of Mizoram, for example, indigenous peoples form a strong majority of almost 95%, they account for only 0.21% in Uttar Pradesh and 0.03% in Goa.



### Photos

- 1.- Treehouse in Jhum field built on tree because of elephants.  
Photo: Anup Samuel John Ingty
- 2.- Garo women at the Wangala festival. Garo Hills, Meghalaya.  
Photo: Anup Samuel John Ingty
- 3.- Garo village in the Garo Hills of Meghalaya.  
Photo: Anup Samuel John Ingty
- 4.- Rally of Naga students in support of the extension of the cease fire coverage area. Photo: IWGIA Archive
- 5.- Militarization: Army in Kohima  
Photo: IWGIA Archive
- 6.- The fertile plains of the Brahmaputra valley have attracted a large number of migrants from Bangladesh and mainland India. Photo: IWGIA Archive



The majority of indigenous people live in an almost contiguous belt stretching from Gujarat in the West to the seven states in the Northeast, with the highest concentration in the central region, where more than 50% of them live. The highest ethnic diversity among the indigenous population is in the north-eastern region, where 220 distinct groups have been identified. They comprise approximately 12% of the total indigenous population of India.

The Constitution of India provides for several specific measures for the protection and promotion of the social and economic interests of the Scheduled Tribes. They include, among others, provisions for the reservation of seats in legislature, educational institutions, services and posts, provisions for autonomy, and for development programs particularly targeting Scheduled Tribes. Compared to other countries, especially in Asia, these legal safeguards are very progressive indeed. However, as will be demonstrated below with respect to Northeast India, due to inherent weaknesses and a lack of political will for proper implementation, they are unable to protect the rights of indigenous peoples and to accommodate their demands for self-determination. Violent confrontations between indigenous movements for autonomy and the state security forces are still the order of the day in Northeast India. Ever since Independence, this has been one of India's most troubled regions.

## A troubled land

Northeast India is often considered the place where South, Southeast and East Asian cultures meet. In spite of considerable cultural influences, the indigenous peoples of the region had, until the onset of British colonial rule, by and large successfully resisted attempts at integration into any of the dominant South Asian polities, notably the Moghul empire. Today, physical features, linguistic affiliation, culture, and religion (nowadays, in many cases, the prevalence of Christianity) set them clearly apart from the mainland majority Hindu and Muslim population and the migrants who have settled in large numbers in the region's fertile plains. Many indigenous peoples have become divided as boundaries were drawn across their traditional homelands when the British colonizers left, and post-colonial India, East Pakistan (later to become Bangladesh) and Burma were created. While modern India came to be a multinational state, some of the indigenous peoples of Northeast India who have developed a distinct national identity, like the Nagas and the Zo (Mizos/Zomis), at the same time became nations<sup>12</sup> divided by state boundaries, similar to the Mayas or the Kurds<sup>13</sup>.

When the British expanded their control into the hills beyond the Brahmaputra Valley during the course of the 19<sup>th</sup> century, they came to realize that they had to

deal with peoples that differed markedly from those living on the plains and who were more strongly influenced by mainland Indian culture. Although they were aware of the complex relationships between the ancient lowland kingdoms and the indigenous hill peoples, and at times made use of them to further their own interests, they soon took up a policy of segregating the hill and plains peoples<sup>14</sup>. The regulations they introduced went far beyond merely putting the hill tracts of the province of Assam under a different administrative system. The Inner Line Regulation, passed in 1873, established a virtual boundary along the foothills and provided that, "any British subject or other person so prohibited who goes beyond 'the Inner Line' ... without a pass shall be liable, on conviction before the Magistrate, to a fine..."<sup>15</sup>. Trade and possession of land by outsiders within the excluded areas were severely restricted<sup>16</sup>. Furthermore, the British had a policy of minimal interference in the hill areas beyond the Inner Line and, by the end of British rule on the Sub-continent, large areas - all of today's Arunachal Pradesh and part of present-day Nagaland state - were in fact still unadministered<sup>17</sup>.

In both Government of India Acts of 1919 and 1935, the tribal areas were again given separate status. On recommendation of the so-called Simon Commission of 1930, tribal areas were classified as Excluded Areas and Partially Excluded Areas<sup>18</sup>. Excluded Areas consisted of those exclusively inhabited by tribal people, while Partially Excluded Areas were those where tribal communities lived together with non-tribal communities but were in large numbers and considered "undeveloped"<sup>19</sup>. Both areas were excluded from the competence of the provincial and federal legislature. The difference between the two was that while in the latter case the elected provincial governments had limited administrative jurisdiction, the excluded areas were administered solely by the provincial governors appointed by the British<sup>20</sup>.

In the process of handing over of power on the eve of independence, the Constituent Assembly set up a committee with the task to make recommendations for the administrative development of the tribal areas of India. A sub-committee, known after its Chairman as the Bardoloi Committee, was formed to take care of the "North-Eastern Frontier (Assam) Tribal and Excluded Areas"<sup>21</sup>. While visiting these areas, the Committee noticed that "unlike other parts of India where tribals had assimilated to a great extent the life and culture of plainsman, the process of assimilation was minimal in the interior of the Assam hills, particularly in the Naga and Lushai hills; that the tribesmen in the north-east were very sensitive about their land, forests, systems of judiciary and that they should be left free from any fear of exploitation or domination by the advanced section of the people"<sup>22</sup>. Like with the Simon Commission before, indigenous leaders from all over the region had submitted memoranda and petitions to the Bardoloi Committee in which they expressed their desire for

autonomy or, as in the case of the Nagas, independence. They also demanded the redrawing of boundaries and, since they were worried about the migration of the plains peoples into their territories, they demanded the continuation of the Inner Line Regulation of the British. Based on their impressions and discussions with the leaders, the Committee recommended that Autonomous Districts and Regional Councils be established to provide for the protection of land rights, the preservation of language and culture and a certain degree of self-rule for the tribal people of the Northeast<sup>23</sup>. The recommendations were almost entirely accepted by the Constitutional Assembly and were included as the Sixth Schedule in the Constitution. In essence, the provisions of the Sixth Schedule are a continuation of the British policy towards the indigenous peoples in Assam.

However, many indigenous peoples were not satisfied with the degree of autonomy granted under the Sixth Schedule. The Nagas immediately refused the inclusion of parts of their territory under the Sixth Schedule and insisted on remaining independent. The Indian state responded with heavy police repression and the Nagas, after negotiations had failed, with armed resistance. In 1963, a separate state was carved out of Assam, called *Nagaland*. Consisting only of parts of the Naga territory and against the explicit stand of the Nagas for unification of their lands, it became obvious that the creation of Nagaland was less intended to accommodate the Nagas' stand for self-determination than to serve as a tool in the divide-and-rule tactic supplementing the heavy-handed carrot-and-stick policy by which the Indian government hoped to do away with the Nagas' armed resistance movement.

In 1966, the Mizo National Front began their armed struggle for independence in the Lushai Hill District that was created under the Sixth Schedule. In response, the district was turned into a Union Territory and, after signing of a peace agreement in 1986, into a state called *Mizoram*.

The degree of autonomy gained under the Sixth Schedule did not satisfy the indigenous peoples of the Garo Hills or the United Khasi and Jaintiya Hills either. The campaign of the All Party Hill Leaders Conference (APHLC) for a separate state achieved its goal relatively easily and, above all, without bloodshed. In 1970, the new state of *Meghalaya* was inaugurated.

Finally, the separation of the North East Frontier Agency from Assam came about because of strategic considerations on the part of the central government, following the Chinese invasion of Tibet in 1949 and the border conflict with China in 1962. It was renamed *Arunachal Pradesh* when it became a Union Territory in 1972, and was turned into a state in 1987.

Together with the kingdoms of *Tripura* and *Manipur* which, partly due to pressure from India<sup>24</sup>, agreed to join the Union at independence, these four newly-created states and what remained of *Assam* make up India's north-eastern region.

However, the solutions devised by the Indian state in many cases fall considerably short of satisfying the indigenous peoples' demand for self-determination and control over land and resources. At present, several armed resistance movements are fighting against the Indian State in the Northeast. The disagreement of these resistance movements with the arrangements made by the Indian government is in some cases fundamental, as in the case of the Nagas who have stood for independence ever since. For others, the degree of autonomy granted is not far-reaching enough. Often, it is the lack of proper implementation of existing provisions and agreements reached - like those with the Bodos, Karbis, or Dimasas - that causes profound dissatisfaction. The Bodos in Assam, for instance, demand a separate state, the Karbis more autonomy than that which is granted under the Sixth Schedule, a state within the state of Assam. Another critical issue, that of immigrant settlers, is still awaiting a solution. Meghalaya state has a large number of settlers, above all Bengalis and Nepalis, who control the state's economy. In Tripura, the indigenous peoples (who call themselves Borok) are struggling to regain control over what is left of their homeland after having been reduced to less than one third of the state's population through the massive immigration of Bengali settlers over the past fifty years. They now demand the creation of a separate state on the land still under their control.

In sum, although autonomy arrangements in North-east India include the establishment of non-territorial Apex councils, union territories or autonomous states within states<sup>25</sup>, the Indian government has in most cases relied on two political-administrative solutions in its attempts to accommodate indigenous peoples' demands for self-determination: the creation of Autonomous District (and Regional) Councils provided for by the Sixth Schedule of the Constitution, and the formation of separate states. These will be briefly discussed below.

## The Sixth Schedule

The Sixth Schedule has currently been applied to Karbi Anglong and North Cachar districts in Assam; the Khasi Hills, Jaintia Hills and Garo Hills districts in Meghalaya; the Chakma, Lai and Mara districts in Mizoram (for the respective minorities in the otherwise Mizo-dominated state); and the Tripura tribal areas in Tripura state. It does not apply to Manipur state, for which a separate Act, the Manipur (Hill Areas) District Act, was passed in 1971. Its provisions are, however, similar to those of the Sixth Schedule. In most Autonomous Districts, there are other tribal peoples present than those in whose name they have been established. And in many, non-tribals live in significant numbers. In Karbi-Anglong, for example, the census of 1991 showed that 47% were non-tribal people<sup>26</sup>.

*Meitei women at the market in Imphal, Manipur.  
Photo: IWGIA Archive*



Each district covered by the Sixth Schedule has an Autonomous District Council (ADC) consisting of not more than 30 members. At least 26 are elected by adults living within its jurisdiction, up to four are nominated by the Governor. These four members appointed by the Governor are expected to be members of minorities who fail to be represented through elections<sup>27</sup>. The council members hold office for a period of 5 years<sup>28</sup>. If there are different Scheduled Tribes in an autonomous district, the Governor may, by public notification, divide the area or areas into so-called Autonomous Regions with their own councils.

Both the District and Regional Councils have legislative, executive and judicial powers. The Councils are empowered to make laws in the areas of:

1. allotment, occupation and use of land other than reserved forest;
2. management of non-reserved forests;
3. use of canals or other water courses for agricultural purposes;
4. regulation of shifting cultivation;
5. village or town administration, including village or town police, public health and sanitation;
6. establishment and definition of powers of village or town committees or councils;
7. appointment or succession of chiefs;
8. inheritance of property;
9. marriage and divorce;
10. social customs<sup>29</sup>.

Furthermore, the Councils have the right to:

1. regulate and control money lending and trading by non-officials;
2. constitute courts for the trial of certain cases and suits where both the parties are Scheduled Tribes subject to the powers and procedures of the Code of Civil Procedure 1908, and the Code of Criminal Procedure 1898;
3. establish and manage primary schools, and to determine the language used and the way primary education is conducted;
4. establish and manage dispensaries, markets, cattle ponds;
5. maintain roads, water-ways etc.<sup>30</sup>.

Both Councils have the right to collect land revenues and certain other taxes and fees within their respective jurisdiction. They are furthermore entitled to a share of the central government and state revenues for carrying out services. This means that they are heavily dependent on state and central government subsidies.

The Sixth Schedule has been hailed by the Indian State, policy makers and experts, as a most progressive provision granting far-reaching autonomy to India's indigenous peoples. A closer look, however, reveals that it possesses several in-built limitations. First of all, the laws and regulations, as well as decisions on taxes and fees made by the Councils,

have to be submitted to the Governor for approval. Until recently, the Deputy Commissioners of the concerned district undertook preliminary processing of legislation<sup>31</sup>. They also co-ordinate most development programmes in their respective district. They thus hold considerable power over the Autonomous District Councils<sup>32</sup>. The fact that legislation enacted by the District Councils requires the consent of the Governor means that the state government severely constrains the exercise of autonomy.

In the case of the Autonomous District Councils of the predominantly indigenous states of Meghalaya and Mizoram, the so-called law of repugnance (paras 12 A and 12 B of the Sixth Schedule) provides that any law enacted by the state legislature prevails over those legislated by the Autonomous District Councils<sup>33</sup>. As Burman writes: "Thus an almost complete subversion of autonomy provision in respect to law making powers of the Councils in Meghalaya and Mizoram has been implanted in the Schedule, through amendment of the Schedule... Besides, insertion of paras 12 A and 12 B in the Sixth Schedule makes the concerned Councils vulnerable to the aspersion of being political toys of the States, even though the concerned states may be predominantly tribal states."<sup>34</sup> In Meghalaya State, which is entirely covered by the Sixth Schedule, para 12 A makes the Sixth Schedule de-facto inoperative<sup>35</sup>.

State governments can also dismiss the Autonomous District and Regional Councils. The Karbi Autonomous District Council was dissolved on four occasions during the 1990s. Allegedly, the Karbi District Council has not been allowed to discuss any subject without the prior permission of the District Magistrate and in all matters of appointment and expenditure, the Governor has the ultimate decision-making power. It has been reported that the Autonomous District Councils in Mizoram have had similar experiences<sup>36</sup>.

Furthermore, Article 31 [A] of the Constitution gives the Indian government the power to acquire any land, whether occupied or not<sup>37</sup>. All reserved forests are also exempt from the jurisdiction of the Councils.

Lastly, the autonomy and performance of the Autonomous District Councils is further constricted by their financial dependence on the state government. Many Autonomous District Councils complain that they have not received what the states owe them, and with the subsidies withheld they are virtually paralysed. As a result, in many states, resource allocation has become a major bone of contention between the Autonomous District Councils and the state governments. On the other hand, internal factors have reportedly contributed to the malfunctioning of the Autonomous District Councils. They have apparently not used their taxation powers properly and relied too much on government grants<sup>38</sup>; misuse of funds, and corrupt and bad leadership have also severely weakened the Councils.

In sum, the autonomy granted under the Sixth Schedule is very limited indeed, with the central and state governments retaining almost full control over them. As Burman summarizes, the provisions in the Sixth Schedule suggest that the Autonomous District Councils "are not subsidiary

Tangkhul Naga women. Photo: IWGIA Archive



organs of the State, but supplementary institutions rooted in Communitarian self regulatory norms. But on a closer look, this is found to veer towards an illusion<sup>39</sup>.

### **The states, the centre and the question of democracy**

In four of the seven states of the Northeast, Nagaland, Mizoram, Meghalaya and Arunachal Pradesh, indigenous peoples form the majority population. As shown above, the former three were explicitly created to accommodate the indigenous peoples' demand for self-determination. These states enjoy the same status and powers as other states of the Indian Union, which also means that they have no greater autonomy. Only for Nagaland special provisions have been included in the Constitution. Article 371 of the Constitution states:

*Notwithstanding anything in this constitution (a) no Act of Parliament in respect of (i) religious or social practices of the Nagas (ii) Naga customary law and procedures (iii) administration of civil and criminal justice involving decisions according to Naga customary law (iv) ownership and transfer of land and its resources, shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides.<sup>40</sup>*

The somewhat wider degree of autonomy as compared to other states is, however, offset by the subsequent paragraph, which reads:

*(b) The Governor of Nagaland shall have special responsibility with respect to law and order in the State of Nagaland for so long as in his opinion internal disturbances occurring in the Naga Hills – Tuensang Area [the two administrative units which were made into Nagaland State, c.e.] immediately before the formation of the State continue therein or in any part thereof and in the discharge of his functions in relation thereto the Governor shall, after consulting the Council of Ministers, exercise his individual judgement as to the action to be taken.<sup>41</sup> (emphasis added)*

In fact, in all north-eastern states, the relationship between central government and the states is inseparable from the ongoing conflicts and counterinsurgency operations. India has treated the indigenous peoples' demands for greater autonomy, civil and democratic rights largely as a "law and order" problem. Both the central and state governments have resorted to extensive militarization and repressive legislation such as the Armed Forces (Special Powers) Act at national level, or the Tripura Security Act, the Nagaland Security Act, and the Meghalaya Preventive Detention Act at state level to deal with the matter. Human rights violations on the part of security forces are rampant.

In its "carrot-and-stick" approach, the central government is at the same time trying to "buy peace"<sup>42</sup> "by pouring in money and hoping this will over time break the back of insurgency by creating a class of persons having a vested interest in peace and 'development'"<sup>43</sup>. However, the result seems to be rather the opposite:

*Nagaland and Manipur ... have the highest per capita development expenditure allocated to them... With such outlays and little to show by way of development, it is clear that more of the funds have been going into the pockets of politicians and administrative leadership of these States. In fact it will not be an exaggeration to say the several political leaders of Manipur and Nagaland have a vested interest in perpetuating ethnic strife in this region.<sup>44</sup>*

The main beneficiaries of the central government development programs appear to be contractors and license holders from outside the region who work in collusion with local politicians. As a result, the governments of north-eastern states like Manipur, Nagaland, Meghalaya or Assam are said to be increasingly corrupt<sup>45</sup>. The reported lack of financial accountability on the part of state governments has been directly related to the centralized fiscal system in India. What has been identified as a major problem in Autonomous District Councils appears to apply as much to states, who have been reluctant to raise financial resources on their own, and "have looked at the central government as a cash cow that can be milked in order to bring the state's income in line with its expenditures"<sup>46</sup>.

One of the core sources of indigenous peoples' discontent and the reason for militancy, especially in Assam and Tripura, is the unabated influx of migrants from mainland India and, above all, from Bangladesh. For Assam, it is feared that if this continues at the present rate it is only a question of time before the Assamese will become a minority in their own state – which is exactly what has already happened in Tripura. Ultimately, it is the central government's unwillingness to act while withholding the right from state governments to devise their own immigration policy that is responsible for the crisis. As Baruah correctly concludes: "if particular territories in a federation are defined as autonomous political entities, and the people living in them are assumed to have the power to determine their own affairs, 'such communities must be exclusionary or else they cease to be communities' ...Autonomy of a community cannot be meaningful unless it includes some notion of closure."<sup>47</sup>

India's half-hearted commitment to true federalism has its roots in an omnipresent fear of disintegration. In the Northeast, it is apparently ready to sacrifice democracy in the ill-fated attempts to retain control by authoritarian means. In a recent paper, Sanjib Baruah writes:

*In the insurgency-hardened Northeast, democratic India has developed a de facto political system, somewhat autonomous of the formal democratically-elected governmental structure. This parallel system is an intricate, multi-tiered reticulate, with crucial decision-making, facilitating and operational nodes that span the region and connects New Delhi with the theatre of action.*

*The apex decision-making node is the Home Ministry in Delhi ... The operational node which implements the decisions consists of the Indian Army, and other military, police and intelligence units controlled by the central and state governments, and involves complex coordination. This apparatus also involves the limited participation of the political functionaries of insurgency-affected states ... Since the insurgencies have some popular sympathy - albeit not stable and stubborn - the perception that the operations have the tacit support of elected state governments is useful for their legitimacy.<sup>48</sup>*

The centrally-appointed Governors, who are vested with considerable power, are what he calls the “crucial nodes in the counter-insurgency network”.<sup>49</sup> As Baruah shows, all the governors presently in office in the seven states in the Northeast “have either occupied high and sensitive positions in India’s security establishment or have had close ties to it”, and he concludes that this “cannot be mere coincidence.”<sup>50</sup>

In response to the rise of the Naga independence movement, the Indian Parliament very early on, in 1958, passed an Act that has been criticized as breaking with all democratic norms. The notorious Armed Forces Special Powers Act empowers the central government to declare any area as “disturbed” and to apply the Act even against the will of the state. It gives the armed forces, among others, the right to shoot to kill if deemed necessary “in order to maintain the public order”, to enter, search and arrest without warrant anyone who is suspected of having “committed or is about to commit a cognizable offence”<sup>51</sup>. The Act gives the armed forces almost complete immunity. “It establishes that no prosecution, suit or other legal proceeding can be brought against any personnel acting under the Act without central government’s permission.”<sup>52</sup>

The de-facto military rule of the Northeast has, however, achieved nothing. On the contrary, armed resistance groups are more active than ever, now operating in five of the seven states. High ranking officers of the Indian army themselves have expressed that other ways have to be sought to solve the conflicts in Northeast India. In 1995, the present Governor of Tripura, retired General K.M. Seth, issued a statement on the Indo-Naga conflict that was widely discussed in the Indian media and has allegedly contributed to the decision of the NSCN leaders to enter into negotiations with the Indian government. At that time, General Seth had been made Commander of the 3<sup>rd</sup> Core Command

based in Rangabhar. In response to a question raised at a press conference, he said that the role of the army was to control violence not to crush the Naga movement, since he considered this a political issue that needed a political solution.

The Indian government would be well advised, precisely for the sake of national stability, for the security of all people living within its boundaries, and not least for the restoration of democracy in the Northeast, to follow this recommendation and change its approach. This would, first of all, imply recognizing the demands of the indigenous peoples as legitimate, and then forging an agreement that grants genuine self-determination. In fact, rather than a threat to democracy, India’s indigenous movements can and should be seen as contributing towards its strengthening. Dasgupta believes that there is no connection between ethnicity in Northeast India and the endangerment of Indian democracy. On the contrary, the “successful processing of ethnic demands can encourage demands from those who were not able to speak out before”, and thereby draw new and previously excluded segments of society into the wider democratic process<sup>53</sup>.

## Notes

<sup>1</sup> Baruah 1999: 98

<sup>2</sup> Ibid.

<sup>3</sup> Schwartzberg, in Baruah 1999: 97f

<sup>4</sup> Baruah 1999: 200

<sup>5</sup> Baruah 2001: 3

<sup>6</sup> Baruah 1999: 206

<sup>7</sup> Bhengra et.al. 1998: 4

<sup>8</sup> Some peoples that would, according to the government’s own criteria, qualify for the status of “Scheduled Tribes” are still excluded from this category. The identification of Scheduled Tribes is a highly politicised issue.

<sup>9</sup> Karlsson 2001: 30

<sup>10</sup> India’s indigenous peoples do not have a problem with the term “tribe” and often use it themselves when speaking or writing in English. The indigenous peoples on the mainland, but less so those in the Northeast, are often referred to as Adivasi, meaning “original people”.

<sup>11</sup> Bhengra et.al. 1998: 5

<sup>12</sup> Unlike its popular understanding and its use in many documents of international law, which sees “nations” and “peoples” as identical with “states”—undoubtedly the legacy of the emergence of the nation-state as the dominant form of political organisation in the modern world—many social scientists consider it a rather “elusive” concept (Keating 1999: 166) and define it less rigidly. Keating suggests that it is “best seen as a set of claims” (ibid.: 167), consisting of: 1. a reference group, to which the nationality claim is attached; 2. the claim to self-determination, “which may or may not mean the right to establish their own state”; 3. a territorial definition, “since nationalisms are essentially claims about the control of territory, and this is a factor that distinguishes them from ethnic or cultural claims”; 4. the claim “that the reference group constitutes or aspires to be a global society, that is a complete society, containing within itself the full range of social institutions and mechanisms for social regulation, as opposed to a mere fragment of larger society, making specific claims for cultural recognition, or for special policy measures”. (ibid.)

13 Galtung 1999  
 14 Baruah 1999: 29; 30ff  
 15 In Kumar 1996: 84  
 16 Baruah 1999: 29  
 17 There are diverging views on the motives behind the Inner Line Regulation. Officially, it was in recognition of the fundamental differences between these peoples and in order to protect the "hill tribes" from exploitation by the plains people that the British colonizers took up a policy of exclusion. According to Baruah (1999: 29) it, "originally came about as a response to the reckless expansion of British entrepreneurs into new lands which threatened British political relations with the hill tribes." Kumar merely states that the true aim was "to isolate the people of the Hills and to prevent interaction between hills and plains" (1996: 9; in what way this would have served their interest is, however, not made clear). And Barpujari is of the opinion: "A perusal of the archival material will reveal that the *Regulations* did not aim at segregating the people of the hills from those of the plains, but to 'check the overzealous military officer's advance to dangerous and exposed positions' which had been the source of complications with the frontier tribes" (1998: 5).  
 18 The Excluded Areas comprised: the Naga Hills, Lushai Hills, North Cachar Hills and North-East Frontier (Saduya, Balipara and Lakhimpur) Tracts; the Partially Excluded Areas included: the Garo Hills, Mikir Hills and the British portion of the Khasi-Jaintia Hills. (Barpujari 1998: 6).  
 19 Baruah 1999: 36  
 20 Ibid.  
 21 Ibid.: 10  
 22 Barpujari 1998: 10f  
 23 Burman 1999: 3  
 24 The Maharaja of Manipur signed the agreement to merge with India after having been kept in his residence, surrounded by soldiers, in Shillong, for days. He was isolated from his advisers, council of ministers and the public at home, put under pressure and intimidated. (Baruah 2001: 1)  
 25 Karlsson 2001: 10  
 26 Burman 2000: 9  
 27 Burman 2000: 9  
 28 Constitution of India, Articles 244 (2) and 275 (1)  
 29 Bhengra et.al. 1998: 12  
 30 Kumar 1996: 19; Bhengra et.al. 1998: 12  
 31 In Assam, Meghalaya and Tripura, the Council's agenda is no longer processed by the Deputy Commissioner. According to the memorandum of understanding between the Government of Assam and ADCs, the Deputy Commissioner should be under the disciplinary control of the Autonomous Council. However, this has not yet been put into effect, allegedly for technical reasons. (B.K. Roy Burman, personal communication)  
 32 Burman 1993:13  
 33 Burman 2000: 11  
 34 Ibid.  
 35 Ibid: 12  
 36 Bhengra et.al, 1998:29  
 37 Bhengra et.al. 1998: 12  
 38 Kumar 1996: 20  
 39 Burman 1999: 3  
 40 Burman 2001: 44  
 41 Ibid.  
 42 Baruah 1999: 111  
 43 Prabhakara 1989, in Baruah 1999: 111  
 44 Gam, A., Shimray et. al., in Barpujari 1998: 109  
 45 Baruah 1999: 207  
 46 Ibid.: 208  
 47 Ibid.: 204  
 48 Baruah 2001: 3  
 49 Ibid: 5  
 50 Ibid.  
 51 Bhengra et. al. 1998: 30  
 52 Ibid.  
 53 Dasgupta 1997: 367, cited in Karlsson 2001: 14

## References

- Barpujari, H.K.:** 1998 - *India's North-East: Problems, Policies and Prospects*. Guwahati: Spectrum Publications
- Baruah, Sanjib:** 1999 - *India Against Itself. Assam and the Politics of Nationality*. New Delhi: Oxford University Press
- Baruah, Sanjib:** 2001 - Generals as Governors. The Parallel Political Systems of Northeast India. *Himal South Asia*, June 2001. [www.himalmag.com/june2001/essay/html](http://www.himalmag.com/june2001/essay/html)
- Bhengra, R., C.R. Bijoy, S. Luithui:** 1998 - *The Adivasis of India*. Minority Rights Group International Report 98/1. London: Minority Rights Group
- Burman, B.K. Roy:** 1993 - *Workshop on Tribal Development, Intentions, Realities, Challenges and Tasks Ahead*. New Delhi: Akhil Bharatiya Adivasi Vikas Parishad
- Burman, B.K. Roy:** 1999 - Issues on the Extension of 73<sup>rd</sup> and 74<sup>th</sup> Amendments of the Constitution in the Sixth Schedule Areas of North East India. Outline of a keynote address in the Seminar on the theme organized by PRIA. Mimeo
- Burman, B.K. Roy:** 2000 - Systems of Self-Governance in Tribal Areas of North-East India and Futuristic Perspectives. Keynote address in the seminar on the theme, jointly organized by SOFCAR and II Con. Mimeo
- Burman, B.K. Roy:** 2001 - Patterns of Self-rule among the Tribal and Indigenous Peoples of India and Horizon of Self-determination. Mimeo
- Dasgupta, Jyotirindra:** 1997 - "Community, Authenticity, and Autonomy: Insurgency and Institutional Development in India's Northeast." *The Journal of Asian Studies* 56(2)
- Erni, Christian/Shimreichon Luithui:** 2001 - Indigenous and Tribal Peoples in India. Desk Review. Project to Promote ILO Policy on Indigenous and Tribal Peoples. Geneva: International Labour Office
- Galtung, Johan:** 1999 - "The Right to Self-Determination and Conflict Transformation"; in: Michael C. van Walt van Praag, with Onno Seroo (eds.): *The Implementation of the Right to Self-Determination as a Contribution to Conflict Prevention*. Barcelona: UNESCO Division of Human Rights, Democracy and Peace/UNESCO centre of Catalonia.
- International Labour Office:** 1989 - ILO Convention No. 169, June 27, 1989, 28 ILM 1382, 1384-85 (1989). Geneva: International Labour Office
- José Martínez Cobo:** 1986 - *Study of the Problem of Discrimination Against Indigenous Populations*. UN Doc. E/CN.4/Sub.2/1986/7/Add.4, paras 379-80
- Karlsson, B.G.:** 2001 - "Indigenous Politics: Community Formation and Indigenous Peoples' Struggle for Self-Determination in North-east India". *Identity* Vol. 8(1)
- Keating, Michael:** 1999 - "Self-Determination, Multinational States and the Transnational Order"; in: Michael C. van Walt van Praag, with Onno Seroo (eds.): *The Implementation of the Right to Self-Determination as a Contribution to Conflict Prevention*. Barcelona: UNESCO Division of Human Rights, Democracy and Peace/UNESCO centre of Catalonia.
- Kumar, B.B.:** 1996 - *Re-organization of North-East India. Facts and Documents*. New Delhi: Omsons Publications
- National Campaign Committee Against Militarisation and Repeal of Armed Forces (Special Powers) Act:** 1997 - *Where 'peacekeepers' have declared war*. Report on violations of democratic rights by security forces and the impact of the Armed Forces (Special Powers) Act on civilian life in the seven states of the North-East. New Delhi.
- World Bank:** 1991 - Operational Directive 4.20, reprinted in IWGIA, Newsletter Nov./Dec. 1991. Copenhagen

*Christian Erni holds a PhD in Social Anthropology and works as Asia Program Coordinator at IWGIA.* □

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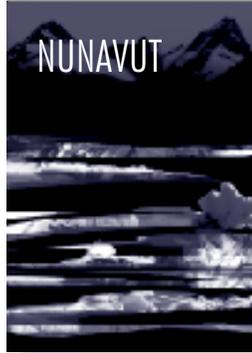
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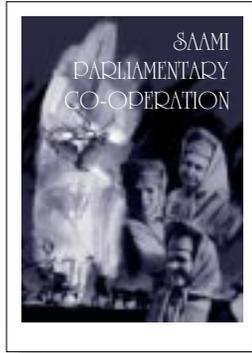


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