THE INDIGENOUS WORLD 2011

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Copenhagen 2011

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EDITORIAL

In 2009, the UN Human Rights Council asked the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) to carry out a study on indigenous peoples and the right to participate in decision-making, to be completed by 2011. The EMRIP submitted a progress report to the Human Rights Council in September 2010. This report shows that indigenous peoples' participation in decision-making and the right to free, prior and informed consent are at the core of indigenous peoples' rights and this is strongly reflected in the articles of *The Indigenous World 2011*. As the report states:

> *Indeed, indigenous participation in decision-making on the full spectrum of matters that affect their lives forms the fundamental basis for the enjoyment of the full range of human rights. This principle is a corollary of a myriad of universally accepted human rights, and at its core enables indigenous peoples to be freely in control of their own destinies in conditions of equality. Without this foundational right, indigenous peoples' human rights, both collective and individual, cannot be enjoyed.*[1]

Let us start with some of the positive developments of 2010.

The year ended with the first specific law on indigenous rights being adopted in Africa, when the parliament of the Republic of Congo passed a law on the promotion and protection of the rights of indigenous peoples in December. The Central African Republic, for its part, became the first African state to ratify ILO Convention 169 in August 2010. These are two very positive developments that will hopefully significantly advance the rights of indigenous peoples and improve their current situation of severe poverty, marginalisation and discrimination in these countries. It is also to be hoped that the developments will inspire other countries on the continent to do the same. With the adoption of a new constitution, Kenya is on its way to a future that provides for the greater participation of marginal groups at all levels of government and that recognises indigenous languages and cultures as well as indigenous communities' desire to preserve their identities and cul-

tures. “The policy and legal gains enshrined in the new constitution is a testimony to indigenous peoples’ determined and unrelenting efforts and their growing influence to champion their own course,” states the article in this volume.

In Thailand, the government has taken a significant step towards addressing indigenous issues by passing a cabinet resolution to restore the Karen’s traditional livelihood. A work plan will consider, among many other things, the continued practice of the rotational farming system, which was formerly considered as mere “slash-and-burn” cultivation that would cause damage to the forests. In Cambodia, an indigenous community was granted a collective title for the first time.

In Bolivia, a number of Guaraní families were finally released from virtual slavery on large estates in the Chaco region after a year-long struggle. Furthermore, Bolivia approved the Law on Mother Earth which, albeit with considerable limitations, includes some provisions for indigenous consultation and some protective measures for communitarian economies. In Colombia, an unexpected positive change has been noted with regard to the public recognition of indigenous peoples on the part of newly-elected President Juan Manuel Santos. It remains to be seen, however, whether this goodwill materializes into an end to impunity for human rights violations and the unconsulted encroachment of the extractive industries onto indigenous territory, which continued with indefatigable speed throughout 2010. Latin American countries have established a legal system that, to a certain extent, recognises indigenous peoples’ rights and protects their territories. Many countries in Latin America have, for example, ratified ILO Convention 169 (the International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries), the latest being Nicaragua, which ratified the Convention in 2010. There is, however, a huge gap between existing rights and their implementation, as can be seen from nearly all of the Latin American country reports this year. Furthermore, access to justice is limited to those who know their rights and can afford legal support. There is thus an increasing need for indigenous rights observatories to monitor the implementation of indigenous rights, provide legal support to indigenous peoples and instigate due legal measures. This increasingly includes taking cases to the Inter-American Human Rights system when domestic legal systems have been exhausted.

On 4 February 2010, the African Commission ruled on the Endorois case, condemning the Kenyan government’s expulsion of the Endorois people from

their ancestral lands in the 1970s and ordering the government to restore the Endorois' rights to their ancestral lands and to compensate them. This is a landmark ruling as it is the first to determine who indigenous peoples in Africa are, and what their rights to land are. The Endorois decision is a victory for all indigenous peoples across Africa. The case is an historic milestone in the struggle for recognition of indigenous peoples' rights to land and sets an unprecedented reference.

When the UN Declaration on the Rights of Indigenous Peoples (*the Declaration*) was adopted in the UN General Assembly in September 2007, only four states voted against it, while 11 states abstained. Australia revised its position in 2009, officially endorsing the Declaration. In 2010, New Zealand, Canada and the US followed suit. Furthermore, two countries that had previously abstained from the vote also expressed their commitment to the Declaration. These are important developments and the value of the consensus around the Declaration cannot be underestimated. The Declaration is truly a universal instrument protecting the rights of indigenous peoples. The articles in this volume, however, also express concerns regarding the conditionality of New Zealand, Canada and the US's endorsement of the Declaration. All three countries have set the Declaration within the limits of their existing legal and constitutional framework, despite strong encouragement from indigenous peoples and civil society to make an unqualified endorsement. It also needs to be noted that a number of countries that abstained from the vote in 2007 have not begun a process of reconsideration, despite the serious human rights situation of the indigenous peoples in these countries. These include, for example, the Russian Federation, Bangladesh, and Burundi, to name but a few.

One of the key elements of the Declaration is the acknowledgment of indigenous peoples' right to free, prior and informed consent as a key principle and instrument with which to assert their right to self-determination. FPIC has been seen by many states as a contentious issue, as it could obstruct their countries' development. However, the current reality is that development is obstructing the lives of indigenous peoples. Development aggression in the form of logging, plantations, mega-dams and other land development projects continues to be the major challenge facing indigenous peoples. Many development projects still go ahead without states having fulfilled their duty to obtain FPIC from the indigenous peoples affected. This is, for example, the case in Malaysia, Peru and Brazil, where large dams flood indigenous lands without the indigenous peoples having been consulted or their free, prior and informed consent obtained. In Nepal, 2010

started with a nation-wide strike on the part of the indigenous peoples demanding the establishment of a mechanism in the Constituent Assembly to implement the principle of FPIC.

This failure to implement prior consultation has also been at the root of social protest in Ecuador, Bolivia and Guatemala. In Peru, a long-awaited law on indigenous and native peoples' right to prior consultation was approved by Congress but later rejected by the President. Much hope had been invested in this law, which was expected to prevent further violent social conflict, such as that which took place in Bagua in 2009.

Development without culture and identity

During its 9th session, the UN Permanent Forum on Indigenous Issues (UNPFII) discussed the issues of "Indigenous Peoples: Development with Culture and Identity". The fact that it is fundamental for indigenous peoples to preserve and develop their cultures and ways of life is strongly reflected in its recommendations. Development for indigenous peoples encompasses all spheres of life and well-being and it is therefore crucial that indigenous peoples effectively participate in development processes, benefiting them as peoples and not only the state as a whole.

In the second part of his Annual Report to the UN Human Rights Council, the Special Rapporteur on Indigenous Peoples analysed the issue of corporate responsibility with respect to indigenous rights. He defined the roles of the states and the roles of companies and clearly stated that companies had to exercise due diligence as part of their responsibility to respect indigenous rights. This year's The Indigenous World, however, clearly shows that encroachment onto indigenous peoples' lands and territories by companies is still one of the greatest threats to indigenous peoples the world over. Many of the articles tell of the displacement of indigenous peoples due to the construction of hydroelectric dams or due to mining operations and other activities (for example in Peru, Cambodia, Brazil, Laos, Malaysia, Uganda, Botswana etc.), of human rights violations related to large-scale developments and of the serious environmental impact of industrial projects on indigenous lands. In Vietnam, several large bauxite-mining projects in the Central Highlands will lead to the serious environmental degradation of thousands of hectares of forests and agricultural lands and will lead to the massive displacement of indigenous peoples and ethnic minorities. Massive land-grabbing

for large-scale developments in Cambodia, including plantations and tourist sites, mining and hydroelectric dams and roads, continues to have a devastating impact on the indigenous peoples. Decisions on such projects are made with no meaningful prior consultation, and no FPIC process. In 2010, the UN Committee on the Elimination of Racial Discrimination expressed concern at "reports of the rapid granting of concessions on land traditionally occupied by indigenous peoples without full consideration, or exhaustion of procedures provided for, under the land law and relevant sub-decrees..." During the year, indigenous peoples in Cambodia increased their advocacy actions on land and resource rights but these were consequently met with intimidation.

In Peru, at the end of the year, the government presented a bill to Congress aimed at legalising the option to move communities when there is a "public or overriding interest" for development projects to proceed, and another aimed at abolishing the requirement for Environmental Impact Assessments. A similar attempt was made in Panama with the approval of Law 30, which would mean that larger development projects would no longer require significant Environmental Impact Assessments.

In Tanzania, human rights abuses against indigenous pastoralist communities continued and, in Loliondo, 200 Maasai pastoralist houses were burnt down in order to make way for a hunting company from the United Arab Emirates. In the Russian Federation, communities were increasingly affected by their limited access to fishing and hunting resources, due to new licences being distributed through tenders, mainly to bigger companies.

The increasing globalisation of the demand for, and grabbing of, lands becomes evident in the article on Ethiopia, where the government has developed a strategy to boost agricultural production through large-scale land leases to foreign investors (such as Saudi Arabian, Indian and Chinese firms) who, in return, are going to build schools, clinics and install electricity for the communities. The tragedy is that all this is going to lead to the destruction of the livelihood systems of millions of pastoral communities in western and south-western Ethiopia, who will lose their land for the sake of this alleged "transformation". The policy does not provide for any compensation, and pastoral communities will be uprooted from their ancestral land without any alternative.

In some countries, such as Tanzania and Malaysia, initiatives taken by governments with regard to land-use planning and community titling – objectively benefiting indigenous communities – are regarded with suspicion. In Sabah, Ma-

laysia for example, communal titling is promoted by the government on the condition that the villagers agree to have their land developed by companies.

Even though, many Latin American states are becoming richer, the situation of indigenous peoples in the countries has changed little. On the contrary, while the states profit from the development of the countries' natural resources and are increasing their GDP, indigenous peoples, on whose lands most of these resources can be found, are increasingly suffering from the severe encroachments onto their land by multinational companies. This is described in every article on Latin America in this volume, which also reports on increasing inequality with regard to rights over and access to such fundamental resources as water (see, for example, the articles on Ecuador and Chile).

Such experiences should be taken into consideration by developed states when discussing bilateral cooperation, development aid and future trade relations. Increased GDP does not necessarily mean an improved human rights situation, nor an automatic improvement in the living conditions of marginalised groups, such as indigenous peoples, as can be seen in several of this year's articles.

The Organisation for Economic Cooperation and Development (OECD) launched the update of its Guidelines for Multinational Enterprises in May 2010. These guidelines are intended to promote responsible business practices on the part of companies from (or operating in) OECD member and other states that accept the Guidelines. Observance of the Guidelines by enterprises is, however, voluntary and not legally enforceable. It is the responsibility of adhering governments to promote them and enhance their influence among companies. The OECD publishes annual reports which describe what adhering governments have done to live up to this commitment.[2] Whereas the current guidelines from 2000 do not include any mention of indigenous peoples or indigenous rights, the OECD has made an attempt, in relation to its enhanced focus on human rights, to include some reference to indigenous issues in the new guidelines. The ToR for the new guidelines refer to the human rights aspects of relationships with local and indigenous communities. In January 2011, the OECD invited the UN Special Rapporteur on the Rights of Indigenous Peoples, Professor James Anaya, to an informal expert meeting on human rights issues, where he stressed that "any discussion of the responsibilities of multinational enterprises in relation to human rights issues must include indigenous peoples' rights, as articulated by the UN Declaration on the Rights of Indigenous Peoples, and as consistently protected through regional-level human rights mechanisms".[3]

Environment, climate and REDD

In December 2010, states and civil society met in Cancún, Mexico at COP16, to discuss climate change under the UN Framework Convention on Climate Change (UNFCCC). During an international indigenous peoples' technical workshop with states, which took place in September 2010 in Xcaret (Mexico) and was hosted by the Government of Mexico, indigenous peoples agreed their key demands and messages. Three central issues were identified: the adoption of a rights-based approach by incorporating the UN Declaration; the recognition of the right to Free, Prior and Informed Consent (FPIC); and the recognition and protection of indigenous knowledge and cultural heritage, innovations, technologies, traditional cultural expressions and indigenous peoples' spiritual beliefs. As a result of consistent indigenous advocacy work and the commitment of the Mexican government to the agreements reached at the Xcaret meeting, the Cancún Agreement arising from COP16 explicitly notes the UN Declaration. The shared vision text makes a general reference to the UN Human Rights Council's resolution on climate change and human rights, which, as the author of the UNFCCC article in this volume stresses, marks a shift in the place of indigenous peoples from vulnerable groups to rights' holders.

FPIC is one of the key principles and issues for indigenous peoples in the discussions on REDD (Reduced Emissions from Deforestations and Forest Degradation). The document from the UNFCCC COP 16 requests that development countries ensure the full and effective participation of indigenous peoples when implementing their national strategies and action plans. Indigenous peoples have been increasingly active in the REDD processes at national level and the opportunities and challenges accompanying REDD are described in many of the articles in this volume (see, for example, Indonesia, Vietnam, DRC, Gabon, etc.). Experiences are diverse and the views on the process are, accordingly, shifting. In some countries, particularly in Africa, indigenous peoples see REDD as a way of asserting their rights through law and policy reforms and, due to the REDD requirements, of applying the principle of FPIC. REDD can also be an opportunity for indigenous organisations to enter into dialogue with governments and to promote indigenous rights, as is stressed in the article on DRC, for example. In Gabon, REDD has become the key instrument for forest peoples, both in terms of creating dialogue between government and key stakeholders and in terms of promoting indigenous peoples' rights and consent in policy making and future legisla-

tion on the implementation of REDD. Indigenous peoples in Kenya decided to take advantage of the opportunities that the REDD mechanisms present and have experienced positive trends in the preparation of the national Readiness Preparation Proposal (RPP), when a government agency for the first time willingly used the term "indigenous peoples".

In Asia, experiences are less positive and indigenous organisations have become cautious as to their involvement in REDD mechanisms and the effect REDD may have on their communities. State forest management has caused problems for indigenous communities in Malaysia in the past and today they are worried about the transparency of REDD projects. They are therefore calling for the implementation of safeguards for indigenous peoples' rights. They are united in their opposition to the implementation of REDD without adequate consultation and without obtaining the free, prior and informed consent of the indigenous communities affected. In the Philippines, opinions on REDD engagements are divided but there are serious concerns that engagement may again mean the disenfranchisement of indigenous peoples from their lands. As the process has already commenced, however, it is crucial that indigenous peoples are prepared for REDD and that they have been increasingly involved in the processes and have succeeded in putting their concerns on the table. Again, in this case, as in many others, indigenous peoples' involvement in decision-making and in the implementation of FPIC is crucial and could, ultimately, lead to the real self-determination of indigenous peoples.

The World Conference on Indigenous Peoples

Concerns with regard to the extreme social and economic disadvantages of indigenous peoples were also shared by the UN General Assembly when, in November 2010, it unanimously adopted a resolution to hold a World Conference on Indigenous Peoples.

The Conference, which will take place in 2014, at the end of the Second International Decade of the World's Indigenous People (2005 – 2014), aims to discuss criteria for fulfilling the objectives of the United Nations Declaration on the Rights of Indigenous Peoples.

The resolution calls on Member States and the international community to help find solutions to the problems faced by indigenous peoples in areas such as

culture, education, health, human rights, the environment and socio-economic development. Furthermore, the General Assembly again encouraged Member States who had not yet done so to ratify ILO Convention No 169 and to consider supporting the Declaration.[4]

About this book

First and foremost, IWGIA would like to thank all the contributors to this volume for their commitment and their collaboration. Without them, IWGIA would never be able to publish such a comprehensive overview of the past year's developments and events in the indigenous world. The authors of this volume are indigenous and non-indigenous activists and scholars who have worked with the indigenous movement for many years and are part of IWGIA's network. They are identified by IWGIA's regional coordinators on the basis of their knowledge and network in the regions. All the contributions are offered on a voluntary basis and IWGIA does not pay for the articles to be written – this we consider a strength but it also means that we cannot guarantee to include all countries or all aspects of importance to indigenous peoples every year. This year the volume includes 58 country reports and 8 reports on international processes. The articles in the book express the views and visions of the authors, and IWGIA cannot be held responsible for the opinions stated therein. We therefore encourage those who are interested in obtaining more information about a specific country to contact the authors directly. It is nonetheless our policy to allow those authors who wish to remain anonymous to do so, due to the sensitivity of some of the issues raised in their articles. A number of country reports presented here take their point of departure as ethnographic regions rather than strict state boundaries. This policy has attracted criticism but is in accordance with indigenous peoples' worldview and cultural identification which, in many cases, cut across state borders.

The Indigenous World should be seen as a reference book and we hope that you will be able to use it as a basis for obtaining further information on indigenous issues worldwide. ❍

Kathrin Wessendorf, editor and Lola García-Alix, director
April 2011

Notes

1 Progress report on the study on indigenous peoples and the right to participate in decision-making. Report of the Expert Mechanism on the Rights of Indigenous Peoples. A/HRC/EMRIP/2010/2.

2 http://www.oecd.org/document/28/0,3746,en_2649_34889_2397532_1_1_1_1,00.html

3 Update of OECD Guidelines for Multinational Enterprises: Informal expert meeting on human rights issues, 25 January 2011. Summary of remarks of invited experts, http://unsr.jamesanaya.org/notes/update-of-oecd-guidelines-for-multinational-enterprises-should-incorporate-commitment-to-indigenous-rights.

4 UN GA Resolution: http://www.un.org/esa/socdev/unpfii/documents/UNGA_65_RES_IPs_en.pdf

PART I

REGION AND COUNTRY REPORTS

THE ARCTIC

GREENLAND

Kalaallit Nunaat (Greenland) has, since 1979, been a self-governing country within the Danish Realm. In 2009, Greenland entered a new era with the inauguration of the new Act on Self-Government, which gave the country further self-determination within the State of Denmark. Greenland has a public government, and aims to establish a sustainable economy in order to achieve greater independence.

The population numbers 57,000, of whom 50,000 are Inuit. Greenland's diverse culture includes subsistence hunting, commercial fisheries, tourism and emerging efforts to develop the oil and mining industries. Approximately 50 per cent of the national budget is subsidized by Denmark.

The Inuit Circumpolar Council (ICC), an indigenous peoples' organization (IPO) and an ECOSOC-accredited NGO, represents Inuit from Greenland, Canada, Alaska and Chukotka (Russia) and is also permanent participant in the Arctic Council.

The majority of the people of Greenland speak the Inuit language, Kalaallisut, while the second language of the country is Danish. Greenland is increasingly becoming a multicultural society, with immigrants from many parts of the world.

Inuit sharing life

2010 became a year of meetings across the Inuit homeland. Although there is no direct air link between Arctic Canada and Greenland, several chartered planes travelled across the Arctic over the year, strengthening relations between Inuit.

The Inuit Circumpolar Council held its 11th General Assembly in Nuuk in the summer of 2010. Inuit from all countries gathered at this quadrennial assembly with the theme "Inoqatigiinneq - Sharing Life", referring to the shared culture and identity of the approximately 160,000 Inuit living in the Arctic.

The ICC General Assembly once again proved to be a very necessary and timely forum. Issues such as health and well-being, economic development, governance, and hunting and food security were on the agenda of the four-day meeting. Around 500 Inuit from across the Arctic participated in the General Assembly,

including leaders from the regional and national governments of Inuit Nunaat, the Inuit homeland.

The result of the General Assembly was the 2010 Nuuk Declaration, which was adopted on the last day of the Assembly. With its 54 articles, the Nuuk Declaration gives the Inuit Circumpolar Council a mandate to work on numerous issues, including facilitating an Inuit Leaders' Summit on Resource Development and a Summit on Education, further analyzing and implementing the UN Declaration on the Rights of Indigenous Peoples and promoting state-of-the-art environmental and social impact assessments, especially with regard to the resource development sector. The Nuuk Declaration also mandates the Inuit Circumpolar Council to continue its advocacy and promotion of Inuit rights, culture, identity and language. As an indigenous peoples' organization, the Inuit Circumpolar Council is a permanent participant in the Arctic Council, and the 2010 Nuuk Declaration furthermore instructed the ICC to strengthen this position, and to continue its participation in the Arctic Council as well as in other international forums.[1]

Resource development

Oil and gas

2010 became a year of substantial industrial development for Greenland. Having inaugurated Self-Government in 2009, Greenland took over the legislation of subsurface resources on 1 January 2010.The Scottish corporation Cairn Energy plc had already, in the summer of the same year, conducted oil and gas explorations in the sea to the west of Greenland. The findings indicated that there are resources to be further explored in the years to come. Greenland and Cairn Energy plc thus plan to conduct further exploratory drilling in the summer of 2011.

Besides Cairn Energy plc, a long list of other corporations have been given exploration licences for offshore oil and gas to the west of Greenland.[2] The country thus hopes to rely on the exploration projects to develop a sustainable national economy as well as to provide employment opportunities for Greenlanders. Since the population of Greenland is relatively small, large numbers of foreign workers are expected to arrive with the exploration and drilling projects. In the summer of 2010, Cairn Energy plc moved approximately 600 foreign workers through the town of Aasiaat in the Disko Bay area each month.[3]

Mining

On land, Greenland also had several large-scale development projects in the planning and decision-making process last year. In South Greenland, different corporations were exploring areas of large deposits of rare earth elements or metals, which are minerals considered to be of high value to the global electronics and IT technology market. Some of South Greenland's deposits of rare earth minerals also showed the presence of radioactive elements such as uranium.

The Parliament of Greenland has, since 1985, upheld a zero-tolerance policy towards any kind of exploitation of Greenland's uranium deposits.[4] The Greenland public has vividly debated the zero-tolerance policy towards uranium and, in South Greenland, organizations both for and against the exploitation of uranium have been founded by the local people.

Along the west coast of Greenland, other mining projects included the prospecting of a large iron mine in the fiord of Nuuk, the capital of Greenland. Here, iron deposits are being explored and are expected to be in amounts exploitable for at least the next 20-30 years. The Maarmorilik mine in the Uummannaq area in north-west Greenland, where both lead and zinc were mined during the 1970s and 80s, is expected to be re-opened, and an exploration licence has been granted to the Angel Mining plc corporation, which has also been active in mining gold in South Greenland. Previous mining activity there is still causing pollution in the area of Maarmorilik.[5]

The aluminum project

The Government of Greenland signed a Memorandum of Understanding (MoU) with the American aluminum production company Alcoa Inc. in 2007. Since then, the corporation and the Government have further negotiated the scope of an aluminum smelter plant project, while both entities - along with a number of independent research institutes - have conducted environmental and social impact assessments of the project.[6] The government established Greenland Development, a company which plays both an informative role and also coordinates the development activities with regard to the land-based business and energy sector and, along with Alcoa Inc. they have continued to facilitate public meetings on the project in some of the larger towns in West Greenland. Several live debates have been held on the Greenland National Radio, KNR. During these debates, some

citizens questioned the role and independence of Greenland Development, while organizations both for and against the aluminium smelter plant project were established in the town of Maniitsoq, close to where the planned smelter is to be built.

The challenge of decision-making

The large number of multinational corporations prospecting small and large-scale industrial development projects in Greenland poses a challenge to independent and open decision-making processes. Multinationals and other corporations often have superior resources with which to conduct research and information campaigns compared to the relatively small economy of Greenland. Although Greenland has had some degree of self-government since 1979, the new form of self-determination, and the increased interest of industries in Greenland's resources, is now forging a strong system in which there are clear and transparent decision-making processes. The increased responsibilities gained with the new legislation on sub-surface resources also calls for a system in which the impact assessment and decision-making processes are clearly defined both for the public and for the foreign corporations operating in Greenland.

The Greenlandic population of approximately 57,000 people lives in remote towns and settlements spread along a coastline of several thousand kilometers. In the winter, transport between towns and settlements is limited to expensive flights, and North Greenland in particular, where sea ice closes the routes for passenger transportation by boat or ship, is at times difficult to access. While other forms of information sharing such as the Internet and TV are expanding, there are still limited resources with which to conduct information, consultation and hearing processes. The implementation of human rights instruments such as the UN Declaration on the Rights of Indigenous Peoples, ILO Convention 169 and other standards that call for open and fair processes with regard to the use of lands, seas and resources, is thus challenging.

Throughout 2010, the Inuit Circumpolar Council openly advocated for the implementation of the UN Declaration on the Rights of Indigenous Peoples, and publicly questioned the existing hearing and decision-making processes in Greenland.

Environmental awareness

Along with the Inuit Circumpolar Council, other national and international civil society organizations have also expressed their concern regarding the environmental aspects of resource development in Greenland. The Greenlandic environmental grassroots organization Avataq has been active in publicly questioning the aluminum smelter project and the numerous mining projects. The organizations against uranium and against the aluminum smelter also raised their voices to question the quality of the numerous environmental impact assessments. The national radio station, KNR, increasingly included these organizations in their debates, contributing to a more nuanced discussion among the Greenlandic public with regard to the environmental aspects of the industrial projects.

In the summer of 2010, when exploratory drilling for oil and gas began in the sea to the west of Greenland, the international environmental NGO Greenpeace acted by bringing its vessel into Greenlandic waters in protest at the drilling. In the process, Greenpeace held a public meeting in Nuuk but, instead of being met by supporters, or by people interested in the environmental dangers of offshore oil and gas exploration, the organization was met by a demonstration against them. Campaigns against the hunting of seals and whales on the part of Greenpeace and other animal rights organizations have resulted in quite serious mistrust of these organizations among the Inuit.

Greenpeace did not therefore obtain the support from Greenlanders that the organization might have hoped for when its supporters boarded the Cairn Energy drilling operations in September 2010, halting activity for several days.

Climate change

In 2010, Greenland continued to experience the rapidly changing Arctic climate first hand. Scientific research reports of the past years have again demonstrated record highs in terms of climate change.7 Some reports show that the Greenland Ice Sheet is melting faster than previously anticipated, while the sea ice in North Greenland and the weather continue to be unstable. The Greenland Climate Change Research Centre, established in 2009,8 conducts research into the changing climate, while the Government of Greenland has initiated projects fo-

cusing on mitigation and adaptation in order to study the consequences of climate change for Greenlandic society and to develop possible adaptation measures.

The Government of Greenland continued its active involvement in climate change issues, especially at the UN Framework Convention on Climate Change Conference held in Cancún, Mexico, in December 2010. Here, the government once again stated its support for the indigenous peoples' struggle against human-induced global climate change, while underlining the need for economic development in accordance with the UN principle of "common but differentiated responsibilities".

The Inuit Circumpolar Council also continued its advocacy for a reference in the international agreement to "Peoples" instead of just "States", as vulnerability to climate change is regional and local in nature, and not defined by the state borders that often divide indigenous peoples, including the Inuit.[9] ❍

Notes

1 Inuit Circumpolar Council, The 2010 Nuuk Declaration: http://www.inuit.org/index.php?id=409
2 Government of Greenland's Bureau of Minerals and Petroleum: www.bmp.gl
3 Cairn Capricorn Social Impact Assessment, Exploration Drilling Programme, Offshore West Greenland 2011, Version 1, 1 March 2011: www.erm.com
4 Government of Greenland's Bureau of Minerals and Petroleum: www.bmp.gl
5 Danmarks Miljøundersøgelser: http://www.dmu.dk/greenland/minerogmiljoe/maarmorilik/
6 Greenland Development: www.aluminium.gl
7 NASA Earth Observatory, Record Melting in Greenland during 2010: http://earthobservatory.nasa.gov/IOTD/view.php?id=49338
8 Greenland Climate Research Centre: http://www.natur.gl/index.php?id=974&L=3
9 Inuit Circumpolar Council press release at COP16: http://inuitcircumpolar.com/index.php?auto_slide=&ID=438&Lang=En&Parent_ID=&current_slide_num=

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SÁPMI

Sápmi is the Sámi people's own name for their traditional living territory. The Sámi people are the indigenous people of the northern part of the Scandinavian Peninsula and large parts of the Kola Peninsula. The Sámi people therefore live in the four countries of Sweden, Norway, Finland and Russia. There is no reliable information as to how many Sámi people there are; it is, however, estimated that they number between 50,000 – 100,000 in all.

Around 20,000 live in Sweden, which is approximately 0.22% of Sweden's total population of around 9 million. The north-west part of the Swedish territory is the Sámi people's traditional territory. These lands are traditionally used by the Sámi for reindeer herding, small farming, hunting, fishing and gathering.

Around 50-65,000 live in Norway, i.e., between 1.06 and 1.38% of the Norwegian total population of approx. 4.7 million.

Around 8,000 live on the Finnish side of Sápmi, which is approx. 0.16% of the Finnish total population of around 5 million.

Around 2,000 live on the Russian side of Sápmi, and this is a very small proportion of the total population of Russia.

Politically, the Sámi people are represented by three Sámi parliaments, one in Sweden, one in Norway and one in Finland, whereas on the Russian side they are organised into NGOs. In 2000, the three Sámi parliaments established a joint council of representatives, called the Sámi Parliamentary Council.

The Sámi Parliamentary Council should not be confused with the Sámi Council, which is a central Sámi NGO representing large national Sámi associations (NGOs) in all four countries.

There are also other important Sámi institutions, both regional and local, *inter alia*, the Sámi University College, which is a research and higher education institution for the Sámi society's needs, and where the language of work and tuition is mainly the Sámi language.

Sweden, Norway and Finland voted in favour of the UN Declaration on the Rights of Indigenous Peoples in September 2007, while Russia abstained.

The Sámi parliaments

The Sámi Parliament in each country is elected by and represents the Sámi people in that country. Each Sámi Parliament is regulated by a Sámi Parliament Act.

The Sámi parliaments are institutions alongside other social institutions in the Norwegian, Swedish and Finnish societies. Their role is to look after Sámi interests and, to a lesser degree, define public policies. However, the Sámi people (in Russia, too,) also have access to all public institutions and services on an equal footing with the other citizens of these countries, and the right to vote in local and national elections.

In order to vote for one of the three Sámi parliaments, one has to be listed in a special Sámi electoral register. The conditions for being on this Sámi electoral register are regulated by the Sámi Parliament Act, and these conditions are quite similar between each of the three Sámi parliaments. They include: self-identification as a Sámi, the use of the Sámi language either by yourself or by one of your grandparents and, in Finland, an ancestor must also have been registered as a Sámi (or as a Lapp, which Sámi consider to be a condescending word) on the population register. Only a part of the estimated Sámi population has so far been recorded on the Sámi electoral registers. In Norway, only around 12,500 people out of the estimated 50,000 – 65,000 Sámi are registered; in Sweden, around 7,000 out of 17-20,000 people are registered; and in Finland around 5,200 out of 8,000 are registered.

The Sámi parliaments are public institutions in their respective countries, and they are politically autonomous, i.e. they freely decide which matters they wish to debate and the governments do not directly interfere in their political life. The Sámi parliaments are 100% dependent on state funding. They are, to some extent, free to determine how that funding is to be spent; however, a large proportion of the funding is earmarked by the state for specific purposes, such as support to Sámi languages, culture, etc. When it comes to land and resource man-

agement, the Sámi parliaments have no role apart from being able to raise whatever issues they want. The Sámi Parliament in Norway does appoint half of the board of the Finnmark Estate, and draws up applicable guidelines on changes in land use in Finnmark. These guidelines for land-use changes (*utmark*) outline the central Sámi interests that are to be considered by the Finnmark Estate and public authorities when taking decisions that change, or notably affect, the traditional use of lands. The Sámi Parliament in Norway has the most staff and the biggest budget, and perhaps the biggest influence, of the three Sámi Parliaments.[1]

On the Russian side there is currently no Sámi Parliament but efforts are being made by the Russian Sámi to establish one.[2]

There were no major political changes to the Sámi parliaments in Norway or Finland during 2010. The Sámi Parliament in Sweden, however, adopted a new Chair of the Board (President), a new Board and a new Head of Administration during 2010.

The draft Nordic Sámi Convention

The governments of Sweden, Norway and Finland, together with representatives from each Sámi Parliament, began new negotiations on the draft Nordic Sámi Convention during 2010.[3] This draft convention is considered to be a consolidation of applicable international law, consolidating the rights of the Sámi people and the obligations of the states.

The UN Special Rapporteur's inquiry

The UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Professor James Anaya, examined the situation of the Sámi people in the Sápmi region of Norway, Sweden and Finland during 2010. The Sámi Parliament Council held a conference in Rovaniemi (Finland) from 14 to 16 April in order to provide the Special Rapporteur with input to his inquiry as a basis for his report. The report is to be submitted at the start of 2011, and will be reported on in next year's edition of *The Indigenous World*.[4]

Developments in Sápmi Norway

The Tana River (*Deatnu* in the Sámi language) is a very long river in the northernmost part of Norway which, for much of its length, forms the border between Norway and Finland. In the Sámi language, the name, *Deatnu*, means a huge river, bigger than normal rivers. The Tana River, together with its tributaries, is 1,100 km long, and salmon fisheries, in particular, have been very important for the Sámi livelihood since time immemorial in the Tana river valley. The Tana River has the highest yearly catch of Atlantic salmon in the world and, in some years, the river has provided up to 20% of all Atlantic salmon caught in Europe's

rivers. Unique to the Tana River is the extensive use of traditional fishing methods such as fences and different kinds of nets, drift nets and seine nets.[5] Sport fishing also accounts for a considerable amount of fish, especially on the Finnish side of the river. Since the river forms much of the border between the two countries, the Norwegian and Finnish states administer the salmon fisheries together, and differing opinions between the two have contributed to problems in managing the salmon fisheries in a way that will be ecologically sustainable in the long term. In 2008, a Norwegian public investigation into fisheries administration in the Tana River, the *Tanautvalget*, was set up to look into local people's rights to manage the fisheries, as had been set out in the Finnmark Act in 2005 and as called for by Sámi. *Tanautvalget* submitted its report in December 2009, suggesting a new local administration for the fisheries in the Tana River. During 2010, the Norwegian Government consulted the Norwegian Sámi Parliament on the issue and an agreement was reached to establish a new local administration for the Tana River and its fisheries. This new administration is expected to come into force during 2011.[6]

In August 2010, the Norwegian Government established a public investigation into Sámi research and higher education. This investigation is entitled *Butenschønutvalget,* after its chair, Professor Nils Butenshøn. The Butenschønutvalget's mandate is to map Sámi research and higher education, with attention to international conventions and the basic conditions for recruitment to Sámi research and higher education, among other things, and thereafter discuss future organisation and coordination in this area, and also to look into how the Sámi University College can develop into a scientific University College and then further into an Indigenous Peoples' University. The Butenshønutvalget will present its report in December 2011.[7]

Developments in Sápmi Finland

In Finland, there was no appreciable progress in the work towards ratifying ILO Convention 169 during 2010. The main obstacle to ratification is the issue of land rights.

Finnish legislation does not recognise any special land rights to the Sámi people and reindeer husbandry is not reserved for Sámi people in Finland, unlike in Norway and Sweden. During 2010, Finland took no appreciable steps towards securing the Sámi people's special land rights as a basis for their culture and economy.

During 2010, the Finnish Department of Education began, together with the Sámi Parliament, to look into how better to revitalise the Sámi language and how laws regarding the Sámi language could be changed in order to support that development. Some outcomes are expected in 2011. Finland has also been putting effort into Sámi research in the field of law.

Developments in Sápmi Sweden

As mentioned in *The Indigenous World 2009* and *The Indigenous World 2010,* a public inquiry into changes in the Swedish Constitution (*Regeringsformen*) proposed, in December 2008, that the Sámi people should have a special mention in the constitution, but only as a minority, not as an indigenous people. The Swedish Government followed this line and suggested in its proposal to the Swedish Parliament (*Riksdagen*) that the Sámi people should be mentioned as a special minority in the constitution. This was heavily criticized by the Sámi Parliament, Sámi organisations and other institutions and organisations. The Swedish Government therefore withdrew its proposal and suggested that the Sámi people should be mentioned in the constitution as a people in Sweden. The Swedish Parliament passed the new proposed wording of the Swedish Constitution (Regeringsformen) and this came into force in January 2010. The Sámi people have therefore officially been a people in Sweden since January 2010.[8]

The issue of whether Sweden will ratify ILO Convention 169 or not was not resolved during 2010. The main reason why Sweden has not yet ratified this Convention is that Swedish laws on Sámi land rights do not fit with Article 14 of the Convention. As a way of implementing the Convention, Sweden has therefore chosen to first adapt national legislation to the Convention before ratifying it, in order to prevent conflicts. Next year will mark 20 years since ILO 169 came into force. I think it can therefore be said that the idea of adapting national legislation prior to ratification is not working. There is simply a lack of political will in Sweden to ratify the convention.

In 2009, the Swedish Government presented what it considered to be a new policy on Sámi land rights and, *inter alia*, membership of Sámi villages, although this was, as mentioned in *The Indigenous World 2010*, heavily criticized given that nothing really new was suggested, and the government therefore withdrew its suggestions in order to consider the matter further. The Swedish Government

thereafter asked the Swedish Sámi Parliament to come up with suggestions for a new policy, and the Sámi Parliament has appointed a committee consisting of the leaders of all parties represented in the Sámi Parliament to come up with suggestions for new legislative changes. The Sámi Parliament is expected to present its findings at the beginning of 2011.

A new updated Sámi language act was promulgated in June 2009 and came into force on 1 January 2010. This new law widens the geographical area in which people have a right to use the Sámi language as an official language.[9]

As noted in *The Indigenous World 2010,* a new bilateral convention on reindeer herding was signed between Sweden and Norway during 2009. No essential changes in the status of this bilateral convention took place in 2010, and so the convention has not yet been ratified. Sámi stakeholders criticised the issue of reindeer pastureland allocations in the convention. During 2010, a Sámi from Sweden, who claims that the states are violating his land rights, took his case to the European Court of Human Rights.[10]

The UN Universal Periodic Review of Sweden's work on human rights

The UN Working Group on the Universal Periodic Review (UPR) reviewed Sweden's human rights record during its eighth session from 3 to 14 May 2010. In the Swedish state's presentation, the Sámi people were mentioned both as a national minority and as Sweden's only indigenous people, and it was also noted that the government had continued to consider ratification of ILO 169, although all legal consequences would have to be further clarified. In the interactive dialogue with other states, Sweden received many good words for its work and commitment to human rights, but was also criticized on some points, including its relations with the Sámi people.

Austria, South Africa, Cuba and the Netherlands were all concerned about Sámi discrimination, whilst Germany acknowledged that Sweden had made efforts to address these issues. New Zealand welcomed the new act on national minorities and minority languages (see *The Indigenous World 2009*) but noted that the Sámi people's land issues had not been resolved. Bolivia was concerned about the Sámi people's participation in political decisions, especially regarding land issues, and noted that Sweden had supported the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO 169 but had not implemented

the rights set out therein. China asked how Sweden was going to address these issues. The Swedish delegation answered that Sweden's Sámi policy promoted self-determination on issues directly affecting the Sámi people, and also referred to a proposal to introduce increased consultation of the Sámi people.

The UPR recommendations to Sweden on Sámi affairs, which were later supported by Sweden, were to: complete the work of clarifying the legal consequences of ratification, and consider ratifying, ILO 169 as a matter of priority (Norway); amend the Swedish Constitution to give explicit recognition to the Sámi people (Greece); continue to develop effective mechanisms for improved dialogue and consultation with the Sámi people in areas that affect them and in the development of legislation (Canada); implement the UNDRIP effectively in full cooperation with the Sámi people (Iran); implement measures to eliminate discrimination of the Sámi people with a focus on ensuring access to land, basic services in education and to ensure that their right to land and culture is preserved (South Africa); initiate studies into ways of establishing Sámi land and resource rights, and ensure that Sámi communities can participate actively in consultations related to land rights, water and resources (Austria); remain proactive in combating discrimination against the Sámi and Roma, and protect their cultural, social and economic rights in consultation with them (Netherlands).

Sweden also received a large number of recommendations that it said it would examine further before answering, *inter alia*: to transfer the administration of land-user rights and land use to the Sámi people (Greece); to include representatives of the Sámi people in all political, economic and social decisions that concern them, and to provide all necessary support to the Sámi people so that they can make use of legal resources that enable them to defend their rights on an equal footing (Bolivia).[11]

Court Cases in Sweden

During 2009, the Supreme Court decided to hear the *Nordmaling* case on the right to reindeer pasturelands in a certain coastal area of north-east Sweden, which was described in *The Indigenous World 2008* as a potentially decisive case for the future legal status of winter reindeer grazing lands in these coastal areas. The hearing for the case has now been set for February 2011.

There are also a number of cases on the right to reindeer pasturelands ongoing in the lower courts, and one upcoming case on Sámi rights to hunt and fish. ❍

Notes and references

1 www.sametinget.no
www.sametinget.se
www.samediggi.fi
See also: **Vars, Laila Susanne, 2009:** *The Sámi People's Right to Self-determination*, dissertation, University of Tromsö, Faculty of Law, July 2009

2 http://www.barentsindigenous.org/organisations.116558.en.html

3 http://www.sametinget.se/17486

4 The Special Rapporteur's report was submitted as we go to press, but the report will be summarized in the next edition of *The Indigenous World*, The report can found at: http://www2.uit.no/ikbViewer/Content/219439/Anaya%20report.pdf

5 The seine net (*nuohtti* in the Sámi language) a fishing net that hangs vertically, with floats at the top and weights at the bottom.

6 http://www.nrk.no/kanal/nrk_sapmi/1.7116297 http://www.regjeringen.no/upload/MD/Vedlegg/Rapporter/Forslag_til_lokal_forvaltning_av_fisk_og_fisket_i_Tanavassdraget_091203.pdf

7 http://www.samediggi.no/artikkel.aspx?MId1=3296&MId2=3296&MId3=3296&AId=3655&Back=1

8 Prop. 2009/10:80 En reformerad grundlag, p. 188ff. http://www.regeringen.se/content/1/c6/13/70/77/84ff1d65.pdf

9 SFS nr: 2009:724 Lag om nationella minoriteter och minoritetsspråk. http://www.riksdagen.se/webbnav/index.aspx?nid=3911&bet=2009:724

10 http://sverigesradio.se/sida/artikel.aspx?programid=2327&artikel=4092030

11 United Nations A/HRC/15/11, General Assembly Distr.: General, 16 June 2010, Human Rights Council, Fifteenth session, Agenda item 6, *Universal Periodic Review, Report of the Working Group on the Universal Periodic Review, Sweden*
http://www.upr-info.org/IMG/pdf/A_HRC_15_11_E.pdf

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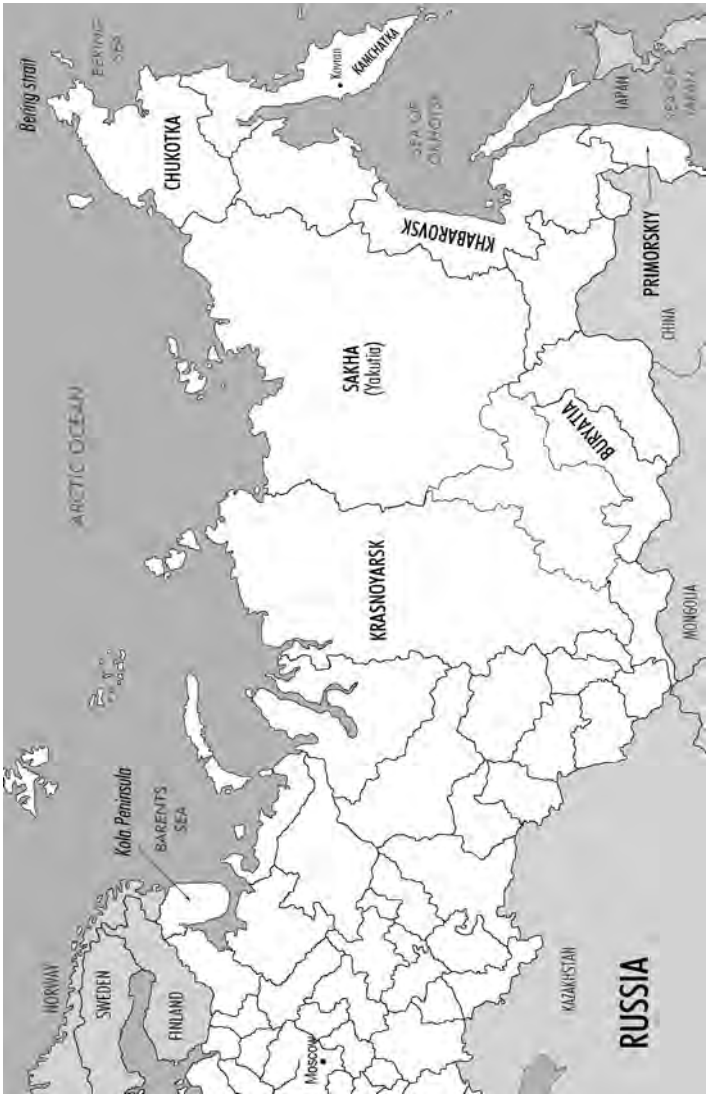
RUSSIA

The Russian Federation is a multiethnic society and home to more than 100 peoples. Of these, 41 are legally recognised as "indigenous, small-numbered peoples of the North, Siberia and the Far East"; others are still striving to obtain this status. This status is conditional upon the following: that a people has no more than 50,000 members; that it maintains a traditional way of life; that it inhabits certain remote regions of Russia; and that it identifies itself as a distinct ethnic community. A definition of "indigenous" without the numerical qualification does not exist in Russian legislation. The small-numbered indigenous peoples number approximately 250,000 individuals in total and thus make up less than 0.2% of Russia's population. They traditionally inhabit huge territories stretching from the Kola Peninsula in the west to the Bering Strait in the east, covering around two-thirds of the Russian territory. Their territories are rich in natural resources, including oil, gas and minerals and they are heavily affected by large energy projects such as pipelines and hydroelectric dams.

The small-numbered indigenous peoples are protected by Article 69 of the Russian Constitution and three federal framework laws: 1) On the guarantees of the rights of the indigenous small-numbered peoples of the Russian Federation (1999); 2) On general principles of the organization of communities [obshinas] of the indigenous small-numbered peoples of the North, Siberia and the Far East of Russian Federation; and 3) On Territories of Traditional Nature Use of the indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation (2001). These three framework laws establish the cultural, territorial and political rights of indigenous peoples and their communities. However, the implementation of the aims and regulations contained in these laws has been complicated by subsequent changes to natural resource legislation and government decisions on natural resource use in the North.

In 1990, indigenous activists, intellectuals and writers established a national umbrella organization – the Russian Association of Numerically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CHINA
BURYATIA
ARCTIC OCEAN
KRASNOYARSK
MONGOLIA
Kola Peninsula
BARENTS SEA
NORWAY
SWEDEN
FINLAND
Moscow
KAZAKHSTAN
RUSSIA

Small Indigenous Peoples of the North, Siberia and the Far East (RAIPON). Today, RAIPON represents 41 indigenous peoples of the North, Siberia and the Far East, 40 of which are officially recognized, with one still seeking recognition. RAIPON's mission is to protect their rights at the national and international level.

Russia abstained from voting in the UN General Assembly on the adoption of the UN Declaration on the Rights of Indigenous Peoples.

In April 2009, the Sixth Congress of Indigenous Small-numbered Peoples of the North, Siberia and the Far East appealed to government agencies with "Recommendations aimed at establishing conditions for the representation of indigenous peoples in Russia" (see also *The Indigenous World 2010*). It received no response to these proposals. Reports are pouring in from associations of indigenous small-numbered peoples of the North, Siberia and the Far East regarding the dire socio-economic situation in settlements and an inability to feed families as traditional natural resources are commercialized, along with the closure of schools and hospitals, resulting in cases of sickness and suicide.[1] Government agencies, however, ignored the numerous appeals made by RAIPON and regional indigenous organizations in 2010.

In 2009, the federal government approved a "Concept for the sustainable development of indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation" which is to be implemented until the year 2025, and a "Range of initial methods for realizing this concept by 2011". Among the Concept's goals and initial methods are:

- The establishment of pilot territories of traditional natural resource use;
- Legislative improvements to simplify indigenous small-numbered peoples' access to traditional natural resources for fishing and hunting; and
- Acceptance and approval of a methodology for assessing damage to traditional lands caused by commercial companies' activities.

All of these goals were to be completed by the end of 2010.

Enhanced restrictions to fishing rights

As of 2010, not a single territory of traditional natural resource use had been established by the federal government.

On 1 April 2010, a federal law "On hunting and protection of hunting resources and the introduction of amendments into several legislative acts" came into effect. For indigenous peoples, the main sticking point in this law is that all hunting grounds, without exception, are to be distributed for long-term lease, based upon the results of tenders. This regulation will deprive indigenous communities of their traditional hunting grounds.

In the last week of December 2010, a federal law "On changes to the federal law 'On fishing and the protection of water biology resources' and other legislative acts of the Russian Federation" was approved. During the second and third readings of the bill on 24 December, intense discussions arose within the Federation Council regarding a specific point on eliminating the word "fishing" from Article 48 of the federal law "On the animal world". By eliminating this word from the law, the federal government, which had initially proposed the law, would deprive indigenous peoples and local residents of the right to priority use of fishing resources.[2] Unfortunately, the law was approved.[3]

But who is bothered with traditional fishing? The problem is that, since 2008, fishing grounds have been allocated by commercial tenders, and the most accessible and productive grounds already have new owners engaged in commercial fishing. During tenders, fishing grounds were auctioned off without regard for the indigenous peoples and local residents already fishing there. Local residents that attempted to participate in competitions lost through lack of financing, and the majority of people living in distant villages never even knew about the auctions. In the summer, when they arrived at their traditional fishing grounds, huts and smokers, they came upon the new owners' employees who explained to them that these were now private fishing grounds and that they could not come here to fish anymore.

On 6 December 2010, during an International Far Eastern Conference in Khabarovsk, Far Eastern fishermen had the opportunity to tell the government representative that they were being sent to fish over 700 km from home. In a public announcement, Prime Minister Putin tasked the Russian Fisheries Agency with finding a solution to allow indigenous small-numbered peoples to continue their traditional fishing.[4]

The resulting law, discussed above, that was passed on the last day of December 2010 only worsened the situation yet more.

There are over 250,000 indigenous small-numbered people in the North, Siberia and the Far East, from the Kola Sami to the Kamchatka Itel'men and the Khabarovsk Krai Nanai. Without exception, they all engage in traditional fishing. In addition to the denial of their fishing rights and the alienation of their traditional fishing sites, over-exploitation by third parties puts the indigenous peoples' livelihood at risk and threatens indigenous peoples' access to adequate food.

Regional examples

In 2010, the **Khabarovsk** branch of the federal fishing authority (Rosrybolovstvo) set the per capita limit at 50 kg per annum, less than 20% of what has been calculated as a sufficient amount for indigenous people pursuing a traditional way of life. In addition, it stopped allocating set amounts to indigenous settlements, which would previously have taken charge of distributing them among their members. Instead, it introduced a highly bureaucratic regime whereby every indigenous person, including infants and the elderly, would have to produce individual documentation to receive the permits. These applications were now to be considered by the federal authorities in Moscow, which have very little insight into the living conditions of indigenous village residents in Russia's Far East. The vice-director of the Amur territorial administration of Rosrybolovstvo concedes that many applications were rejected due to formal errors, and most inhabitants of the villages along the Amur learnt about the new procedure only at the beginning of the fishing season. In 2010, just one in every ten Nanai, Nivkh or Ul'ch village residents was thus legally entitled to fish for his or her own personal consumption. This meant that, in 2010, the majority of indigenous peoples in Khabarovsk Krai were forced to engage in poaching, risking fines and confiscation of fishing equipment.[5]

In **Taimyr district**, in the Arctic North of Krasnoyarsk Krai, indigenous people report that fishing for the purpose of pursuing their traditional way of life is now impossible because a decree from the administration of Krasnoyarsk Krai allows only the catch of certain fish species that do not occur in the rivers of Taimyr. Multiple appeals from indigenous peoples' organisations asking for this anomaly to be rectified went unheard.[6]

The inhabitants of the village of Uelkal' in **Chukotka** are currently without any traditional foodstuffs. In 2010, the sea hunters of this village did not receive per-

mission to embark on sea hunting. Petitions by the villagers to the district administration, the food and agricultural and the indigenous affairs directorate of the region have been to no avail. The indigenous village will therefore remain without the meat or fat of sea mammals until the summer of 2011, according to the Chukotka Association of traditional hunters.[7]

The indigenous people of Olginski district in **Primorsky Kray** found themselves in a difficult situation in summer 2010 when, at the peak of the migration period of the Keta, a Pacific salmon species, the controlling authorities suddenly decided to prohibit the catch of salmon.[8]

In **Sakha (Yakutia)** republic, news sources reported a "fishermen's insurrection" in Allaikha district in the north-east of the republic. A member of parliament reported in Yakutsk that only those who had offered to pay the highest price had been granted fishing grounds, while fishermen who were unable to obtain a fishing quota were fined, and their boats and nets confiscated.[9] Since the local indigenous Even and Yukaghir have very few alternatives to fishing, the current regulatory practices effectively bar them from pursuing their main economic activity.

As reported from the village of Kovran on the north-western coast of **Kamchatka** peninsula, the village council held an emergency session on 31 May 2010, where it was established that, after the administration had introduced commercial fishing sites on the Kovran River, the salmon stocks had deteriorated sharply. None of the residents' appeals to the authorities, including one to the Russian president, were heeded. The residents therefore now describe their situation as an emergency. The indigenous Itelmen people of Kovran are currently denied the right to feed themselves in the way in which they have done since time immemorial.[10]

As in many other regions, the traditional fishing sites of indigenous peoples in **Buryatia** have recently come under the control of commercial fishing enterprises, who won them in public auctions announced by the authorities. The animal husbandry department countered criticism of this policy by responding to the media that

> *Nobody is taking anything away from the Evenks. Tenders will be announced for fishing sites […], in which everyone can participate. [After that], one will have to ask for permission for fishing from the person who won the tender.*[11]

However, lease-holders of fishing sites are under no legal obligation to let indigenous people fish their sites and are unlikely to do so, because they are in direct competition for the same resources.

Methodology to measure the impact of industrial development on indigenous lands

The law "On guarantees of the rights of indigenous small-numbered peoples", adopted on 30 April 1999, declares that indigenous peoples have the right to compensation for the impacts of industrial resource use on indigenous lands and ways of life. However, for a long time no mechanism existed to enforce this provision. Finally, in December 2009, the Ministry of Regional Development affirmed a "Methodology for calculating losses experienced by groups of indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation due to economic or other activities of organizations (with all forms of property) or individuals in places traditionally inhabited by indigenous small-numbered peoples of the Russian Federation and used by them for traditional activities".

The Ministry subsequently declared that the methodology would be tested during 2010. Many indigenous peoples' organizations volunteered to engage in this process and proposed industrial sites actively under development within their respective territories for inclusion. In western Russia, the Kola Saami wanted to use the methodology to assess the development of the Shtokman oil field, one of the world's largest offshore gas reserves yet to be exploited; the Association of Indigenous Peoples of Sakhalin wanted to assess the damage to indigenous peoples' livelihoods caused by oil and gas pipelines built over the last ten years; the indigenous peoples' Association of Sakha Republic (Yakutia) sought to use the methodology to evaluate a gas pipeline and a hydroelectric station proposed and designed for southern Yakutia.

The case of the Soyot in Buryatiya

The Association of the Soyot people of Buryatiya wanted to evaluate a proposed gold-mining and ore processing facility immediately adjacent to a Soyot settlement. The Soyots living in the eastern Sayan Mountains in Okinsky District were very concerned about the development of gold mining and the construction of a processing plant in the mountains above the Soyots' traditional lands. These industrial sites threaten to seriously pollute rivers, lakes, ground water and pastures where the Soyots graze their reindeer, yaks and cattle.

During a seminar on indigenous peoples' legal rights, organized by RAIPON, its President S. N. Kharyuchi paid a visit to Okinsky District, during which he learned about issues of concern to the indigenous population, visited the mine and the construction site for the processing plant and participated in negotiations with the mine's leadership. Over the course of the seminar, Okinsky District residents drafted an appeal to the Russian Federal Ministry of Regional Development requesting that the Ministry facilitate testing of the methodology. Seminar participants supported the creation of an ethno-ecological council in Okinsky District that would include indigenous and local residents, government agencies and resource users in order to facilitate ongoing joint efforts to monitor the project and develop a long-term action plan to protect the indigenous territories and to protect and develop the traditional activities and culture of the indigenous and local population. Notably, the mine's director interacted directly with indigenous and other local residents and expressed sympathy with their concerns. He approved of the proposals for additional studies into the impacts the project was having on the indigenous population's traditional ways of life and supported the idea of establishing a comprehensive system for cooperation between local residents and government agencies to organize ethno-ecological monitoring. Despite his support, the director noted that a final decision on these issues was beyond his control.

The mine is operated by the privately-owned company, Khuzhir Enterprise. The company has been granted licenses to conduct geological studies and to mine gold ore in the Republic of Buryatiya. While the company's legal address is in the village of Orlik in Okinsky District, decisions are made elsewhere. Verteks, a mining company established in November 2005, purchased 60% of Khuzhir Enterprise's shares in February 2006. Verteks is registered in Moscow and is currently undergoing a reorganization. It is not clear whether Verteks' leadership and shareholders understand what a tremendous responsibility they bear in preventing harm to a region inhabited by indigenous and local residents living a traditional way of life and in conserving a globally-important cultural and natural heritage. The answer to this question remains to be seen. As a result of the abovementioned seminar, participants began sending appeals to the Russian Ministry of Regional Development, asking the Ministry to facilitate testing of the methodology. The Ministry, however, decided to wait for initiatives on the part of regional governments and industry. Ultimately, the Ministry took no practical steps apart from distributing a briefing letter on the methodology to regional government agencies.

Despite the availability of the draft methodology, the Ministry thus failed to take any meaningful steps in 2010 to put in place a working mechanism for assessing damages caused to indigenous peoples by industrial projects and determining compensation levels. Appeals by indigenous organizations were met with no substantive response. These delaying tactics are a cause for major concern in relation to the fate of indigenous peoples living in the impact zone of these projects.

The East-Siberia-Pacific gas pipeline

Russia's largest gas producer Gazprom is currently planning the construction of a gas pipeline route leading from Yakutia to Khabarovsk and Vladivostok on the Pacific coast. Previously approved plans for this project foresaw a route paralleling the already existing 4,857 km-long East-Siberia-Pacific Ocean oil pipeline, which is already in operation. Gazprom recently presented a modified route, which the company prefers as it is significantly shorter and thus cheaper to build. However, the proposed route would cut through three districts in the south of Sakha (Yakutia) which are home to more than 4,000 indigenous Evenks. The association representing the indigenous Evenks of Yakutia has appealed to President Medvedev and to Gazprom to change the route. In an open letter, it expressed grave concern that "for the sake of saving 49 billion roubles (1.7 billion US$) it has been proposed to build the pipeline straight through the territories of traditional nature use of the Evenk people (...), [and] through the nature reserve 'Cheroda'". In December 2010, 213 inhabitants of the village of Tyanya in Olekminski District sent a letter of appeal to the presidents and governments of Russia and Yakutia, urging them to spare their territories stating:

> *Industrial projects which were constructed earlier affected only the outskirts of our territories, we always found ways to lead our reindeer to other places, directed our hunters to other lands, i.e. much of our territories remained unaffected and nature preserved its original beauty. Now it is different. Under the second proposed route, the gas pipeline will run straight through the very heart of our land. In fact, this will be a blow into the heart. i.e. our entire existence will be put at stake. Gazprom insists on the second route, pointing to a cost advantage of 49 billion roubles. Is money more important than an entire people whose language, culture and way of life are priceless?"* [12]

The signatories explicitly state that they are not opposed to economic development as such; they are merely calling on Gazprom to refrain from the newly-proposed route and revert to the original plans.

The situation of remote indigenous settlements

Remote settlements inhabited predominantly by indigenous peoples are finding themselves increasingly abandoned and disconnected from supplies. One case to gain publicity in 2010 was Paren, a Koryak village of 60 inhabitants in Penzhinski District in Northern Kamchatka territory. In October 2009, the indigenous information centre "Lach" reported that the inhabitants of Paren had been left without food, other than fish and wild plants, and without access to medicine and clothing. Neither adults nor children had been attended by any doctor or nurse for two years. No treatment was available for sick children. When the report was published, the children had been suffering from an unknown virus for a number of months. Young mothers had nothing to eat and nothing to feed their babies. In the winter months, the inhabitants had come close to starvation. After a complaint was submitted to the UN Special Rapporteur on the rights of indigenous peoples, a single shipment of food and other products was delivered to the village; however, the problems reported regarding the schools, the kindergarten and the medical services remained unresolved in February 2011.[13]

On the one hand, the disturbing conditions in Paren are related to the liquidation of Koryak Autonomous Okrug, which was merged into the new Kamchatka territory in 2006. Reportedly, the administration of the new, bigger territory is devoting very little attention to the conditions of remote indigenous villages in the formerly autonomous North. On the other, it is merely indicative of the state of affairs in many small indigenous villages in the North, Siberia and the Far East.[14]

Evenkia dam shelved

In a major victory for Russia's indigenous peoples, the Rushydro company announced in May 2010 that it would freeze its plans to construct one of the world's largest hydroelectric dams on Siberia's Lower Tunguska River (see Russia chapter in *The Indigenous World 2009*). The plan, which involved the prospect of a

mass resettlement of indigenous Evenks and uncontrollable environmental risks, was shelved after a sustained campaign by RAIPON, in coalition with Russian environmentalists, and two years after the UN Committee on the Elimination of Racial Discrimination (CERD) called on the Russian government to cease support for this project. This decision came after RAIPON, together with the German NGO INFOE had submitted an alternative report to the committee denouncing the grave anticipated impact of this project. ❍

Notes

1 The reports are published on RAIPON's website - http://www.raipon.info.
2 In Article 48 of the federal law "On the animal world", this word is given in the following context: "Citizens of the Russian Federation whose existence and income is completely or partially based on the traditional subsistence systems of their ancestors, including hunting, fishing and gathering, have the right to use traditional methods to harvest living creatures and products related to their vital functions…" This article is related to Article 49, which states, "Indigenous small-numbered peoples and ethnic communities whose distinctive culture and way of life include traditional methods for hunting and harvesting fauna, citizens who belong to these groups, and their associations have the right to priority use of the animal world in areas of traditional habitation and economic activity." Article 49 goes on to explain that it includes guaranteed first priority in selecting hunting, fishing and gathering areas, allowances with regard to deadlines and areas containing fauna, etc.
3 The law was published in *Rossiyskaya gazeta*. #297, 31 December 2010.
4 RAIPON news 07.12.2010 http://www.raipon.info.
5 News Agency *Vostok Media*: Aborigeny Dal'nego Vostoka vozmushcheny novym printsipom razpredelenia ryby, 31 May 2010 http://www.vostokmedia.com/n75693.html.
6 O soblyudenii konstitutsionnykh prav i svobod korennykh malochislennykh narodov na territorii Krasnoyarskogo Kraya v 2010 godu, available at http://www.narodsevera.ru/dat/bin/files/107_doklad_palxcina.doc .
7 *Mir korennykh narodov. Zhivaya Arktika*. Vol 25, 2010, p 42
8 *Information agency PTP*: Razreshat li malochislennym korennym narodam lovit' rybu v Primore? 19 October 2010 http://ptr-vlad.ru/news/ptrnews/37372-razreshat-li-malochislennym-korennym-narodam.html.
9 News portal *Sakha News*. V Allaikhe delo dokhodit do 'rybnykh buntov, 1.11.2010, http://www.1sn.ru/43312.html.
10 Information Centre "Lach", published in *Mir Korennykh Narodov. Zhivaya Arktika.* Vol 25, pp. 27-28
11 Evenki ostanutsya bez ryby? *Inform polis*, 23.07.2010, http://www.infpol.ru/news/673/38387.php, verified 25 Feb 2011
12 Information received from the Yakutian Association of Indigenous Small-Numbered Peoples of the North.
13 Report by the Information Centre "Lach", 14 March 2011.

14 Some descriptions of similar situations in other Northern settlements are available at http://npolar.no/ipy-nenets

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INUIT REGIONS OF CANADA

In Canada, the Inuit number 55,000 people, or 4.3% of the Aboriginal population. They live in 53 Arctic communities in four Land Claims regions: Nunatsiavut (Labrador); Nunavik (Quebec); Nunavut; and the Inuvialuit Settlement Region of the Northwest Territories.

In 2005, the Labrador Inuit Association, formerly representative of the Labrador Inuit, signed a settlement for their land claim that covers 72,500 square kilometres. The **Nunatsiavut** government was created in 2006. It is the only ethnic-style government to be formed among the four Inuit regions to date.

The **Nunavut** land claim, which covers two million square kilometres, was settled in 1993. The Nunavut government was created in April 1999. It represents all Nunavut citizens. Nunavut Tunngavik Incorporated (NTI) represents Inuit beneficiaries of the Nunavut Land Claim Agreement.

The **Nunavik** land claim (James Bay and Northern Quebec Agreement) was settled in 1975. The Nunavik area covers 550,000 square kilometres, which is one-third of the province of Quebec. Makivik Corporation was created to adminster the James Bay Agreement and represent Inuit beneficiaries. Nunavik is working to develop a regional government for the region.

The **Inuvialuit** land claim was signed in 1984 and covers 91,000 square kilometres in the Northwest Territories. The Inuvialuit Regional Corporation (IRC) represents Inuvialuit beneficiaries. They, too, are continuing with negotiations for self-government arrangements.

Inuit in Canada called 2010 the "Year of the Inuit". This was recognized by a statement in Canada's House of Commons in November 2009. It was a year in which Canada hosted the world, appropriately for Inuit, with the winter Olympic Games, held in Vancouver, British Columbia. These games featured a strong In-

uit presence from all four regions, as listed above. The games also featured a traditional Inuit icon as their symbol – the Inukshuk.

The national Inuit organization – Inuit Tapiriit Kanatami (ITK) – marked the "Year of the Inuit" by holding a new event entitled "A Taste of the Arctic" in Ottawa to bring Inuit issues directly to political, business and government leaders in a unique setting at the National Gallery of Canada. The event featured Inuit foods, entertainment and sealskin fashions. It was a fundraising event for the Arctic Children and Youth Foundation, raising over $15,000 for the organization. Inuit, however, were quite sensitive to the tragic earthquake in Haiti that had occurred a few days earlier, and raised over $90,000 collectively among the four regions for Haitian earthquake relief.

Inuit responded to the August 2009 European Union ban on the import of sealskin products[1] by launching a lawsuit in January 2010 against the European Parliament. In the 1980s, when the first wave of European seal product bans took place, Inuit took exception to the paternal notion of an "exemption" for skins hunted by Inuit, and did so again in 2010. When the market is decimated for one group, it is decimated for all, notes the Inuit submissioin. ITK is the main plaintiff in this lawsuit, which also has individual and organizational plaintiffs in Greenland, the Canadian Arctic, Newfoundland and Quebec. During the course of the year,

ITK submitted appeals and a second lawsuit against what Canadian Inuit consider to be illegal and immoral legislation that violates the EU's own trade and human rights laws. Inuit have consequently opposed the EU's attempts to join the Arctic Council.

In March, Inuit representatives attended the Convention on International Trade in Endangered Species' (CITES) 15th Conference of the Parties meeting in Doha, Qatar. At stake was an American proposal to uplist polar bears from appendix II to appendix I. This was defeated. The proposal would have restricted the international trade in polar bears. For Canadian Inuit communities, commercial bear hunting licenses are an important part of the economy. The hunters typically come from the USA or abroad, and thus hunters would not have been able to take home their pelts. The meat, meanwhile, is consumed by the community.

Early in 2010, ITK also launched the Inuit Qaujisarvingat - Inuit Knowledge Centre (IKC) - housed within ITK. It is a centre designed to guide academic study towards including Inuit points of view, to forge a bridge between Inuit knowledge and Western science, and also to promote the development of Inuit researchers.

National Inuit leader Mary Simon headed the Canadian delegation to the Inuit Circumpolar Council (ICC) General Assembly held in Nuuk, Greenland in June/July 2010. The result of the meeting was the Nuuk Declaration, which includes a provision for Inuit leaders to hold a summit on resource development issues, given that offshore oil drilling and uranium mining are being contemplated in Arctic lands and waters.

In many forums during 2010, such as the Economic Club of Canada, the ICC General Assembly in Nuuk and the Canada-UK Colloquium in Iqaluit, in both Canada and abroad, national president Mary Simon spoke on the continuing effects of climate change across Inuit Nunangat (the name for the four Inuit regions in Canada). In sum, Mary Simon continued to support and lobby for international, national and regional efforts to curb carbon emissions. Given that the Inuit regions are experiencing grave effects caused by climate change, with shorelines eroding, permafrost melting and infrastructure threatened (in some cases requiring relocation), adaptation is also urgently needed. Ms Simon has stressed that international adaptation funds should be available for regions within developed nations, such as Canada, for Aboriginal peoples who are experiencing the ravages of climate change right now.

In addition, ITK President Mary Simon made progress on developing a national Inuit education strategy for all Inuit regions in Canada. The objectives are

to ensure Inuit receive culturally appropriate education, to improve education outcomes for Inuit and to ensure a brighter future for Inuit in all regions.[2]

The four Canadian Inuit regions made significant progress in 2010 in developing their respective regions:

The Inuvialuit Settlement Region

In the Inuvialuit Settlement Region, in the Northwest Territories, the shaky global financial recovery experienced in 2009 abated in 2010 and brought a steady rise in the demand for commodities, diamonds in particular. This saw the return of Darnley Bay Resources Limited (DBR) to the region and the commencement of exploration activities. Diadem Resources Limited (DRL) also returned to the Paulatuk area, in partnership with DBR.

The year began with the Inuvialuit Regional Corporation (IRC) formally responding to the Joint Review Panel Report on the Mackenzie Gas Project. IRC Chair and CEO Nellie Cournoyea supported the fundamental opinion that the Mackenzie Gas Project would provide the foundation for a sustainable northern future. By year's end, the project was still awaiting federal cabinet approval. The proposal to build this pipeline has a long and colourful history. First proposed in the 1970s, it was the subject of a Canadian Royal Commission headed by Thomas Berger. In sum, the commission said that construction would have to wait until Canada had settled the land claims in the region, and Aboriginal peoples could play a substantive part in its development. By 2010, the Inuvialuit were indeed well prepared for this major project, and will now be partners in the consortium to build and operate the pipeline once it receives final approval.

The oil spill in the Gulf of Mexico in the spring of 2010, coupled with the increase in hydrocarbon exploration interest in the Beaufort Sea, brought significant concerns over the environmental risks associated with such activities. Consequently, in June 2010, the Inuvialuit Regional Corporation's (IRC) Chair and CEO requested that Canada's Minister of Indian Affairs withhold the issuance of any further exploration licenses until Arctic-related concerns had been fully addressed.

A major accomplishment during 2010 was the announcement that Inuvik would be the site of one of the seven National Events hosted by the Canadian Truth and Reconciliation Commission, a commission created to hear testimony

from victims of Canada's church and government-run residential schools, resulting in a litany of abuses against students. This important event will bring some 700 people into the community at the end of June 2011.The region has the highest proportion of residential school abuse victims in Canada.[3]

Nunavut

The Nunavut Territory is the largest Inuit region in the Canadian Arctic. In September, two monuments were unveiled to commemorate the "High Arctic Relocatees". The monuments, one in Grise Fiord and one in Resolute Bay, have helped bring closure to Inuit who were relocated thousands of kilometers from Inukjuak and Pond Inlet to these two desolate high Arctic communities in the 1950s by the government of Canada in order to assert Canadian sovereignty in the Arctic. Healing circles were held in both communities following the unveilings.

The government of Canada had issued a formal apology in August. Canada's Prime Minister, Stephen Harper, offered a personal apology to surviving original relocatees during his trip to Resolute Bay.[4]

Nunavik

The Nunavik Region continued to move ahead with the project to create a regional government with the governments of Quebec and Canada.

In April, Makivik Corporation, the economic development entity created in 1978 to administer the James Bay and Northern Quebec Agreement, held the Nunavik Economic Summit in Kuujjuaq. The event focused on market-based opportunities in the fields of mining, natural resources and tourism along with new opportunities in the areas of community economic development and the land-based economy. The summit also provided an opportunity to discuss the concept of sustainable development in the Nunavik context.

Prior to monuments being unveiled in the High Arctic communities of Grise Fiord and Resolute Bay, the federal Minister of Indian and Northern Affairs travelled to Inukjuak, in the Nunavik region, on 18 August 2010 to issue a formal apology on behalf of the government of Canada to Inuit relocatees in particular, and all Inuit in general. It was a major event for Inuit during 2010.

Among the many economic development initiatives developed by the Makivik Corporation, Cruise North, an Arctic cruise line, experienced a very successful year. Expeditions returned to full capacity following an economically depressed 2009. Inuit youth are taking up more of the positions as guides on this adventure cruise experience. At least one of the cruises also has an environmental mission, which is to clean up waste materials left behind decades ago by military installations in the Arctic.[5]

Nunatsiavut

In Nunatsiavut, Labrador, the newly formed Nunatsiavut government held an election on May 4.

Earlier in the year, a new administration centre was unveiled in Nain. Built at a cost of Can$9 million, the centre will house 50 Nunatsiavut government offices.

It was announced that the remains of 22 Inuit who lived in the Labrador community of Zoar in the early 1900s would be returned from the Field Museum of Natural History in Chicago, IL, USA. The remains had been removed from an abandoned Moravian church mission during the Rawson-MacMillan Sub-Arctic Expedition of 1927-1928. The plan is to return the remains to Nain in 2011.

An historic meeting took place on 27 October when the Nunatsiavut Executive Council met for the first time with the Newfoundland and Labrador provincial cabinet. The historic meeting provided both governments with the opportunity to discuss a variety of issues of mutual concern, such as natural resources, the environment and climate change, education, health care, housing, and the Labrador Inuit Land Claims Agreement.[6] ❍

Notes

1 See also the article on Greenland in *The Indigenous World 2010*.
2 Developments related to ITK can be followed at www.itk.ca
3 Developments in the Inuvialuit region can be followed at the following website: irc.inuvialuit.com
4 Developments in Nunavut can be followed at the following website: tunngavik.com
5 Developments in Nunavik can be followed at the following website: makivik.org
6 Developments in Nunatsiavut can be followed at the following website: nunatsiavut.com

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NORTH AMERICA

CANADA

The indigenous peoples of Canada are collectively referred to as "Aboriginal peoples". The *Constitution Act, 1982* of Canada recognizes three groups of Aboriginal peoples: Indians, Inuit and Métis.

According to the 2006 census, Aboriginal peoples in Canada total 1,172,790, 3.6% of the population of Canada.[1] First Nations (referred to as "Indians" in the Constitution and generally registered under Canada's Indian Act[2]) are a diverse group of 698,025 people, representing more than 52 nations and more than 60 languages. Around 55% live on-reserve and 45% reside off-reserve in urban, rural, special access and remote areas.

The Métis constitute a distinct Aboriginal nation, numbering 389,780 in 2006, many of whom live in urban centres, mostly in western Canada. "The Métis people emerged out of the relations of Indian women and European men prior to Canada's crystallization as a nation."

UN Declaration on the Rights of Indigenous Peoples

On 12 November 2010, Canada reversed its opposition and announced its support for the *UN Declaration on the Rights of Indigenous Peoples*.[3] The government chose a Friday afternoon and simply posted its support on its web page, an effective method of minimizing a news story.

Indigenous and human rights organizations had been pressuring the government to make this change of position since 2007. However, it was not completely good news. The government indicated that it had endorsed the *Declaration* "in a manner fully consistent with Canada's Constitution and laws".[4] Such a qualification could serve to perpetuate the *status quo* and is largely viewed as an attempt to minimize the effect of the *Declaration*.[5] Indigenous peoples and human rights organizations have strongly encouraged Canada to make an unqualified endorsement.[6] The government did not consult with indigenous peoples in any substantive manner prior to the endorsement.

1. Barriere Lake (Quebec)
2. Lubicon Lake Cree Nation (Alberta)
3. Haida Gwaii
4. Yellowknives Dene First Nation
5. Athabasca Chipewyan and Mikisew Cree

There are no signs that Canada's positions have significantly changed. In seeking to evade responsibility in a discrimination complaint to the Canadian Human Rights Tribunal, the government has sought to devalue its endorsement. Canada claimed "the Declaration does not change Canadian laws. It represents an expression of political, not legal, commitment. Canadian laws define the bounds of Canada's engagement with the Declaration".[7] This ignores the rulings of Canadian courts, which freely rely on declarations in interpreting human rights. Indigenous peoples and human rights organizations continue their work of implementing the *Declaration*, including educational initiatives. Indigenous political organizations are using the *Declaration* in policy development, and reviewing exisiting policies to ensure the standards of the *Declaration* are being upheld.

Undermining indigenous rights in international forums

Canada has attempted to lower standards for indigenous peoples' human rights in international forums. Officials played an obstructive role in the informal negotia-

tions at the UN Human Rights Council for the resolutions governing the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the rights of indigenous peoples. Canada challenged the "s" on "peoples", even though the Constitution refers to aboriginal "peoples" and use of such term in the self-determination context was affirmed by Canada in 1996.

Of the 193 parties to the *Convention on Biological Diversity*, Canada was the only one that objected to: "Taking into account the significance of the United Nations Declaration on the Rights of Indigenous Peoples" being included in the preamble to the Nagoya Protocol on Access and Benefit Sharing. The Protocol was thus adopted with the phrase "Noting the United Nations Declaration...".[8] The UN General Assembly has verified that terms such as "takes note of" or "notes" are "neutral terms that constitute neither approval nor disapproval".[9] Such language falls below the standards of the *Declaration*, which require states to "promote respect for and full application of [its] provisions ... and follow up [its] effectiveness" (art. 42).

Canada's regressive positions on indigenous peoples' human rights were cited among the reasons why Canada did not obtain a seat on the UN Security Council.[10] This is the first time that Canada has been unsuccessful in seeking a Council seat. Alex Neve, Secretary General of Amnesty International Canada writes, "Part of what went sour for Canada during the Security Council vote can be traced back to our appalling behaviour in 2006 and 2007, when the UN finally adopted a Declaration on the Rights of Indigenous Peoples…. We not only voted against it, we aggressively (and fortunately unsuccessfully) pressed other countries to oppose it."[11]

Lack of support for indigenous women and children

Although the government has announced a commitment of 10 million dollars to address violence towards Aboriginal women, none of these funds will support the important work being carried out by the Native Women's Association of Canada's Sisters in Spirit program, previously funded by the government. Unfortunately, the new funding is focused almost exclusively on policing responses, rather than supporting the initatives of Aboriginal women or programs to reduce the vulnerability of indigenous women and their families. Further, the government continues to refuse to engage with Aboriginal women's organizations in order to develop a comprehensive response in keeping with the seriousness and pervasiveness of

the violence. This has been regarded as a setback to the many families of murdered and missing Aboriginal women and the agencies supporting them.[12]

There has been minimal progress in what was reported last year regarding the complaint before the Canadian Human Rights Tribunal brought by the First Nations Child and Family Caring Society and the Assembly of First Nations in terms of the funding of services for Aboriginal children who live on reserves. Canada is continuing its efforts to stop the Tribunal hearing from taking place, and has launched new arguments claiming that the Tribunal lacks jurisdiction to hear the complaint. In response, the Assembly of First Nations submitted arguments showing Canada's lack of good faith, highlighting that the government had affirmed that "... a legislative amendment passed in 2008 ensures that First Nations people living on reserves have full access to, and protection under, the *Canadian Human Rights Act*",[13] which establishes the Tribunal and its jurisdiction. In these proceedings, the two complainants are using the *UN Declaration* and the *Convention on the Rights of the Child*, by which Canada is legally bound.

Undermining self-determination

In response to a long-standing, unresolved leadership dispute among the Algonquins of Barriere Lake (Quebec), the federal Department of Indian Affairs bypassed the traditional governance system and imposed a band council election, as per the Indian Act. Although fewer than a dozen ballots were cast and despite overwhelming rejection from the community, including the "elected" Chief, Indian Affairs recognizes this "council" as the leadership of the Barriere Lake.[14]

Indian Affairs has imposed 3rd party management on the Lubicon Lake Cree Nation (Alberta), which gives control of a community's financial and administrative powers to an outside firm selected by the federal government. The government took this step after refusing to recognize the outcome of a 2009 election held under the Lubicon's longstanding election code.[15]

In a report to the Human Rights Council, the UN Special Rapporteur on the rights of indigenous peoples, James Anaya, called for "renewed and resolute" action to protect the rights of the Lubicon Cree. The Special Rapporteur also said the federal and provincial governments should take care not to "take advantage" of any internal divisions among the Lubicon people and should instead work toward "the integrity of the Lubicon Lake Nation and advance its self-determination."[16]

Lubicon youth traveled to the UN in March to meet with members of the Human Rights Committee (HRC), on the 20th anniversary of the HRC decision regarding Lubicon land rights as human rights. Despite assurances given to the HRC in 1990, Canada has yet to conclude a negotiated settlement with the Lubicon Cree and continues to undermine the survival and well-being of the community.[17]

In both cases, Canada is undermining the governance structures of these communities in what would appear to be efforts to control the resource-rich lands.

Legislative strategies to undermine indigenous rights – Bill S-11

In March, the Senate introduced Bill S-11, *An Act respecting the safety of drinking water on first nation lands*.[18] Ensuring access to safe drinking water remains a critical human rights concern in indigenous communities. However, the government is trying to use this Bill to acquire legislative authority to "abrogate or derogate from ... aboriginal and treaty rights"[19] through future regulations. It is unconscionable for the government to exploit the conditions on reserves in order to weaken constitutionally protected Aboriginal and Treaty rights. Such a strategy, under the guise of providing safe drinking water, fails to uphold the honour of the Crown. These actions are the antithesis of a human rights-based approach, and are incompatible with any notion of partnership and mutual respect. Aboriginal organizations and opposition parties are criticizing the Bill in its current form, which is still under debate.

Bill C-3

As a follow-up to the *McIvor* decision[20] of the British Columbia Court of Appeal (reported in *The Indigenous World 2009*), Canada proceeded with Bill C-3, *Gender Equity in Indian Registration Act.* This Bill received Royal Assent in December, and it goes one step towards addressing the gender discrimination in the *Indian Act*. The government was criticized, however, for not addressing the broader concerns raised by Aboriginal organizations with regard to this legislation.[21] The government did what can be described as the minimum required under the *McIvor* decision, and took a narrow approach to redressing discrimination in the *Indian*

Act. In this context, Canada has again failed in its duty to consult Aboriginal peoples and accommodate their concerns.

Duty to consult and accommodate

In relation to matters affecting Aboriginal and treaty rights, court cases continue to address the Crown's duty to consult Aboriginal peoples and accommodate their concerns. The content of the duty varies with the strength of the right claimed and the impact of the proposed activity on such right. As reported previously in *The Indigenous World*, Canada's highest court ruled in the *Haida Nation* case that the nature and scope of the Crown's duty to consult would require the "full consent of [the] aboriginal nation …on very serious issues".[22]

Too often, federal and provincial governments resist what is clearly their constitutional duty, in spite of having policies that outline due processes. Important cases in 2010 included *Yellowknives Dene First Nation*,[23] where a third party, North Arrow, had been granted a land-use permit to carry out mineral exploration. The Court ruled in favour of the First Nations due to both the lack of consultation by North Arrow and the failure of the government to ensure consultation.

> *Aside from not affording the [First Nations] an opportunity to address their concerns, the [Land and Resource] Board acted on North Arrow's statement as to consultation, as did [Indian and Northern Affairs Canada], without ever hearing from these First Nations in response. They never inquired into the existence, nature or manner of the so-called consultations.*[24]

Corporations are starting to show a willingness to consult and accommodate indigenous peoples, with or without government partnership. For example, Talisman Energy commissioned the report: "*Implementing a Corporate Free, Prior, and Informed Consent Policy: Benefits and Challenges"*.[25]

Haida Gwaii

In June, the provincial government of British Columbia passed Bill 18, the *Haida Gwaii Reconciliation Act*, which legally restored the name Haida Gwaii (Islands of

the People) to the Queen Charlotte Islands. The legislation also enshrined B.C.'s commitment in the historic Kunst'aa guu – Kunst'aayah Reconciliation Protocol to engage in joint decision-making with the Haida on Haida Gwaii. In a well-attended ceremony, the name Queen Charlotte Islands was formally returned to provincial representatives. The change will be reflected on maps and documents.

The Oil Sands – As Long as the Rivers Flow

A report, "As Long as the Rivers Flow: Athabasca River Knowledge, Use and Change"[26] examines oil sands operations and the impact on the Athabasca River and the Treaty rights of the Athabasca Chipewyan and Mikisew Cree. The river is being both depleted by withdrawals for the oil operations and contaminated. Both are affecting the indigenous peoples who depend on the river to survive and thrive. This further substantiates concerns regarding the health of the river and the impact on the health of the indigenous people in these communities.[27] Indigenous peoples and their allies continue to draw attention to the oil sands in the international climate change negotiations. ❍

Notes

1 **Statistics Canada, 2009:** *Aboriginal Peoples of Canada: 2006 Census*. Released 29 January 2009. http://www.statcan.gc.ca/bsolc/olc-cel/olc-cel?lang=eng&catno=92-593-X

2 The Indian Act remains the principal vehicle for the exercise of federal jurisdiction over "status Indians", and governs most aspects of their lives. It defines who is an Indian and regulates band membership and government, taxation, lands and resources, money management, wills and estates, and education. **Hurley, Mary C., 1999:** *The Indian Act*. http://dsp-psd.pwgsc.gc.ca/Collection-R/LoPBdP/EB/prb9923-e.htm

3 Canada, "*Canada's Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples*", 12 November 2010, online: http://www.ainc-inac.gc.ca/ap/ia/dcl/stmt-eng.asp.

4 Canada, "*Canada Endorses the United Nations Declaration on the Rights of Indigenous Peoples*". 12 November 2010, online: http://www.ainc-inac.gc.ca/ai/mr/nr/s-d2010/23429-eng.asp.

5 **Amnesty International Canada et al, 2010:** *Joint Statement in Response to Canada's Endorsement of the UN Declaration on the Rights of Indigenous Peoples.* 16 November 2010, online at: http://www.cfsc.quaker.ca/pages/documents/UNDeclENDORSEMENTbyCANADAIPsandHRtsOrgsJointResponseFINALNov1610_000.pdf

6 See, for example, http://cfsc.quaker.ca/pages/documents/UNDecl-JointlettertoPMStephenHarper-June1810.pdf; http://cfsc.quaker.ca/pages/documents/UNDecl-Jointstatementfor3rdanniversary.pdf; http://cfsc.quaker.ca/pages/documents/UNDecl-Cannon-replytoMinister-Oct510.pdf.

7 *First Nations Child and Family Caring Society et al.* v. *Attorney General of Canada*, Attorney General of Canada's submissions in response to AFN's submissions on the endorsement by Canada of the *UN Declaration on the Rights of Indigenous Peoples*, 17 December 2010, Tribunal File No. T1340/7008 para. 10.

8 "Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity", in Conference of the Parties to the Convention on Biological Diversity, *Report of the Tenth Meeting of the Conference of the Parties to the Convention on Biological Diversity*, Nagoya, Japan, 18-29 October 2010, UN Doc. UNEP/CBD/COP/10/27 (19 December 2010), Decision X/1, Annex I at 88.

9 Annex to General Assembly Decision 55/488 of 7 September 2001.

10 See, *e.g.*, **John, Edward, Matthew Coon Come, Warren Allmand & Paul Joffe, 2010:** UN Security Council – Did Canada Merit a Seat? *Windspeaker*, Vol. 28 Issue 9, online at: http://www.ammsa.com/publications/windspeaker/un-security-council%E2%80%94did-canada-merit-seat

11 **Neve, Alex, 2011:** Is Canada a human rights good guy? *Toronto Star*. January 3, online at http://www.thestar.com/news/insight/article/915028--is-canada-a-human-rights-good-guy.

12 **Native Women's Association of Canada. 2010**. *NWAC responds to $10M announcement from the Department of Justice Canada*, 9 November 2010, online at: http://www.nwac.ca/media/release/09-11-10-0; and **Quebec Native Women Inc., 2010:** *Open Letter: Quebec Native Women supports NWAC's call to keep the Sisters in Spirit program alive*, 23 November 2010, online at: http://www.faq-qnw.org/documents/SIScutsNov2010.pdf

13 *First Nations Child and Family Caring Society et al.* v. *Attorney General of Canada*, AFN's submissions on the endorsement by Canada of the *UN Declaration on the Rights of Indigenous Peoples*, 9 December 2010, Tribunal File No. T1340/7008, para. 52 (quoting Indian and Northern Affairs Canada, Backgrounder: Canada's Endorsement of the United Nations Declaration on the Rights of Indigenous Peoples, 12 November 2010, online: http://www.ainc-inac.gc.ca/ai/mr/nr/s-d2010/23429bk-eng.asp).

14 For more details see: http://www.barrierelakesolidarity.org/.

15 **Amnesty International, 2010:** *Canada: Twenty Years' Denial of Recommendations Made by the United Nations Human Rights Committee and the Continuing Impact on the Lubicon Cree*. 17 March 2010, online at: http://www.amnesty.org/en/library/info/AMR20/003/2010/en

16 **James Anaya, 2010:** *Report of the Special Rapporteur on the situation of the human rights and fundemental freedoms of indigenous people*, Human Rights Council, 15 September 2010, A/HRC/15/37/Add.1

17 See http://www.amnesty.ca/lubicon/?p=11

18 http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&Session=23&query=7021&List=toc

19 Bill S-11, *An Act respecting the safety of drinking water on first nation lands,* section 4(1)(r). See note 18.

20 *McIvor* v. *Canada (Registrar, Indian and Northern Affairs)*, [2009] 2 C.N.L.R. 236 (B.C.C.A.).

21 See **Quebec Native Women Inc., 2010:** *"Indian" Status Issue: QNW Demands Amendments to Bill C-3: Aboriginal Women Deserve Better*. 3 June 2010, online at http://www.faq-qnw.org/documents/June3billC-3.pdf; and **Native Women's Association of Canada, 2010:** *Bill C-3 – Gender Equity in Indian Registration Act*, on line at http://www.nwac.ca/media/release/07-12-10.

22 *Haida Nation v. British Columbia (Minister of Forests),* [2004] 3 S.C.R. 511, para. 24.

23 *Yellowknives Dene First Nation* v. *Canada (Attorney General)*, 2010 FC 1139 (Fed. Ct.)
24 *Ibid*., para 111.
25 **Lehr, Amy K. & Gare A. Smith, 2010:** *Implementing a Corporate Free, Prior, and Informed Consent Policy: Benefits and Challenges*, eBook. Boston/Washington, D.C.: Foley Hoag LLP, online: http://www.foleyhoag.com/NewsCenter/Publications/eBooks/Implementing_Informed_Consent_Policy.aspx.
26 **Candler, Craig et al. 2010:** *As Long as the Rivers Flow: Athabasca River Knowledge, Use and Change*. November 26, online at: http://parklandinstitute.ca/downloads/reports/AsLongAsRivers-Flow-WEB.pdf.
27 **Timoney, Kevin and Peter Lee, 2009:** Does the Alberta Tar Sands Industry Pollute? The Scientific Evidence. *The Open Conservation Biology Journal*, 3, 65-81.

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THE UNITED STATES

According to the United States Census Bureau, approximately 4.9 million people in the U.S., or 1.6%, identified as Native American in combination with another ethnic identity in 2008. There are currently around 335 federally recognized tribes in the United States (minus Alaska), most of which have reservations as national homelands. More than half of American Indians live off-reservation, many in large cities.

American Indian nations are theoretically sovereign but limited by individual treaties and federal Indian law, which is in flux and often dependent on individual U.S. Supreme Court decisions. The government has treaty and trust obligations toward indigenous nations, stemming from historical land sales by Indian nations to the federal government and the assumption of a continuing guardianship over them. Separate federal agencies, such as the Bureau of Indian Affairs and the Indian Health Service, are responsible for the federal government's responsibilities to Indian tribes.

UN Declaration on the Rights of Indigenous Peoples

After consultations with Native leaders, tribal governments, NGOs and other interested parties, on December 16, during the opening of the second White House Tribal Nations Conference, President Obama announced that the United States had changed course and was going to endorse the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). "The aspirations it affirms - including the respect for the institutions and rich cultures of Native peoples - are ones we must always seek to fulfill," he said.[1] In a longer statement, the Department of State announced that "in response to the many calls from Native Americans throughout this country and in order to further U.S. policy on indigenous issues" U.S. policy had changed:

The United States supports the Declaration, which—while not legally binding or a statement of current international law—has both moral and political force. It expresses both the aspirations of indigenous peoples around the world and those of States in seeking to improve their relations with indigenous peoples. Most importantly, it expresses aspirations of the United States, aspirations that this country seeks to achieve within the structure of the U.S. Constitution, laws, and international obligations, while also seeking, where appropriate, to improve our laws and policies.[2]

The key terms in these announcements are the reference to "aspirations" and the clear rejection of the binding powers of the UNDRIP. While this endorsement of UNDRIP was an important step, it fell short of what the National Congress of American Indians (NCAI) had called for in November. The NCAI resolution had asked that "the United States should immediately accept and support the Declaration, not as merely aspirational but as obligatory principles of international law" and that the President "consider the development of a Native American & Alaskan Native Commission to develop recommendations for implementation of the provisions of the Declarations and address their relevance to the duties and responsibilities of the different federal departments and independent agencies."[3] When in April the U.S. Ambassador to the United Nations, Susan Rice, announced to the UN Permanent Forum on Indigenous Issues that the United States would review its opposition to UNDRIP, she acknowledged that, "There is no true history that does not take into account the story of indigenous populations - their proud traditions, their rich cultures, and their contributions to our shared heritage and identity." However, she identified the cause of contemporary problems as "the heavy hand of history", a formulation that evades any accountability on the part of specific historic and contemporary actors for the consequences of their actions and inactions.[4]

In his original announcement, the President rightly noted that, "What matters far more than words, what matters far more than any resolution or declaration, are actions to match those words." While this is very true, it also raises concerns: the Obama administration may be working hard to find actions to match the words, but empty rhetoric has a long history in American Indian policies and law. Although the President ordered federal agencies to define practices for consultation with tribes, for example, several did not meet the deadline set by the administration. Similarly, the Government Accountability Office (GAO) released a report in July that details the failure of government agencies to comply with the Native American Graves

Protection and Repatriation Act (NAGPRA), a 20-year-old law that seeks to repatriate bodily remains and sacred objects held by museums and archives. The report points out that while museums can be fined for non-compliance with the law, federal agencies cannot be held accountable. One of the two agencies that has done the least to comply with NAGPRA is, ironically, the Bureau of Indian Affairs.

It is in the light of contemporary and historical experiences such as these that American Indian peoples might be forgiven for remaining somewhat sceptical as to the UNDRIP endorsement. James Anaya, the UN Special Rapporteur on the rights of indigenous peoples, released a statement in which he stated that, "With its endorsement [...] the United States strengthens its stated commitment to improve the conditions of Native Americans and to address broken promises. Indigenous peoples can now look to the Declaration as a means of holding the United States to that commitment."[5] However, as the State Department said, this endorsement gives the Declaration "moral and political" but not legal force. While this is an important step forward, the U.S. endorsement is thus also a reminder of another statement that the UN Special Rapporteur made this year: "Today the Declaration remains more of a reminder of how far there is to go in bringing justice and dignity to the lives of indigenous peoples than a reflection of what has actually been achieved on the ground."[6]

Settlements

On December 8, President Obama signed into law the Claims Resolution Act of 2010, which addresses several issues affecting American Indian peoples. After long delays, the Act makes the settlement in the Cobell lawsuit official (see *The Indigenous World 2010*), and this will provide US$3.4 billion in compensation for trust accounts that were mismanaged by the federal government. In addition, the Act provides US$680 million in damages in settlement of the Keepseagle case, a lawsuit against the federal government brought by American Indian farmers who were denied access to federal aid available to others. A lawsuit brought by African American farmers on the same issue has also been settled in this Act. In addition, the Act settles water rights lawsuits for Taos, Pojoaque, Tesuque, San Ildefonso and Nambe pueblos in New Mexico, the White Mountain Apache Tribe in Arizona and the Crow Tribe in Montana. While these settlements are indicators of better communications between tribes and the federal government, they are not without their critics. The compensation in Cobell is a fraction of the money that the federal government actually took from Native people. The outgoing Chairman of the Cheyenne River Sioux Tribe in South Dakota renewed his call against the settlement days before it was signed into law. "It's dangling some funds in front of individuals who are living in a poverty-stricken area," he said. "Give those individuals what it's really worth. Yes, it's expensive for taxpayers, but it didn't come cheap to our people, either."[7] Similar critiques apply to modern water rights settlements. In general, tribes get less water than they are actually due under the law but, from a different perspective, they are at least certain of receiving some water for their future. It is the same rationale that underlies all of these settlements: incapable of finding true justice and reparation, indigenous peoples have to settle for at least something, even if it is a fraction of what they are owed.

Water

Abundant clean water is increasingly a problem for indigenous peoples, and the situation in the United States is no different. Water laws in the western United States depend on prior appropriation: the older one's water right, the longer one is entitled to water should there be a drought. Reservations not only have very old water rights - older than most states - but Indian reserved water rights theoreti-

cally extend to all water that can be reasonably used for the purpose of a reservation. Because states claim jurisdiction over water, and the federal government does not want to interfere with growing water demands, Indian tribes often reach agreements which, while guaranteeing them a quantified amount of water permanently, also limit the water available to them in the future such that they give up huge amounts of water theoretically belonging to them. The Navajo Nation also signed a water rights settlement in October on their rights to water in the Lower Colorado basin. While this agreement ensures them a quantified amount of water, it falls far short of the nation's rightful claims.

Issues over water rights settlements can be seen in a decision on a 1973 water rights agreement in Nevada. The 9th U.S. Circuit Court of Appeals ruled for the Pyramid Lake Paiute Tribe in April. The court determined that a local irrigation district had stolen at least 65 billion gallons of water from the tribe over ten years. In Oregon and northern California, on the other hand, concerns regarding tribal water rights have led the Hoopa Valley Tribe to refuse to sign an agreement on the restoration of the Klamath River basin. The Yurok, Karuk and Klamath tribes have signed the Klamath Hydropower Settlement Agreement and the Klamath Basin Restoration Agreement, which both call for studies on the removal of hydropower dams and the restoration of salmon runs. The Hoopa Valley Tribe, however, has concerns over the uncertain language of the agreements, which could leave the dams intact and does not mention tribal claims to water from the Klamath. The tribe does not have the power to stop the current negotiations, but it has registered its concerns.

For the Hoh tribe in Washington State, concerns over water take a different form. The tribe was settled on a one-square-mile reservation in the flood zone at the mouth of the Hoh river and in the Tsunami zone along the Pacific. Congress passed the Hoh Indian Tribe Safe Homelands Act in November, which will allow the tribe to expand the reservation by 462 acres and move to higher ground.

Another threat to water supplies, including in Native communities, is natural gas extraction. A method known as "fracking" or "fracturing" breaks apart rock formations by shooting a mixture of water, sand and chemicals several miles underground. While this method releases natural gas, the chemicals used can also contaminate the water. Wells on the Wind River Reservation in Wyoming have been affected, and the Onondaga Nation in New York has been part of a successful effort to declare a moratorium on fracking in the state until 2012.

Energy and mining

In April, Secretary of the Interior Ken Salazar approved a large off-shore wind farm project in Nantucket Sound, off Massachusetts. The project had been fought by local residents on Cape Cod, Nantucket and Martha's Vineyard for various reasons, but two Wampanaog tribes raised objections against the wind farm because they feared the visibility of the 440-feet high turbines from the shoreline might interfere with ceremonies. They were also concerned that parts of Nantucket Sound might have been used as burial grounds when the Sound was above water in the past.

Wind energy has become an increasingly interesting investment for many American Indian nations, especially on the Great Plains; while tribes would like to shift to renewable energy production, however, on many reservations, mining still provides many of the few jobs available. This is true, for example, in the Southwest. In October, the Environmental Protection Agency (EPA) ordered one coal power plant on the Navajo Nation, the Four Corners Power Plant to install pollution controls. The plant, officially one of the country's most polluting coal plants, needs to reduce its pollution by 80%; it plans to continue to operate for another 30 years, however, and actually increase its energy output. The plant receives its coal from the Navajo Mine, a surface coal mine operated by BHP Billiton. Also in October, however, a judge revoked a permit for the expansion of the mine. He ordered the Office of Surface Mining Reclamation and Enforcement to revisit its environmental impact study with meaningful public notice, in English and Navajo, to make sure community members could give their input to the expansion plans. Navajo grassroots organization Dine Citizens Against Ruining Our Environment has been fighting for years against mining activities on the reservation and lax federal oversight (see *The Indigenous World 2009*). Coal mining is one of the largest sources of income for the Navajo Nation, however.

Agreement for two settlements over uranium mining on the Navajo and Hopi reservations came in September. Radioactive contamination and potential remedial actions at the Tuba City Dump Site in Arizona and at the Quivira Mine in New Mexico will be studied. The Quivira Mine will also have to control radium releases. Past and present uranium mining continues to cause many health problems for indigenous nations in the United States (see *The Indigenous World 2008*).

Healthcare

As part of the national healthcare reform, Congress has finally renewed the Indian Health Care Improvement Act (IHCIA), which had been ignored since 2000 (see *The Indigenous World 2008*). IHCIA provides measures for modern healthcare delivery in Indian Health Service (IHS) facilities and authorizes long-term care, youth suicide prevention and mental health treatment and other programs that were not being provided by the IHS. Although the Obama administration has significantly increased IHS funding, the agency is still woefully underfunded, and whether or not the IHS will be able to implement these programs will depend on the willingness of Congress to appropriate the necessary money. In December, Congress re-authorized the Special Diabetes Program, which, among other things, provides funding for tribal efforts to combat American Indian diabetes. Diabetes is a growing problem in the United States overall, but significantly affects indigenous communities; some see 60% of their people affected by the disease. Healthcare on reservations is often inadequate, mainly because of underfunding and systemic problems in American health care management overall. Over the last ten years, the internal inspection service for the Department of Health and Human Services has opened almost 300 investigations relating to the IHS. Apart from Medicaid and Medicare fraud, these have focused mainly on mismanagement, misconduct and drug diversion. Some of these serious problems came to light this year in the Aberdeen Area offices, which oversee IHS operations in North and South Dakota, Nebraska and Iowa. Among other problems, IHS had rehired staff previously convicted of embezzlement and drug charges (and who had committed those crimes within the IHS). It also allowed staff under investigation for misconduct to take a year-long paid leave of absence. An illustration of the struggles facing the IHS can be seen in a lawsuit that was filed in September by the American Civil Liberties Union (ACLU) on behalf of women on the Cheyenne River Sioux reservation in South Dakota. ACLU sued for the release of IHS documents related to "the failure to provide adequate obstetric and medical care" on the reservation.[8] Since the obstetric unit on the reservation closed in 2001, women have had to travel 90 miles to Pierre for obstetric services. A new IHS facility on the reservation is not planned until 2012. In Pierre, women who are covered by the IHS see a single doctor. Many women from Cheyenne River have complained that they are routinely pressured into induced la-

bors, sometimes before their due dates, and without any explanation of the reasons, risks or benefits of the practice. They are afraid that if they refuse, the IHS will not cover their healthcare.

Law enforcement and sovereignty

Faced with huge problems of law enforcement on the reservations (see *The Indigenous World 2009*), the Department of Justice has allocated 33 new federal prosecutors to crimes on reservations, and launched three pilot projects with Indian Country Community Prosecution Teams, working closely with tribal and federal law enforcement. In July, President Obama signed into law the Tribal Law and Order Act. Among other provisions, the Act mandates training for tribal and federal officers in interviewing victims of domestic violence. It also gives tribal police access to the federal criminal background database and allows tribal courts to sentence criminals to three years in prison. Ever since the 1968 Indian Civil Rights Act, tribal courts had been limited to sentences of one year or less. When federal law enforcement decides not to prosecute a case, it now has to turn over the results of its investigation to tribal police and courts. It is hoped that these measures will make a dent in the epidemic of violence, drug crimes and sexual abuse occurring on many reservations.

In July, the Iroquois national lacrosse team, ranked fourth in the world, tried to attend the World Lacrosse Championships in England on Iroquois passports, as they had done for the past 20 years. Because Iroquois passports are not deemed secure by the Department of Homeland Security, however, players travelling under their own passports would not have been allowed re-entry into the United States. After the Department of State finally granted an exemption, the British consulate refused to give visas to the players, and the Iroquois team had to withdraw from the tournament. The issue has once again brought to the forefront the complex limitations imposed by the United States on indigenous sovereignty. Although American Indian nations are theoretically sovereign, their sovereignty is unilaterally placed under that of the United States, which creates - in both practice and theory - a colonial situation. ❍

Notes and references

1 Remarks by the President at the White House Tribal Nations Conference. Office of the Press Secretary, the White House.
2 Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples. http://www.state.gov/documents/organization/153223.pdf
3 The National Congress of American Indians Resolution #ABQ-10-064 http://www.ncai.org/fileadmin/resolutions/ABQfinal/ABQ-10-064_floor_amended.pdf
4 http://usun.state.gov/briefing/statements/2010/140600.htm
5 United States' backing for indigenous rights treaty hailed at UN. http://www.un.org/apps/news/story.asp?NewsID=37102&Cr=indigenous&Cr1=
6 "It's not enough to support the Declaration on the Rights of Indigenous Peoples," says UN expert. http://unsr.jamesanaya.org/statements/its-not-enough-to-support-the-declaration-on-the-rights-of-indigenous-peoples-says-un-expert
7 "Cheyenne River tribal leader opposes $3.4 billion Cobell settlement" Rapid City Journal 23/11/2010
8 *American Civil Liberties Union vs. Indian Health Services*. Complaint for Injunctive Relief. United States District Court for the Southern District of New York

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MEXICO AND CENTRAL AMERICA

MEXICO

In January 2008, the Catalogue of Indigenous Languages of Mexico was officially published by the recently created National Institute of Indigenous Languages (INALI). This lists 368 variants of 68 indigenous languages, grouped into 11 linguistic families.

Although it is difficult to give an accurate estimate of the indigenous population of Mexico, the National Population Council (CONAPO) set the number living in the country at the time of the Population and Housing Census (2005) at 13,365,976, or 13% of the total population, spread across the 32 states of the country.

The country ratified ILO Convention 169 in 1990 and, in 1992, Mexico was recognised as a pluricultural nation when Article 6 of the Constitution was amended. In 1994, the Zapatista National Liberation Army (*Ejército Zapatista de Liberación Nacional* - EZLN) took up arms in response to the misery and exclusion being suffered by the indigenous peoples. The San Andrés Accords[1] were signed in 1996 but it was not until 2001 that Congress approved the Law on Indigenous Rights and Culture and, even then, this did not reflect the territorial rights and political representation enshrined in the San Andrés Accords. More than 300 challenges to the law were rejected. From 2003 onwards, the EZLN and the Indigenous National Congress (*Congreso Nacional Indígena* - CNI) began to implement the Accords in practice throughout their territories, creating autonomous indigenous governments in Chiapas, Michoacán and Oaxaca. Although the states of Chihuahua, Nayarit, Oaxaca, Quintana Roo and San Luís Potosí have state constitutions with regard to indigenous peoples, indigenous legal systems are still not fully recognised.[2]

At the end of 2009, following a significant delay, the Presidency of the Republic presented the *2009-2012 Programme for Indigenous Peoples' Development*, which was supposed to have been a six-year framework covering the pe-

1. Oventic and Acteal, Chiapas
2. Agua Azul Waterfalls, Chiapas
3. Ayutla, Guerrero
4. Xochistlahuaca, Guerrero
5. San Juan Nuevo Parangaricuto, Michoacan
6. Uekakua, Michoacan
7. Santiago Mexquititlán
8. San Juan Copala, Oaxaca

riod 2007-2012. It will now only cover three years. The document offers new proposals only in terms of the way in which the areas to be addressed are structured, and demonstrates major limitations in terms of its concept of indigenous development, the ensuing programmes and projects, and its complete lack of any analytical or critical balance with regard to the way in which institutions operate.

At the end of 2010, the United Nations Development Programme presented its Report on the Human Development of Mexico's Indigenous Peoples. The challenge of unequal opportunities.[3] Despite some interesting information, this publication illustrates the limitations of the UNDP's methodology, *inter alia*: the excessive generalisations to which the Human Development Index gives rise, the reluctance to use methodologies (already existing and proven in Mexico) that would permit a local-level analysis to be conducted (the information remains based at the municipal level), the total lack of fieldwork and the limited concept of indigenous development.

Megaprojects on indigenous territories

The regional strategy of "development megaprojects", in the context of the Plan Puebla-Panamá (now renamed the Meso-American Integration and Development Project, MIDP), has made significant strides and, as we shall see in the case of mining companies, the Mexican government's support to the MIDP – which ignores the interests of local populations - is leading to increasing conflict in a number of areas. A development philosophy has clearly been replaced by a business one, as can be seen in: the promotion of the investment plan (ratified by the 13th Tuxtla Summit in Cartagena de Indias, Colombia, a country now included in the MIDP) for the Pacific Corridor between Puebla and Panama; the renovation of the border crossing between Belize and Mexico; the regional Fibre Optic Network (with 92% funding from the IADB and the Economic Commission for Latin America and the Caribbean, administered by RED-CA, the company in charge of the Meso-American Information Highway); the inauguration of the Chiapas Biofuel Plant in November 2010 (with jatropha monocropping), agreed between Mexico and Colombia; along with the Mexico-Guatemala power links, connected in turn to the Costa Rica – Panama electricity lines. All this affects the region's indigenous territories in different ways.[4]

Energy and mining

With an important potential for exporting energy to Central America, the projects hold the seeds of conflict, both now and in the future: the Nahua population of Guerrero continue to dispute the La Parota dam; the Paso de la Reina dam, in Oaxaca, for which the Federal Electricity Company has planned the budget up to 2015-2018, is continuing despite strong opposition from the coastal Chatino and Mixtec peoples, impoverished Afro-Mexicans and *mestizo* peasant farmers from the Costa Chica; in the southern region of the Tehuantepec Isthmus, 410 wind turbines have already been installed and Spanish energy companies (Iberdrola, Manesa, Endesa, Preneal, Acciona, etc) have plans to expand onto the territories of the indigenous Binniza (Zapotec) and Ikoots (Huaves) peoples. These projects also link into the tourist industry along the Acapulco (Guerrero) - Salina Cruz (Oaxaca) highway, with its 500 kilometres of tropical beaches. This highway, in turn, will facilitate the transport of minerals across the whole Sierra Madre del Sur.

In support of this, the General Department for Mines and the Ministry of Energy's Department for Mapping and Mining Concessions have granted 550 mineral exploration and exploitation licences over 1,583,928 hectares of national territory. One megaproject of the Acerero del Norte Group involves extracting iron, via open pit mining, from a huge seam that crosses 11 highly impoverished indigenous municipalities (Chatino, Mixtec, Zapotec and Chontal). This will be used to construct seamless steel oil pipes (in Salina del Marqués) and a dam in Paso Pichichi, plus a railway line and a wharf in Puerto de Salina Cruz, which will act as an export hub to the Pacific.

With little information on these plans and their impact, which have government consent, the indigenous people have seen their assemblies manipulated by agents of the Hochschild México and Hochschild Mining companies (British owned) and Camsim Minas S. A., which are seeking to extract silver, gold, lead, zinc and iron from indigenous territories in Guerrero. The Ministry for Agrarian Reform is involved in this (in Tepeyac more than a thousand community members voted against the Ministry's proposals) and a high number of communities are calling for consultations to be conducted in accordance with ILO Convention 169 and in line with the laws on Sustainable Forest Development, National Waters and Wildlife.

In the north-west of the country, the indigenous Wixárika (Huichol) community is denouncing the fact that its sacred sites at Wirikuta and Real del Catorce are under threat from the Canadian mining company, First Majestic Silver, which has received concessions from the Mexican government that will affect 16 population centres in six *ejidos*. The General Assembly of the Council of Elders (held from 3 to 5 September 2010) energetically stated its opposition to projects that would lead to the drying up or contamination of their water courses.

In his struggle against the Canadian and Mexican owned Blackfire mining company, the son of assassinated Chiapas leader, Mariano Abarca (killed on 27 November 2009), made a statement in Canada regarding the company's responsibility for human rights violations and called on that country's government to establish a law that would control mining companies and call them to account for their aggression.

The Canadian company, Fortuna Silver Mines, represented in Mexico by Minera Cuzcatlán, holds 5,000 hectares of concessions in Ocotlán de Morelos (Oaxaca), on the territories of five settlements: Ocotes de Ejutla, San José del Progreso, San Jerónimo Taviche, Rancho del Toro and San Jacinto Ocotlán. Although the massive opposition of the population in question (Zapotec and poor *mestizo* peasant farmers) was fragmented in 2009 by the combined actions of the government,

businessmen and political parties, the people managed to get the project halted thanks to national support and the mobilisation of the National Assembly of Environmentally Affected Groups, which met in Magdalena Ocotlán in September 2010.[5]

Human rights

Unfortunately, indigenous rights continue to be an issue that the Mexican state has put on hold. The symbolic case of the Acteal massacre (the massacre of 45 indigenous Totzil, including children and pregnant women, belonging to the "Las Abejas" organisation, a grassroots structure of the EZLN (Ejército Zapatista de Liberación Nacional), perpetrated by paramilitaries in the Los Altos Chiapas region of south-eastern Mexico on 22 December 1997) remains unpunished. Assassinations of indigenous communicators and leaders unfortunately continue.

Migration

2010 was a year that demonstrated the extremely violent reality suffered by indigenous Central American migrants who cross Mexico in their efforts to reach the United States. Although there are no detailed figures, it is perhaps sufficient to note that, on 23 August, 72 bodies of Central and South American migrants were found in San Fernando, Tamaulipas (north-eastern Mexico), presumably kidnapped by members of organised crime networks and executed when they refused to pay a ransom or join their ranks. Given their lack of official documentation, it has still not been possible to ascertain the nationality of all of these people, but it is more than likely that there are indigenous people among the Hondurans, Salvadoreans and Guatemalans. This tragic event, which was condemned by the Office of the UN High Commissioner for Human Rights, the Secretary-General of the OAS and the presidents of the victims' countries of origin, highlights the crude reality to which indigenous migrants are exposed while crossing Mexican territory. To this situation must be added the daily suffering of Mexican indigenous migrants of the Nahua, Mixtec, Triqui, Mixe, Tlapanec and Mazahua peoples, among others, who continue to travel to the agricultural fields in the north-east of the country to work as day labourers despite the toxic agrochemicals, low salaries and sub-human living conditions to which they are exposed by their employers, simply because they have no other means of survival in their places of origin.

San Juan Copala

The case of the autonomous municipality of San Juan Copala, in Oaxaca, deserves special mention given that it has been regularly attacked by opposing organisations, including indigenous, since it declared its autonomy in 2007. This situation only worsened during 2010. The *Movimiento de Unificación y Lucha Triqui* (Movement for Triqui Unification and Struggle - MULT), *Unidad y Bienestar Social en la Región Triqui* (Unity and Social Well-being in the Triqui Region - UBISORT) and *Partido Unidad Popular* (Popular Unity Party - PUP) are all directly accused by the inhabitants of San Juan Copala (SJC) of having set paramilitary siege to the municipality from the end of 2009 until September 2010, and of causing the blockade and violence to which they have been subjected. On 27 April, Alberta Cariño Trujillo, a Mixtec communicator and human rights defender, and Jyri Antero Jaakkola, an international human rights observer from Finland, who were forming part of the second peace caravan en route for the municipality with food, clothes, medicine and water for the besieged population, were murdered by paramilitaries allegedly belonging to UBISORT.[6] It was only then that the Mexican and international mass media turned their attention on San Juan Copala for a few days. On 12 May, Margaret Sekaggya, UN Special Rapporteur on the situation of human rights defenders, Philip Alston, UN Special Rapporteur on extrajudicial, summary or arbitrary executions, James Anaya, UN Special Rapporteur on the rights of indigenous peoples, and Frank la Rue, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, all condemned these events and called on the Mexican government to take the necessary measures to protect the lives of the inhabitants of SJC.[7] Nonetheless, since 20 May, when Timoteo Alejandro Ramírez (one of the SJC's main leaders) was assassinated along with his wife, Cleriberta Castro Aguilar, a selective manhunt of the leaders of the different communities that make up the municipality has been unleashed. On 23 August, Antonio Ramírez López, leader of Santa Cruz Copala, was executed, along with Antonio Cruz García and Roberto García Flores. A conservative calculation indicates that at least 25 people lost their lives in 2010 due to conflict-related causes.[8]

The people displaced from the autonomous municipality are also subjected to harsh conditions. Calculated at more than 500 individuals, mainly women, children and elderly, they have been evicted and are the victims of persecution, rape and murder, as in the case of Teresa Ramírez Sanchez, a Triqui woman displaced

from San Juan Copala and who, despite being pregnant, was killed on 16 October 2010. In the face of such a climate of violence and the apathy of state and federal governments, the Inter-American Commission on Human Rights has issued Precautionary Measures (PM 19701-135) to the Mexican government, calling on it to guarantee the life and physical integrity of 135 members of San Juan Copala, and to provide information regarding the measures taken in order to clarify the events leading up to the adoption of these measures and to remove the factors causing the risk.

Chiapas – EZLN

During 2010, the climate of violence, harassment and pressure endured by different Zapatista communities in Chiapas continued. The Good Governance Committees of the member communities of the Zapatista National Liberation Army (EZLN) issued various press releases illustrating this fact.[9] These contained complaints of aggression, harassment and provocation on the part of paramilitary organisations that have been in place since 1994, when the EZLN extended its movement. The complaints refer to land grabs, imprisonments and assassinations of peasant leaders, along with the theft and looting of lands on which the Zapatista support bases are located. Those responsible are known and, according to the press releases, protected by all three levels of government authority. Particularly noteworthy are the cases of hostility and eviction at Bolón Ajaw and Agua Azul; the murder of workers on the Amaytic Ranch in Ricardo Flores Magón municipality; the attacks by PRD and PRI supporters on El Pozo community, during which two health promoters were held prisoner; the land invasion at Campo Alegre and the grabbing of 29 hectares bought by Zapatistas and on which they were providing autonomous education. During 2010, the Fray Bartolomé de las Casas Human Rights Centre issued at least nine urgent actions related to indigenous rights.[10] Events at Mitzitón community, where members of The Other Campaign have been harassed for the last 13 years by the paramilitary group known as *Ejército de Dios - Alas de Águila* ("Army of God - Eagle Wings) are a clear example of how, despite the complaints made, the three levels of government are doing nothing to reverse this situation. Despite this context of aggression, however, autonomy continues to be built, as shown by the progress made in the Zapatista Autonomous Rebel National Liberation Education System (SERAZLN) which, through its primary and secondary schools and the Zapatista Autonomous Rebel Centre for Spanish and Mayan Languages (CELMRAZ), has increased the

number of children on its roll, offering an autonomous education to more young children and youths.[11]

COP 16

Prior to COP 16 (16th meeting of the Conference of the Parties to the UN Framework Convention on Climate Change), which was held from 29 November to 10 December 2010 in Cancún, Quintana Roo, indigenous organisations from Mexico and Latin America, organised in the Abya Yala Indigenous Forum on Climate Change, met to make proposals on programmes related to climate change mitigation and adaptation and the Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD) mechanisms. The *Red Indígena de Turismo de México* (Indigenous Network for Mexican Tourism - RITA) represented Mexico in this. The participating organisations called on the main greenhouse gas emitters to make real commitments to reducing these emissions, and to change the development model responsible for climate change, which directly affects the biodiversity of indigenous territories. They also undertook to highlight the role of indigenous peoples in natural resource conservation and to demand respect for their territories via consultation and free, prior and informed consent during COP 16. The world's indigenous peoples' representatives thus endorsed the opening declaration of the Indigenous Peoples' International Forum on Climate Change, a preparatory meeting to COP 16 held on 27 and 28 November, at which they called for changes to the production and consumption models that are causing climate change, and the adoption of real solutions on the part of the States Parties. The declaration urged all final texts and agreements to respect, value and recognise indigenous rights, in accordance with the UN Declaration on the Rights of Indigenous Peoples and other international human rights standards.

During COP 16, the governments in attendance and the officials of the 194 delegations participating in the meeting were asked to adopt decisions that take indigenous peoples into consideration. The value of the biotic resources, and the need to avoid natural disasters such as floods and droughts, which primarily affect native peoples, was highlighted. Indigenous peoples that participated on issues of climate change mitigation and adaptation and environmental refuges unanimously rejected the carbon market and the unrestricted use of forests as

part of any programme or scheme based on carbon compensation, known as the REDD+ mechanism.

Indigenous communicators

In the area of communications, there were unfortunately no significant changes in the situation of indigenous communicators in 2010. After one and a half years of negotiations, six broadcasting licences were finally issued to community radio stations in January, but only *Zaachila Radio* has an indigenous component. The attacks on and harassment of indigenous radio stations continues. The debate on enacting a new Television and Radio Law in the country gathered pace in Congress and two bills of law were even drafted, one of which included the possibility of giving indigenous peoples access to the radio-electric spectrum, and of operating and managing communications media. Neither of these were successful, however. On 29 and 30 June, faced with such a situation, the 3rd National Indigenous Communications Congress was held in Mexico City. In their declaration, the indigenous communicators ratified the right to acquire, operate and manage the communications media; they urged Congress to recognise this right by legislating on communications and by reserving 30% of the radio-electric spectrum for indigenous communicators, as well as creating a federal fund aimed at strengthening their work; they condemned the attacks on and murders of indigenous social communicators and leaders. Importantly, following an agreement on the part of the Abya Yala Continental Summit of Indigenous Communications, held in Cauca, Colombia, from 8 to 12 November 2010, Mexico was chosen to host the next Summit in 2012.

Postscript: It is with great sorrow that we have to report that, on the day that this article was completed, Monday 24 January 2011, Bishop Samuel Ruiz García, one of the main human rights defenders of Mexico's indigenous peoples in recent decades, sadly passed away. ❍

Notes

1 The San Andrés Accords are agreements reached between the Zapatista Army of National Liberation and the Mexican government, at that time headed by President Ernesto Zedillo. The accords were signed on February 16, 1996, in San Andrés Larráinzar, Chiapas, and granted au-

tonomy and special rights to the indigenous population of Mexico. President Zedillo and the Institutional Revolutionary Party (PRI) however, ignored the agreements and instead increased their military presence with the political support of the other important political parties, the Democratic Revolution Party and National Action Party (PRD and PAN).

2 **Aragón Andrade, Orlando, 2007:** Los sistemas jurídicos indígenas frente al derecho estatal en México. Una defensa del pluralismo jurídico. *Boletín Mexicano de Derecho Comparado*, Nueva Serie, Year XL, Num. 118, Jan-April 2007, pp. 9-26.

3 **UNDP, October 2010**: *Informe sobre Desarrollo Humano de los Pueblos Indígenas en México. El reto de la desigualdad de oportunidades.*

4 http://www.proyectomesoamerica.org/boletin/interno/boletin_2010.htm

5 http://www.afectadosambientales.org/

6 http://www.jornada.unam.mx/2010/04/29/index.php?article=009a1pol&section=opinion

7 http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10041&LangID=S

8 http://www.cidh.org/medidas/2010.eng.htm

9 http://enlacezapatista.ezln.org.mx/

10 http://www.frayba.org.mx/acciones_urgentes.php?hl=es&tag_ID=22

11 http://www.serazln-altos.org/

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GUATEMALA

The more than 6 million indigenous inhabitants (60% of the country's total population), made up of the: Achi', Akateco, Awakateco, Chalchiteco, Ch'orti', Chuj, Itza', Ixil, Jacalteco, Kaqchikel, K'iche', Mam, Mopan, Poqomam, Poqomchi', Q'anjob'al, Q'eqchi', Sakapulteco, Sipakapense, Tektiteko, Tz'utujil, Uspanteko, Xinka and Garífuna ethnic groups, continue to lag behind the non-indigenous population in social statistics: they are 2.8 times poorer and have 13 years' less life expectancy; meanwhile, only 5% of university students are indigenous.

The situation of indigenous peoples changed little during 2010: 73% are poor (as opposed to 35% of the non-indigenous population), and 26% are extremely poor. Even so, indigenous participation in the country's economy as a whole accounts for 61.7% of output, as opposed to 57.1% for the non-indigenous population.

Guatemala voted in favour of the UN Declaration on Rights of Indigenous Peoples in 2007.

Inequality, the root of indigenous exclusion

During the celebrations for International Day of the World's Indigenous Peoples on August 9, indigenous organisations managed to obtain special coverage of the indigenous situation in the mass media, where it was emphasised that, despite significant progress (greater visibility, more space to make themselves heard), indigenous peoples' conditions remain critical in terms of their standard of living and, particularly, in relation to the rest of society. Racism and discrimination persist, an illustration of the negative way in which the country's indigenous population is treated, in addition to constant violations of their fundamental rights, dispossession of their territories and natural resources, and their scant participation in decisions relating to the issues of most importance for the country.

DEPARTMENTS

1. Santa Rosa	4. Quetzaltenango	7. Guatemala	10. Totonicapán
2. Jutiapa	5. Quiché	8. Escuintla	11. Baja Verapaz
3. Jalapa	6. Chimaltenango	9. Sololá	12. Department of San Marcos (Marlin Mine)

Institutionalised practice of denying indigenous identity and belonging

The lack of data and statistical records on indigenous peoples is in itself an expression of a state-institutionalised practice of attempting to cover up their existence and deny their basic rights. "Ladinization" (a coercive process of cultural assimilation that converts indigenous peoples into *ladinos* and *mestizos*) has

been an aspiration of the elites, who consider that these peoples are hindering their country's modernisation. It is for this reason that the elites have encouraged a denial of indigenous identity in official records.

In this regard, a number of cases arose last year in which the National Registry of Persons (RENAP) unilaterally classified various indigenous people seeking to obtain ID cards, as *ladinos*. The Xinca Parliament, which represents this people's communities in the departments of Santa Rosa, Jutiapa and Jalapa, denounced the fact that, without any consultation, RENAP civil servants had recorded them as *ladinos* and that they had been discriminated against when they tried to defend their true identity. In another similar case, which went before the courts, members of the Racancoj family, from the Maya K'iche' of Quetzaltenango, also complained that they had been registered as *ladinos*.

Chichicastenango: a people regaining its property rights

After many years of legal struggle, the Indigenous Council of Chichicastenango, in Quiché department, has managed to get a court to reinstate its rights over a plot of its own land that had been expropriated and then privatised in favour of a telephone company in 1973, without the people's consent. This is the first time that a court has recognised an indigenous people's property rights and it is also the first time that the ordinary courts have accepted the representation of an indigenous council despite the fact that it does not have legal personality, a formality that has long prevented indigenous peoples from bringing cases relating to the dispossession of their property rights before the courts. For experts in indigenous law, this case is important as it sets a precedent for future conflicts over indigenous lands.[1]

Legislative indifference with regard to approving the Rural Development Law

After more than 10 years of discussion, the draft Rural Development Law, a commitment of the Peace Accords signed in 1996 and promoted primarily by the indigenous and peasant farmer organisations, was finally submitted to the Congress of the Republic for approval. Despite intense lobbying on the part of the social organisations, however, they were unable to break the circle of legislative indifference.

At the end of the day, Congressmen and women paid more attention to pressure from the private sector, despite the fact that this sector had deliberately abandoned the discussion committee when it began to address issues related to land ownership and land conflicts. Despite multiple protest actions on the part of the indigenous and peasant farmer organisations in favour of this law, including marches, meetings with deputies and civil servants, publicity campaigns, fora and press releases, it was not possible to gain the backing of the legislators to pass this law, nor other laws presented by the indigenous organisations relating to sacred sites, community consultations, community radio stations and indigenous jurisdiction. This indifference is a reflection of the fact that, despite government rhetoric to the contrary, the country's indigenous peoples are not a priority when it comes to formulating public policies in a state which, instead of its "Maya face", continues to show a face of racism and exclusion.

The impact of North American migration policies

Prompted by poverty and exclusion in their own country, indigenous peoples have found a way of improving the lives of their families and communities of origin by migrating to North America. The migratory venture, as a family project, involves investing the household's scarce resources in sending a family member abroad who can then send back money to their community. Apart from the family and community disintegration that consequently occurs, and the dependence this can cause on remittances from abroad, the main risks facing the migrants are the dangers to their own lives on the long journey north.

In 2010, various families from the west of the country were plunged into tragedy after violent acts took the lives of a number of migrants, both in Mexico and the United States. In addition, raids and deportations back to their places of origin only make the lives of their families worse due to the debts taken out to finance the migration of one or more of their members in the first place.

30 years on: Second Iximché Declaration

As they did once before in 1980, the country's main indigenous organisations again met in Iximché, a pre-Hispanic city of the Maya Kaqchikel people, in Chi-

maltenango department, to commemorate the 30 years since the First Iximché Declaration, a document which, at the time, denounced the early signs of the genocide that was to come on the part of the repressive state forces during the armed conflict. On 22 February 2010, a meeting organised for the occasion assessed the indigenous peoples' situation and denounced their persistent discriminatory treatment and repression, and the systematic and institutionalised violations of their rights. In a Second Declaration, they reaffirmed their mistrust of the state and its lack of credibility, given the lack of attention to indigenous demands. The declaration set out future prospects for struggle and resistance, and highlighted a desire for unity, consensus and organisational strengthening. It expressed a need to mobilise in defence of the indigenous territories and in opposition to the extractive industries that are pillaging their natural wealth; it rejected the government's discourse, which is exploitative of indigenous issues and affirmed the need for international alliances.

The 13 Baktún Political Council: an emerging space for reflection

In the face of divisions caused by the political parties, a group of indigenous leaders has set up the 13 Baktún Political Council, aimed at encouraging a space for debate that will foster a convergence of indigenous thought. The 13 Baktún Political Council has promoted debate around the main national and global problems affecting indigenous peoples, and alternative proposals for transforming the state's role and its policies of domination have emerged from this. The council also wishes to revitalise the moral and social force of indigenous peoples as part of a process of recovering their history, values, integrity and harmonious relationship with Mother Earth. In terms of political participation, 13 Baktún is calling on indigenous peoples to avoid being bought off by politicians with false offers, or offers of secondary posts on the different electoral lists, as has happened in the past. Instead, it suggests active political participation on the basis of indigenous principles and values.

The indigenous territories, a different reality in the face of violence

During election campaigns, promises of security and justice form the major pledges of the main political parties, particularly those that continue to talk the rhetoric

of force and authoritarianism in order to put an end to this scourge, policies that could be counter-productive given the wave of abuse and repression they may unleash. Faced with the inability of the government's security forces to keep control in many districts and communities, neighbours have established their own vigilante groups to detain and punish alleged criminals, with which the vicious circle that in turn generates more violence and impunity reminiscent of the paramilitary groups of the internal armed conflict is complete. In addition, the violence has a political, economic and social cost that is detrimental to the state's credibility and finances.

This violence affects the whole country, with murdered and murderers coming from all sectors of society, both indigenous and non-indigenous. It has, however, been clear for a number of years that the crime rate is much lower in indigenous areas than in non-indigenous ones. Some experts believe that those living on the indigenous territories have different perceptions of social co-existence, and a series of local institutions, rules and forms of self-government that promote best practices in this regard.

Far from recognising, supporting and making the most of the potential of indigenous law, however, the government has resorted to the age-old tactic of laying siege to predominantly indigenous areas such as Alta Verapaz, San Marcos and San Juan Sacatepéquez (department of Guatemala), with the claim that this will bring crime and drugs trafficking down. Some analysts believe that these measures are also aimed at curbing the social protests against extraction activities.

Closure of the Marlin Mine recommended by the IACHR

On 20 May 2010, the Inter-American Commission on Human Rights (IACHR), asked the Guatemalan government to:

> *suspend mining of the Marlin I project and other activities related to the concession granted to the company Goldcorp/Montana Exploradora de Guatemala S.A., and to implement effective measures to prevent environmental contamination, until such time as the Inter-American Commission on Human Rights adopts a decision on the merits of the petition associated with this request for precautionary measures.*[2]

The IACHR also recommended adopting measures to decontaminate the water sources, address health problems, and guarantee the life and physical integrity of the inhabitants of the 18 communities affected by the mining.

Although the government announced its readiness to comply with these recommendations, in practice no progress has been made towards their fulfilment, thus defying the IACHR's resolutions. In contrast, not only has the transnational company Goldcorp continued operating and launching its costly publicity campaign on the benefits of mining but the government has also continued to support an expansion of these activities in various parts of the country, whilst continuing to criminalise the social protests and delegitimise the value of community consultations.

It is clear that the pressure that extraction companies exert has greater weight over the decisions of the national and local authorities, who give in to these interests due to the royalties on offer. In October, the local mayor of Uspantán, in Quiché department, published various press releases in the country s main newspapers discrediting and disapproving of the results of the consultations conducted in his municipality.

In order to put an end to such attitudes, different social organisations have been documenting the community consultation experiences in order to produce technical and legal proposals aimed at forcing the state to institutionalise these processes, as stipulated in ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples.

Special Rapporteur on the rights of indigenous peoples notes abuses at Marlin Mine

During the third week of June, James Anaya, UN Special Rapporteur on the rights of indigenous peoples, visited Guatemala specifically to see whether consultation principles were being applied in relation to the extraction industries or not. On the basis of the multiple testimonies of environmental contamination, disease, harassment, cattle deaths, attacks and even murders of community leaders, forced displacements, damage to or destruction of houses and horrible rapes and sexual abuses of women that he obtained during his visit, the Rapporteur's report concludes that the extraction activities on indigenous territories have created

huge instability and social conflict that threatens the very governability of the country.[3]

His report indicates that this conflict is due to the lack of a legal and institutional framework that would ensure the validity of community consultations, and also to the weak system for protecting indigenous rights, particularly the precarious legal position of recognition of the right to ownership of lands and territories. He also recommended that the Guatemalan state obey and comply with the IACHR's recommendation to close Marlin Mine for good. There has, however, been no government action specifically aimed at complying with this recommendation to date.

Disasters again affect indigenous communities disproportionately

During May and June, two different natural events affected the country. First of all, the eruption of Pacaya, a volcano located in the north of Escuintla department, impacted on the homes and movements of thousands of families in the centre of the country and affected air transport for three weeks. At almost the same time, tropical storm Agatha caused immense damage to life, infrastructure and basic services in 214 of the country's 333 municipalities (65% of the national territory), leaving a toll of 1.5 million dollars of damage, 165 deaths, 74 disappearances and, in all, 166,000 people affected.

The greatest material and human damage occurred in the indigenous communities of the highlands, in Sololá, Chimaltenango, Totonicapán and Baja Verapaz departments, where the accumulated impact of previous disasters and the lack of progress in terms of reducing their social, economic and environmental vulnerability makes them prone to suffering every time such phenomena occur. The government reports, however, explain that this damage is due to global climate change, thus minimising the accumulated vulnerability that is a feature of the lives of much of the population.

Ever more obstacles to demands for autonomy

Indigenous peoples' territorial management, which is expressed in the form of community administration of communal lands, water sources, sacred sites and

traditional knowledge, is facing ever more obstacles to its recognition and respect. These forms of territorial management are at a disadvantage in relation to the centralised patterns implemented by the state. There is a general trend, supported by the conservation NGOs, towards promoting the conversion of natural spaces (protected ancestrally by indigenous peoples) into protected areas, with the argument that this will not only ensure their conservation but will also facilitate the allocation of resources from environmental cooperation. When the community forests are turned into protected areas, however, the rules of access and use change to the detriment of the ways of life of the poorest families.

In addition, a group of 23 communities, half of them indigenous, have seen their negotiations to become new municipalities frustrated due to the opposition of the country's local mayors, united in the National Association of Municipalities (ANAM), in conspiracy with the deputies, who have not only delayed these negotiations but have changed the goal posts for creating new municipalities, raising the minimum number of inhabitants required from 10,000 to 20,000, despite the fact that 60% of current municipalities have less than 10,000 inhabitants. The basic problem is that the creation of more municipalities will reduce the budgets received by the others, in addition to which the mayors do not wish to lose their hegemony and control over the communities that are seeking this new status.

Indigenous proposals at COP16

At the Climate Change Conference held in Cancún, Mexico, during December, there was a small space for indigenous participation, under the auspices of environmental NGOs, at which they managed to put forward some proposals relating to the REDD (Reducing Emissions from Deforestation and Forest Degradation in Developing Countries) mechanisms, in their different versions. Various REDD concerns were raised in the different COP16 fora that involved indigenous people. Firstly, they noted the scant involvement indigenous peoples had had in preparing the country plans, which were prepared in hermetically-sealed spaces with strong government control. Secondly, they rejected the commoditisation of nature that these financial mechanisms will cause, and which they doubt will effectively benefit the indigenous peoples, who are the owners, and who care for and protect the forests. Thirdly, they stated their concern at the state's intention to claim ownership of the carbon contained in the natural forests, thus monopolising the nego-

tiation of REDD resources, an aspect they rejected given that most of the country's natural forests exist purely because the communities have made great efforts to conserve them, primarily under a communal ownership approach.

Finally, the indigenous people's organisations believe that, to face up to the challenges raised by climate change, the current development model, which is characterised by the destruction of nature, has to be revised. Values that form a part of the indigenous world view need to be recovered, values that make a harmony between human activity and Mother Earth possible, a principle on which the indigenous people's world view is based. ❍

Notes

1 Alcaldía indígena recobra propiedad de un terreno. Prensa Libre, 30 March 2010, p.2.
2 http://www.politicaspublicas.net/panel/siddhh/cidh/512-cidh-marlin-gt.html
3 http://clavero.derechosindigenas.org/wp-content/uploads/2010/06/guatemala-observaciones-preliminares-relatora-naya18jun10.pdf

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NICARAGUA

The seven indigenous peoples of Nicaragua live in two main regions: firstly, the Pacific Coast and Centre North of the country (or simply the Pacific), which is home to the Chorotega (221,000), the Cacaopera or Matagalpa (97,500), the Ocanxiu or Sutiaba (49,000) and the Nahoa or Náhuatl (20,000); and, secondly, the Caribbean (or Atlantic) Coast, inhabited by the Miskitu (150,000), the Sumu-Mayangna (27,000) and the Rama (2,000[1]). Other peoples enjoying collective rights in accordance with the Political Constitution of Nicaragua (1987) are the black populations of African descent, known as "ethnic communities" in national legislation. These include the Kriol or Afro-Caribbeans (43,000) and the Garífuna (2,500).

It is only in recent years that initiatives have been taken to establish regulations for improved regional autonomy, such as the 1993 Languages Law; the 2003 General Health Law, which promotes respect for community health models; Law 445 on the System of Communal Ownership of Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and the Bocay, Coco, Indio and Maíz Rivers, which came into force at the start of 2003 and which also clarifies the communities' and titled territories' right to self-government; and the 2006 General Education Law, which recognises a Regional Autonomous Education System (SEAR).

The Sandinista National Liberation Front (FSLN) came to power in Nicaragua in 1979, subsequently having to face up to an armed insurgency supported by the United States. Indigenous peoples from the Caribbean Coast, primarily the Miskitu, took part in this insurgency. In order to put an end to indigenous resistance, the FSLN created the Autonomous Regions of the North and South Atlantic (RAAN/RAAS) in 1987, on the basis of a New Political Constitution and the Autonomy Law (Law 28). Three years later, the FSLN lost the first national democratic elections in Nicaragua to the National Opposition Union (UNO), headed by the liberal Violeta de Chamorro, and a land policy was put in place that promoted the settlement on and individual titling in indigenous territories, also com-

1. Sumu Mayagna territory
2. Miskitu territory
3. Bosawa Biosphere Reserve
4. Moskita Community Nation
5. Mayangna territories of Sauni Arungka
6. Rama y Kriol territory
7. Awas Tingni Mayangna Sauni Umani territory
8. Nueva Segovia department
9. Madriz department
10. Esteli department
11. Awaltara Indigenous territory
12. Rio San Juan department
13. Jinotega department

mencing the establishment of protected areas over these territories without any consultation. Daniel Ortega, the historic leader of the FSLN, returned to power following the 2007 elections.

2010 was a year of consolidation for the FSLN government given that most of the population had, by then, recognised (pragmatically) that public benefits would no longer be gained through the democratic mechanisms set out in the Law on Civic

Participation but through party-political affiliation and the Councils for People's Power introduced by President Daniel Ortega. This situation seems unlikely to change, given that the 2009 ruling of the pro-FSLN judges in the Supreme Court of Justice remains in effect, enabling the re-election of the President of the Republic and municipal mayors, in violation of Article 147 of the Political Constitution.

Not all mayors, however, seem to enjoy equally favoured status. There has been a noted breach in municipal autonomy through the removal from office of at least eight elected public servants in five municipalities, including four mayors. Although the official argument states that this was down to bad management, civil society organisations believe it may have more to do with their failure to tow the official line.

Last year, the Council of Elders of the Moskitia Community Nation proclaimed their independence from the Republic due to a lack of government attention; their statement fell on deaf ears, however. At the same time, and as a result of bilateral conversations, the Diriangén Coordinating Body (of the Matagalpa) felt that it was positive that they had been able to discuss and present their demands directly to state institutions.

For the indigenous peoples in particular, who enjoy regional autonomy, the role of the Atlantic Coast Development Council and its Secretariat – established by the national government – was notable. The bilateral and multilateral cooperation funds that were now beginning to be channelled directly towards the Atlantic Coast and in favour of indigenous peoples were conditional upon the favourable assessment of this Secretariat as regards their compatibility with national priorities, thus limiting the support for the priorities of the indigenous/Afro-descendant territorial governments and the two autonomous regional governments.

In an initial attempt to link directly with the local territories of indigenous peoples and ethnic communities, where the jurisdictions and authorities have a cultural logic in terms of respect for self-determination, German cooperation earmarked nine million dollars to indigenous territories in the RAAN but was forced to accept the intermediation of the New Emergency Social Investment Fund (FISE), which was established to inject development funds via the FSLN structures.[2] With funding from British cooperation, the World Bank Trust Funds also established unexpected mechanisms to ensure harmonisation of its Atlantic Coast Development Programme with the central government's priorities. On the other hand, the World Bank is promoting the Community-driven Projects mecha-

nism with the aim of creating administrative and technical capacity within these traditional government structures.

The growing popularity of Daniel Ortega's government may have something to do with the immediate response of the Councils for People's Power in the Pacific to the flooding the country suffered in the rainy season. The Chorotega, on the other hand, felt they received no support during the extreme famine they experienced on their territories during the dry season. To this must be added significant improvements in the road network plus a government strategy that is common at critical moments in history, aimed at building nationalist sentiment: Daniel Ortega created an international conflict - in this case with Costa Rica - over the San Juan River border. With funding for tourism development from the Inter-American Development Bank, the national government was dredging the river to increase its depth in the Nicaraguan branch of the delta in order to facilitate river transport. To this so-called "water robbery" was added an apparently unnecessary displacement of Nicaraguan armed forces in the border area, which culminated in the conflict reaching the International Court of Justice in The Hague.

Legislative initiatives

The Law for the Development of Coastal Areas was hurriedly pushed through in 2009, but the indigenous peoples' fear that all lands up to 200 metres from the water line would pass unconditionally to the municipal administration proved unfounded. In 2010, however, at the height of the stated border conflict with Costa Rica, the FSLN presented, and succeeded in getting approved, another even more radical law, the Law on the Legal Border Regime, which creates a new legal regime governing the area up to 15 kms into national territory from the border and coast lines. This affects all the people living in those territories, including indigenous peoples and ethnic communities who only recently achieved territorial recognition and autonomous government in this area by means of Law 445. The new law gives the Nicaraguan Army a belligerent role related to "the conservation, protection, renovation and sustainable use of the natural resources and environment, the creation of tourism development areas (Art. 6.1) and any other strategic plans that the President of the Republic may order". Article 21 states that, in these areas, "the natural resources are the property and direct, indivisible, inalienable and imprescriptible dominion of the State". The law is considered unconstitutional

and will affect indigenous territories along the Atlantic and Pacific coasts, and along the Coco and San Juan rivers.[3]

Paradoxically, on 6 May, the National Assembly ratified ILO Convention 169, which should have been an indication of a significant positive change in favour of indigenous and Afro-descendant peoples in Nicaragua with regard to their claims for territorial rights. However, the Borders Law demonstrates the lack of prior consultation and agreement that takes place in legislative processes. In fact, indigenous peoples from the Centre North perceive this ratification more as a political move to divert attention from the General Law for Indigenous Peoples of the Centre-North and the Pacific, presented to the Assembly in 2006 and which, in their opinion, is the priority legislation that should have been approved. Whatever the reason behind ratification of the Convention, many indigenous rights defenders in Nicaragua share the perception that they, along with the ILO, have an enormous task of educating both the state institutions and indigenous peoples as to the implications of, and implementation mechanism for, this instrument.

The process of reforming the Regional Autonomy Statute (Law 28), mentioned in previous editions of IWGIA's Yearbook, is now at a standstill until the presidential elections in November 2011, awaiting the simultaneous completion of the final shaping of all the territories in the demarcation and titling process under Law 445.

The indigenous movement and state institutions

Regional elections were held in the Atlantic Coast in March, with an overwhelming 62.8% abstention rate, clearly highlighting yet again the indigenous and Afro-descendant rejection of the party political model imposed on the system of regional autonomy. What the indigenous peoples are seeking is a direct link between their communal, territorial and regional political structures. One example of the reasons for the current incompatibility can be seen in the fact that, on being re-elected as President of the RAAS Council, Rayfield Hodgson again certified a false territorial authority (with the same governing body that he himself had certified years back under another name but which had had to be cancelled). This time the supposed authority is called the "Indigenous Multi-ethnic People of San Juan del Norte of 24 communities of the River San Juan, from Boca de Sábalo to

San Juan del Norte". A request made by the Rama and Kriol Territorial Government (GTR-K) for a meeting to discuss this issue met with no reply whatsoever.

During the year, the Human Rights Ombudsman dismissed the Special Ombudsman for the Indigenous Peoples of the Centre and North Pacific, Aminadad Rodríguez, after having been in post for years with neither funding nor office. The Sutiaba authorities claim that the Human Rights Ombudsman's term in office had already ended when he dismissed Aminadad and that this dismissal was, in reality, related to his own links with the trade in indigenous land in the Pacific.

After two years of waiting, in October 2010 the Umbrella Organisation of the Sumu-Mayangna Nation (Sumu Kalpapakna Wahaini Lani-SUKAWALA) finally managed to submit its new statutes for their required review by the Ministry of the Interior. After a long process of manipulation on the part of the political parties and consequent internal conflicts over the leadership, the only step now lacking is the publication of these statutes in the Gazette and then the Sumu-Mayangna nation will have achieved public recognition of their highest organisational structure as a self-government. SUAKWALA previously operated as an association.

The demarcation and titling process for indigenous and Afro-descendant territories

This year, the Wangki Maya, Wangki Twi and Prinzu Awala territories joined the 12 other territories now demarcated and titled, of the 23 anticipated by the National Demarcation and Titling Commission (CONADETI).[4] Only two of these territories are free from conflicts with *mestizos*/settlers living within them. As guiding body of the process with the Attorney-General's Office and the Property Register, CONADETI appears to have neither the political will nor the financial resources necessary to complete this final stage of *saneamiento* (i.e. the resolution of conflicts with third parties on their titled territories), this having been pending for a third year. National government spokespersons have stated that, before beginning the process, CONADETI wants to produce a Co-existence Policy, and wishes also to await the results of the national elections in November 2011. Meanwhile, the territorial authorities under the greatest pressure from settlers, such as the Rama and Kriol Territorial Government and Mayangna Sauni Arungka (MATUMBAK) are – with the backing of the Atlantic Coast Development Council – beginning this complicated process with their own funds, seeking socially and

legally viable ways of resolving these conflicts themselves. According to Deputy and Member of CONADETI, Brooklyn Rivera, "there is no obstacle to beginning to undertake actions aimed at regularising the territory," provided it is coordinated with CONADETI.

At a public event, the President of the Republic issued the land titles granted last year and emphasised that his government was "issuing titles…out of respect, recognition and admiration for your beliefs, your culture and your values, as well as your ritual and daily way of life". A month later, and in reaction to this government recognition, armed settlers brought traffic to a standstill in Siuna municipality of the RAAN,[5] threatening the indigenous people and demanding that the government withdraw the title issued to the Mayangna Sauni Arungka territory and provide for the individual titling of their illegal plots in the Bosawás Reserve. In the South Atlantic, there have been physical attacks and the burning of Rama houses; some settlers are continuing to make angry noises but others have now begun a *rapprochement* with the Rama and Kriol Territorial Government in order to settle their presence in accordance with the Co-existence Guide offered by the indigenous authority. CONADETI views this guide, as a proposal for dialogue, as a valid input for all the territories in the *saneamiento* process.

Following the fraudulent sale of 12,400 hectares of the symbolic territory of Awas Tingni Mayangna Sauni Umani (AMASAU) to a logging company – denounced by the territorial authorities, SUKAWALA and the Council of Elders in 2009 – a commission was established to investigate this case, although apparently nothing has been resolved.

With funding from the Inter-American Development Bank and the World Bank, the Land Administration Project (PRODEP) will continue the process of cadastral surveying in the centre-north of the country, work that had come to a halt due to a request made by the indigenous authorities of five Chorotega territories to the Attorney-General's Office alleging that the technical staff in charge of the project were unwilling to recognise indigenous communal titles. With the support of the Nicaraguan and Central American Institute of History, and in cooperation with the Valencian Institute for Conservation and Restoration of Cultural Assets (in Spain), the Chorotega Coordinating Body this year obtained the restoration of a number of communal titles dating from the 17th century. It is to be hoped that the titles will help prove their communal ownership and improve the way in which this process is being handled.

"Development" projects and natural resources

In contrast to statements made last year, the 200 MW Tumarín hydro-electric megaproject, approved for implementation on the Grande de Matagalpa River, is not located on indigenous territory but between two parts of the Tumarín indigenous territory, given that this territory was divided during the titling process to leave untitled space for this megaproject.

The Rama and Kriol Territorial Government (GTR-K) – which represents nine communities in the RAAS – and the department of Río San Juan were the beneficiaries of British cooperation funds administered by the World Bank for the detailed design of renewable energy, water, transport, safe water and waste management projects, in line with their Autonomous Plan for Development and Territorial Administration, published in 2009.

On 5 July, the national government (the National Port Authority) signed a Memorandum of Understanding with two South Korean companies for the financing of the Deep-water Port project in the Kriol community of Monkey Point, linked to the national plan to build a "dry" inter-oceanic canal. The International Monetary Fund made observations regarding financial unsustainability and the need to put this out to a call for tenders, which the Memorandum did not specify.

The same community of Monkey Point made a complaint against the Nicaraguan Armed Forces for violations against children in their community on the part of members of the army and navy throughout the whole period in which a military base was stationed in their community (2003-2010). Although the community has submitted a proposal for the relocation of this base outside of their territory and for rules of conduct, the only thing they have received to date is a counterclaim from the army for slanderous allegations, made against the leader who is representing the community in the complaint.

In the run-up to the regional elections, the missing section of the highway between Bluefields and Nueva Guinea was made passable in the dry season. This road connects Bluefields to the Pacific Coast. The works were carried out without an environmental impact assessment and without the required consultations, given that it affects both the Rama and the Kriol territory, two protected areas and a Ramsar Site (wetland of international importance, as declared by UNESCO).

At the end of the year, the Ministry of the Environment and Natural Resources (MARENA) recognised the importance of establishing a joint management system with the GTR-K for protected areas that overlap with their titled communal lands. Initially, the government turned the indigenous demand for joint management, which has a basis in law, into a proposal for a regulation with national coverage. Nonetheless, the position of some indigenous territorial authorities not to accept even the existence of the protected areas - particularly in the Bosawás Biosphere Reserve – and to demand the *saneamiento* of their territories prior to any process of this kind, has left this issue at a tripartite level between the GTR-K, the RAAS Secretariat of Natural Resources (SERENA-RAAS) and MARENA. By signing this joint management agreement as soon as possible, it is also hoped that it will be possible to approve two management plans that have been a source of dispute for a number of years. However, it remains to be seen whether MARENA will insist on leaving aside the permits for large projects and jointly administrate only the permits for small projects of little impact. ❍

Notes

1 Source: Universidad de las Regiones Autónomas de la Costa Caribe Nicaragüense (URACCAN, 2000) and the Rama y Kriol Territorial Government (GTR-K, 2005-7). Field studies jointly conducted by URACCAN and the GTR-K with funding from the Danish cooperation agency, DANIDA, as a contribution to the Rama y Kriol Territorial Assessment.
2 http://www.fise.gob.ni/
3 The indigenous peoples have the right to self-goverment, along with free access to and administration of the natural resources on their territories (Arts. 5, 89 and 180 of the Constitution).
4 See official preview map: http://www.presidencia.gob.ni/cdcc/www.scaribe.gob.ni/Mapa%20%20Avance%20de%20Demarcacion%205.swf
5 Autonomous Region of the North Atlantic (RAAN).

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COSTA RICA

Costa Rica covers an area of 50,900 km², of which 3,344 km² (5.9%) are recognised as indigenous territories. Costa Rican law envisages 24 such territories, inhabited by eight peoples. Seven of these are of Chibchense origin (Huetar in Quitirrisí and Zapatón; Maleku in Guatuso; Bribri in Salitre, Cabagra, Talamanca Bribri and Kekoldi; Cabécar in Alto Chirripó, Tayni, Talamanca Cabécar, Telire and China Kichá, Bajo Chirripó, Nairi Awari and Ujarrás; Brunca in Boruca and Rey Curré; Ngöbe in Abrojos Montezuma, Coto Brus, Conte Burica, Altos de San Antonio and Osa; Teribe in Térraba) and one of Meso-American origin (Chorotega in Matambú). In the last census,[1] 63,876 people (1.7% of the total population) defined themselves as indigenous, of which 33,128 (42.3%) live on the stated territories, 18.2% live in areas surrounding them and 39.5% elsewhere in the country.

Costa Rica (along with El Salvador, Honduras, Chile and Uruguay) continues to be one of the countries with the lowest level of constitutional recognition of indigenous rights in the region.[2] Costa Rica ratified ILO Convention 169 in 1992 and has voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007.

A legislative agenda that systematically excludes indigenous issues

The indigenous organisations' main demand, for more than 17 years, has focused on getting the "Law on the Autonomous Development of Indigenous Peoples" (legislative file 14,352) adopted. It was the indigenous peoples themselves that set out in this text the possible and reasonable legal mechanisms by which to ensure proper management of the indigenous territories, including the recovery of lands, which have continued to be invaded by settlers, under the nose and acquiescence of the local authorities. And yet, after years of discussions, negotiations, strikes, demonstrations and mass mobilisations, five presidential and legislative terms of office have come and gone without this legislation being approved.

Unfortunately, the meaning of this could not be clearer: the future of indigenous peoples is a priority for neither the parliament nor the government. In one of the last peaceful demonstrations that was held in the legislative assembly on 10 August 2010, indigenous people were violently evicted and the President of Congress gave orders to prevent them from entering the adjacent premises from where people can watch live debates through a large window, as is the right of all of the country's citizens. On that occasion, the indigenous people were only asking that it be clearly stated whether the draft bill of law would be on the agenda or not or whether the intention was, as in previous years, to archive it. The response they received eloquently demonstrates the style of Costa Rica's indigenist policy: silence, evasion, violence, zero dialogue, zero consultation or consultation that is systematically ignored. It would seem to be no more than the renewal of a plan that originated at the time of the Conquest: to force the disappearance of indigenous peoples through a gradual loss of their lands and of the means to reproduce their cultures.

A National Development Plan oblivious to diversity

In December 2010, the President of the Republic presented the 2011-2014 National Development Plan, the text of which ignores both the country's ethnic and cultural diversity and the state's obligation to respect indigenous rights. The *Mesa Nacional Indígena de Costa Rica*[3] (National Indigenous Council of Costa Rica) expressed its concern that none of the indigenous peoples' structural claims were included in this plan, such as self-determination, recognition of legal pluralism, an end to land dispossessions and the invasion of territories by non-indigenous individuals. It questioned the integrationist focus and the fact that public investments were being planned on indigenous territories in a paternalistic manner, without prior consultation. The concepts and language used in the plan is reminiscent of an indigenist perspective that was current decades before ILO Convention 169 was ratified by Congress. In a clear attitude of discrimination, the Planning Ministry insists on calling the indigenous territories "reserves" and the indigenous peoples "groups" or "ethnic groups". The plan mentions a National Programme for Indigenous Peoples' Development the text of which, if it exists, has never been opened up to consultation with the indigenous peoples. Nor does it mention or consider the Indigenous Community Development Plans, which have already been produced in four indigenous territories (Talamanca Bribri, Talamanca Cabé-

car, Cabagra and Alto Laguna de Osa) and which are drawn up via a participatory process and contain proposals based on the indigenous world view and each culture's concept of development. The national plan also ignores the provision of health and education from an intercultural perspective.

It is worrying that the Costa Rican state continues to consider environmental conservation and the existence of indigenous peoples and their rights as an obstacle to development, given that the plan states that,

> *The generation of electricity basically uses clean energy sources of less environmental impact, primarily hydroelectric resources,* ***which are not being fully exploited due to the fact that a significant proportion of renewable energy sources are on the indigenous reserves and in forested areas protected by environmental laws****.*[4]

State resistance to free, prior and informed consent

Just as the National Development Plan and the supposed National Programme for Indigenous Peoples' Development were never put out to consultation with the

indigenous peoples, in clear violation of ILO Convention 169, public investment projects affecting indigenous territories have also been produced without any reference to consultation, despite the fact that this forms a legal obligation of the state. The People's Ombudsman has repeatedly noted that the Costa Rican state has an obligation to consult.[5]

It is notable that the process for designing and implementing the "El Diquís Hydroelectric Project" in the south pacific region of Costa Rica has still not been the object of any consultation. This dam, the largest in Central America, will be built in a region of high diversity and will directly affect the territories of two indigenous peoples (the Teribe and Cabécar) and, indirectly, the territories of the Brunca, Bribri and Cabécar. And yet the state institution responsible has still not commenced the consultation process that the region's indigenous peoples are demanding. Failure to implement a free, prior and informed consent would mean, yet again, that the Costa Rican state is in violation of its own laws, and consolidating a political will that places discrimination, racism and political exclusion above intercultural dialogue.

More exclusion in education

Even in the field of education, where the indigenous movement had, in recent years, managed to bring about the creation of the Department of Indigenous Education (DEI) to address the special curricular needs of schools in indigenous territories, tremendous setbacks have been noted. Under the pretext that the indigenous sector is not unique in its needs, the DEI has been dismantled and indigenous education subsumed into a new department that deals with multiculturality throughout the country. All the progress that has been made, through immense efforts, such as the appointment of language and culture teachers by the communities' elders, and the appointment of an indigenous director to run the DEI, has now been thrown into doubt and everything points to the fact that the subsumation of indigenous education into multicultural education is simply another veiled attempt on the part of the dominant cultural power to crush specific cultures in the name of constitutionally-enshrined equality which, for many politicians, is synonymous with cultural homogenisation. Had the Law on Autonomous Development been passed, this change would not have been so easily achieved but,

unfortunately, the government was able to make the necessary amendments simply by issuing a decree.

Progress in accessing the justice system on the part of indigenous communities

Against such a frustrating political backdrop for the future of indigenous peoples, the efforts that have been made within the judiciary are noteworthy, where an Attorney-General's Office for Indigenous Affairs has been created to provide specialist follow-up to cases involving indigenous people. Its objectives consist, in part, of

> *providing an egalitarian but above all accessible public service, enabling an efficient and effective, human and differentiated investigation for its users within the dynamic of a friendly criminal process.*[6]

It has also begun to refer to reports from cultural experts, which help the judges to determine delicate issues in the criminal but also the agricultural sphere, including land conflict resolution. This situation has begun to give the indigenous communities a greater faith in appealing to the courts to resolve complex and longstanding problems of territorial management. These provisions will, for example, enable the judges, when ruling on territorial conflicts, to gain an understanding of the particular forms of land ownership and the customary laws that the community applies in its territorial management.

Conclusion

Indigenous rights suffer from a severe lack of protection in Costa Rica, primarily in relation to self-determination, consultation and territorial rights. Although the state has enacted laws recognising the indigenous territories, it tolerates their dispossession by non-indigenous individuals and has no action planned that would recognise their land rights in practice. It is the same situation with regard to enacting the Law on Autonomous Development, the discussion of which could

drag on for many more years. Indigenous rights are not a priority for the state, and nor is complying with the obligations it took up on ratifying ILO Convention 169.

Although there is an Indigenous Affairs Commission, this has not focused on promoting or defending the structural rights of the country's indigenous peoples, nor has it gained significant legitimacy within the indigenous territories. It has not focused on formulating public policies for indigenous peoples that would respect their visions of development; in contrast, it has limited itself to promoting projects from a clientilist perspective, with very little impact on the widespread poverty and social exclusion existing on the indigenous territories. On occasions it has even promoted projects that are highly questionable, such as mineral exploration on the part of foreign companies of dubious repute.[7]

The situation of the indigenous people living outside the territories has also not been considered and, in fact, there is little information on these people, who also suffer high levels of social exclusion. The case of the Maleku people dramatically demonstrates the trend towards basic survival. More than two-thirds of its 1,115 members have had to abandon the Guatuso indigenous territory, which is in itself small (3,000 ha) and 85% of which has been invaded by settlers and cattle ranchers.[8] 80% of the Maleku currently speak their own language, Malekujaica, but, under conditions that are threatening the cultural reproduction of their entire people, it is unlikely that this will continue beyond the next generation when the language will become relegated to the list of languages that have become extinct despite the survival of its people. This list also includes Brunkaj, Huetar and Naso-teribe. ❍

Notes

1 **Instituto Nacional de Estadística y Censos, 2001:** IX Censo Nacional de Población y V de Vivienda Resultados generales. San José, Imprenta Lil and **Solano Salazar, Elizabeth, 2000:** *La población indígena en Costa Rica según el censo 2000*. San José, sle.

2 **Aguilar, Gonzalo, Sandra La Fosse, Hugo Rojas and Rebeca Steward, 2010:** *Análisis comparado del reconocimiento constitucional de los pueblos indígenas de América Latina*. Nueva York, Conflict Prevention and Peace Forum. Mimeo.

3 Mesa Nacional Indígena de Costa Rica. Plan Nacional de Desarrollo 2011-2014 no reconoce los derechos indígenas. Press release. San José, MNI, 3 January 2011.

4 Government of Costa Rica. Plan Nacional de Desarrollo 2011-2014 María Teresa Obregón Zamora. San José, Ministry of National Planning and Economic Policy, 2010. pg 35.

5 People's Ombudsman of the Republic. Protección Especial Informe Anual 2003-2004. San José, People's Ombudsman of the Republic, 2004. Mimeo.

6 "Ministerio Público inauguró Fiscalía de Asuntos Indígenas", at http://ministeriopublico.poder-judicial.go.cr, official web page of the Attorney-General's Office, published 12 August 2009.
7 See *La Nación* newspaper dated 19 March 2010.
8 According to a study carried out in 1997 by Seferino Morales, surveyor, contributing to the submission of an appeal for unconstitutionality on the part of the community against the Costa Rican state. Mimeo.

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PANAMA

There are seven indigenous peoples or nations living in the Republic of Panama: the Ngäbe, the Kuna, the Emberá, the Wounaan, the Buglé, the Naso Tjerdi and the Bri Bri.[1] According to the May 2010 census,[2] they represent 12.7% (417,559) of the total population of 3,405,813.

When their territories were demarcated, the legal form they were given was the *comarca* and, within this, their own territory and political/administrative structure are recognised. There are five *comarcas* established by law: San Blas or Kuna Yala in 1953; Emberá-Wounaan, 1983; Kuna-Madungandi, 1996; Ngöbe-Buglé, 1997; and Kuna-Wargandi, 2000.[3] The Naso-Tjerdi (previously known as the Teribe) territory still remains to be legalised. There are communities that live outside of the *comarcas*, such as the Emberá and Wounaan of Darién,[4] and the Ngäbe and Buglé in Chiriquí and Bocas, and they are still seeking the legalisation of their lands.

There were seven events in 2010 of consequence to virtually all of the country's indigenous peoples:

1. The approval of Law 30, which affected the whole country but hit the poorest disproportionately;
2. The failure to ratify ILO Convention 169;
3. The flooding, which as always hit the most vulnerable areas the hardest;
4. The ongoing situation of poverty and extreme poverty in the indigenous areas of the country;
5. Drugs trafficking across most of the indigenous territories;
6. Increased migration to urban areas; and
7. The approval of Law 88 officially authorising the alphabets of the country's indigenous languages and promoting Intercultural Bilingual Education.

1. **Approval of Law 30**: In spite of much opposition, Law 30 was approved on 16 June, heralding in changes to three codes and another six laws. The people called it the "sausage" law because it was a mishmash of several unrelated laws. One of its consequences was to reduce workers' rights, for example, with a rule enabling a company to take on new staff to replace its workers if they go on strike. There were also other issues, such as the fact that members of the security forces[5] would no longer be held on remand or suspended from their posts pending an investigation into misconduct. Large "development" projects would also no longer require significant environmental impact studies, thus putting a number of the *comarcas* in danger.

   For this reason, in July, the workers at the Bocas del Toro banana plantations (mainly indigenous Ngäbe, Buglé, Naso, Bri Bri and Kuna) began to peacefully protest. Faced with the government's failure to listen, however, and the ensuing repression, the protests turned into a bloodbath. At least four people died, with over 700 more wounded, some of them losing their sight.[6] Negotiations followed, and the law was replaced by six different laws. No-one was found guilty of these events, not one person was prosecuted or sentenced.

2. **ILO Convention 169:** Panama's indigenous peoples have spent years requesting ratification of this Convention but consecutive governments have turned a deaf ear to their requests. On 9 August 2010, the Ombudsman sponsored the "National Indigenous Congress", which was attended by the traditional authorities of the seven peoples. At this meeting, ratification was once more requested from the Minister of the Interior and other authorities – both orally and in writing – but no response has yet been received. It would seem that there is no political will to implement this.[7]
3. **Floods:** There was a great deal of rain in the Kuna zone of Madungandi, in Kuna Yala, in the Emberá and Wounaan zone, in the Ngäbe and Buglé zone of Bocas, and in other parts of the country in both June and December. This led to consequent flooding and destruction of crops. It is estimated that some 5,000 people were affected, exacerbating the already appalling situation in which these indigenous peoples live.[8]
4. **Poverty:** Human development statistics in the *comarcas* are truly scandalous. The country as a whole scores 0.840 on the Human Development Index, while the Ngóbe-Bugle *comarca* only achieves 0.447.[9] This is corroborated by the high rates of poverty (90%) and extreme poverty (65%) noted in the indigenous *comarcas*. In other words, although the country in general scores quite high on the index, the *comarcas* themselves are on a par with Haiti (0.404).[10] It would seem that there is no political will on the part of governments to truly resolve these situations, which have been the same for years.
5. **Drugs trafficking:** In the indigenous areas, in particular the Buglé (Bocas del Toro), Kuna (Kuna Yala) and Emberá-Wounaan (border with Colombia) areas, drugs trafficking continues, involving and harming the indigenous communities, who find themselves "caught in the crossfire". Indigenous leaders state that community members are forced to act as guides and mules, carrying cocaine along the Darién's rivers in order to cross the marshlands to the Pan-American Highway. "Our young people are forced by these drugs traffickers to act as guides along the routes," said tribal leader Betanio Chiquidama, who represents the Emberá and Wounaan people living in Darién. "Their ultimatum is 'Carry it or die'," he said, adding that smugglers from the FARC guerrilla group in Colombia were recruiting young people with money.[11]
6. **Temporary and permanent migration:** Temporary migration to Costa Rica on the part of the Ngäbe and Buglé has increased, as has that of the Kuna, Emberá and Wounaan to Panama City. Almost half of the Kuna population

now lives in Panama City. This is having significant social, cultural and economic consequences. It is estimated that some 15,000 indigenous people emigrated temporarily to Costa Rica in 2010.[12]

7. **Intercultural bilingual education:** Perhaps the only "positive news" to come out of Panama in 2010 in relation to the country's indigenous peoples was Law 88, instigating the official use of the alphabets of indigenous languages and laying down some rules on intercultural bilingual education. This issue has also been the object of a long and difficult struggle over the last 30 years, fraught with obstacles and bureaucratic procedures. In the end, the indigenous peoples did not achieve exactly what they wanted; the Ministry of Education imposed its own criteria but, nonetheless, it still represents an important achievement.

   There were also other events affecting the country's indigenous peoples in 2010, such as the land problems of the Naso-Tjerdi, the struggle for greater visibility on the part of the Buglé, and the ill-considered changes to the internal laws of the Ngäbe and Buglé, which could lead to serious problems given the possibility of mining and hydroelectric power plant construction within their *comarca*.

In all, the outlook is not a bright one. 2010 represented a struggle for survival that will need to continue, with redoubled efforts, in 2011. ❍

Notes

1 These are how the names are written in Law 88 of 2010 although there is some disagreement on the part of indigenous linguists.

2 In other words an increase from 8% (2000 estimates) ton 12.7%, according to this Census. Even so, serious deficiencies have been noted in this census.

3 In 1997, when they established the *comarca*, they officially wrote "Ngöbe".

4 There is a draft Law on Collective Lands for these communities but, in the face of the government's apathy, this has lent itself to conflicts with non-indigenous settlers.

5 There is constitutionally no army in Panama but, in practice, there is a militarised security force that acts as such.

6 http://multimedia.telesurtv.net/16/7/2010/12457/indigenas-panamenos-fueron-reprimidos-brutalmente-por-la-
http://www.dialogo-americas.com/es/articles/rmisa/features/special_reports/2010/05/28/feature-01 policia/ see also the Human Rights Everywhere report (020810) at www.hrev.org

7 See the news at http://www.portalfio.org/inicio/noticias/grupos-culturales-y-minorias/4708-panama-etnias-indigenas-solicitan-al-estado-panameno-ratificacion-del-convenio-169-de-la-oit.html
8 See, for example: http://www.informador.com.mx/internacional/2010/256382/6/fuertes-lluvias-e-inundaciones-en-panama.htm
9 The Human Development Index, according to the UN, indicates levels of health, education and decent life. It is measured from 0 to 1. There are many studies in this respect. See for example: UNDP (2008) *National Human Development Report 2007-2008*; Inchauste, G. and Cancho, C (2010) *La inclusión social en Panamá: La población indígena*, IDB.
10 See: http://es.wikipedia.org/wiki/Indice_de_desarrollo_humano
11 http://www.dialogo-americas.com/es/articles/rmisa/features/special_reports/2010/05/28/feature-01
12 There are various works that illustrate this situation. See for example.: Quintero, B. y Hughes, W. (2005) *Migración Indígena en Panamá,* CONAPI, Panama; Sarsaneda, J. (2010) *La Ruta de la Desolación: Migración Ngóbe a Costa Rica*, MiTraBS, Panama; Sánchez S., K. (2009) *Migración transfronteriza indígena: Los emberá y wounaan en Jaqué, Darién*. Master's thesis, University of Costa Rica.

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SOUTH AMERICA

COLOMBIA

The 2005 census determined that there were 1,378,884 indigenous individuals (3.4% of the country's population) belonging to 87 different peoples in Colombia. These peoples live in such contrasting ecosystems as the Andes, the Amazon, the Pacific, the Eastern Plains and the desert peninsula of Guajira. Although home to few different peoples, the Andean departments of Cauca and Nariño, and that of La Guajira, account for approximately 80% of the country's indigenous population. Regions such as the Amazon and Orinoquia, with a very low demographic density and a high level of settlement dispersion, are home to the greatest number of peoples (70), some of them on the verge of extinction. One particularly sad case is that of the nomadic Nukak Makú people. Displaced and virtually exterminated, there are now less than 500 of them in existence (in 1990 there were 1,400). Settlement, coca, cattle ranching, drugs trafficking and armed actors are all at the root of this ethnocide**.**

Almost a third of the national territory is formed of Indigenous Reserves, many of them besieged by oil companies, mining companies, banana and palm oil growers, companies wishing to extract resources, build ranches and grow illicit crops.

The 1991 Political Constitution recognised the fundamental rights of indigenous peoples and ratified ILO Convention 169 (now Law 21 of 1991). After abstaining from the vote on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in the UN General Assembly in 2007, Colombia reversed its position and endorsed the UNDRIP in 2009.

2010 will go down in Colombian history as the end of the Uribe era. On 26 February 2010, the Constitutional Court issued Judgment C-141/10 declaring Law 1354 of 2009 inadmissible, the intention of which was to call a constitutional referendum to reform the National Constitution once more and make President Álvaro Uribe Vélez' aspirations for a third term in office possible. With this ruling, the

Constitutional Court reigned in an increasingly personalised regime which, over two terms in office, had accumulated excessive power that was threatening to suppress liberal democracy. The Constitutional Court thus became the major player in Colombia's recent history. And, as the economist Alejandro Gaviria Uribe states: "Historical protagonists are not usually those whose deeds are out of the ordinary but those who have the courage to do what they have to, when they have to."[1]

The political context of the new government

The new Colombian president, Juan Manuel Santos, was considered Álvaro Uribe Vélez' political successor. He was his right-hand for eight years. First as founder of Uribe's party ("the party of the U") and, secondly, as his Minister of Defence. During his presidential campaign, Santos promised continuity in the policies of the previous government, above all "Democratic Security".

To his critics, he was just another subordinate of the Uribe regime, someone who would continue to dismantle the rights of the Colombian people, rights won through hard struggle and which, as in the case of indigenous rights, had been constitutionally recognised. He would be blind to the human rights violations and excesses committed by the security forces against the civilian population, including the so-called "false positives".[2] He would continue to defy the highest courts of the land and would continue the Uribe-style "bullying" of his neighbours, Chávez and Correa. He was elected in the second round with 9,004,221 votes (68.9%), the highest vote recorded in history for a presidential candidate in Colombia.

It therefore came as a complete surprise to the country when, once in office, Santos apparently took a radical turn, putting an end to the Uribe style of government. His first action was to visit the Constitutional Court to honour its decisions, and state the government's unconditional compliance with its rulings. Santos thus put an end to the disputes Uribe had created between the judicial and executive powers. And, in less than a week, he had managed to establish an agenda for dialogue to re-establish diplomatic and commercial relations with Venezuela and Ecuador.

Highly significant of this change was the fact that he agreed to a proposal from Gustavo Petro, presidential candidate for *Polo Democrático* (a party that groups together various left-wing tendencies) for a bill of "victims" and "land restitution" for the almost four million people displaced by the violence. In an unusual act, it was the president himself who steered this bill through Congress, prioritising its approval and stating that if he could implement this commitment to the victims of the violence he would have justified his time in office. To leave no doubt as to his debt to the victims, he appointed a respectable politician from the Conservative Party, Juan Camilo Restrepo, as Minister for Agriculture, with the task of taking forward a "Land Law", the spirit of which would go beyond simply recovering the land that was forcibly taken and returning it to its rightful owners but would

also change the land use in favour of agriculture, putting an end to the large and unproductive cattle ranches and re-establishing the peasant farmer economy, reintegrating peasant farmers displaced by poverty into the rural sector.

The end of this post-Uribe era has only just begun. For the moment there are signs that, with *Polo Democrático* weakened by internal divisions,[3] the only real opposition to the Santos government is, paradoxically, that of former President Álvaro Uribe who, along with the country's most reactionary sectors (large landowners, palm oil growers, resource extraction companies) and their paramilitary allies,[4] is preparing to place obstacles in the path of the land law and victims law, seeking to prevent the return of land to those displaced by the violence and, of course, the introduction of changes to the land ownership structure.

Rather than revolutionary, the changes introduced by Santos are aimed at re-establishing the liberal state, ruined by the previous government. This process is important, however, as it has revived a debate on the state and quality of our democracy and the role that social organisations, political parties and all civil society institutions must play in overcoming the constant violence which, since the 1950s, has resulted in almost 800,000 deaths and, as documented by the Attorney-General's Office, caused 173,183 murders, 34,467 forced disappearances, the mass displacement of 74,990 communities and the recruitment of 3,557 child soldiers on the part of the paramilitaries between June 2005 and December 2010 alone,[5] without counting data on murders, forced disappearances and kidnappings committed by the guerrillas.

The Santos government's economic agenda for poverty reduction

The Argentine economist, Bernardo Kliksberg, an expert on poverty issues, asks why, in a country such as Colombia, with such great biodiversity, with abundant water, excellent and varied climates, lush soils and exceptional farming possibilities, almost half of the population (20 million people) live below the poverty line. This is a scandalous figure for such a potentially rich country. The previous government was skilled in masking this reality and hiding the tragic circumstances in which half of the population live. Above all, it prevented progress from being made towards a more integrated definition of poverty that would have revealed that this was a product of the social, economic, cultural and political exclusion suffered disproportionately by peasant farmers, indigenous peoples, Afro-Colombians and

other rural sectors, and not only a consequence of the violent guerrilla forces that were paralysing the country. This would have placed poverty on the deeper level of a denial of rights and guarantees. We Colombians are beginning to realise that something is wrong with Colombian democracy when it cannot guarantee inclusive relations of equality, respect and human rights protection for the poorest sectors of society.

Poverty was thus becoming a much-needed issue on Juan Manuel Santos' government agenda, hence his presidential campaign slogan, "from democratic security to democratic prosperity". And the issue of poverty is now taking on even greater importance; dreadful weather means that a third of the country, where the best agricultural lands are to be found, has been flooded by torrential rains unleashed by the so-called "La Niña effect", adding another three million "climate displacees" to the four million already displaced by violence. Experts calculate that, once the waters have receded (which could take a year), it could be another decade before the lands can be recovered for agricultural use.

Without additional resources to implement an economic agenda that would support the victims of violence and these new displaced people as well, Juan Manuel Santos' government is following the same logic as Álvaro Uribe in pinning its hopes on obtaining financial support for these programmes from development of the mining sector. "A pipe dream" say the experts, as such lucrative incomes do not exist in the form of royalties, when these are largely wiped out by the incentives the previous government was giving to such companies.[6] Also, however, because INGEOMINAS, the state body responsible for supervising these companies, has never implemented the necessary mechanisms for monitoring, supervising or controlling them in order to check production and costs, which are the basis for calculating state taxes. Moreover, the recently appointed Comptroller-General revealed the chronic indifference of the Comptroller's Office in terms of protecting fiscal resources from the greed of corrupt regionally and locally-elected representatives, under cover of their paramilitary mentors. To date, the government has no clear strategy for tackling this fiscal drain. And something strange must be going on in the new government since they are keeping the tax incentives in place in order to attract foreign investment into mining; "open veins" out of which the country's wealth drips, all the more so as the price of gold has now reached an historic high (1,380 dollars an ounce in November 2010) and many predatory extraction companies are returning, surging voraciously to the rivers and mountains in search of this precious metal, considered now to be the only

and safest global currency that will enable countries to tackle inflation and the devaluation of the dollar.

A new fraud can be seen emerging in relation to the victims of violence and the rural poor, as it is inflammatory to present mining as the "engine of economic development" that will generate resources with which to compensate and repay those displaced by violence and climate. It is most likely that, as so many times before, the train of "democratic prosperity" will leave the displaced, the indigenous, the black population, peasant farmers and other rural and urban poor behind. Or it will go without them, as we know that mining activity does not generate development but does devastate fish populations in the rivers with its cyanide and mercury. "Illegal mining is poisoning us," stated Beatriz Uribe, Minister for the Environment.[7] Legal mining, too, since she herself recognised that there were 571 mining titles in 203,000 hectares, "where mining projects cannot be developed".[8] Worse still, it is making us even poorer, as confirmed by the researcher, Cristina de la Torre: "The astronomical growth in the price of gold, the exorbitant exemptions granted by the previous government to the sector's multinationals, the ease with which titles were granted and the no less attractive opportunity to launder assets in this way has created a fever that threatens to displace drugs trafficking from top place in the black economy."[9] De la Torre says that, over the last six years, "mining titles have quadrupled" and a quote from the online journal *La Silla Vacía* shows the size of the fiscal drain: "…the Treasury and the Bank of the Republic calculate the royalties lost to the state over the last year at 3.5 billion. One has to ask: if 18 billion is expected in royalties for 2010 and 2011, how much will unpaid royalties amount to?"[10] A reasonable question, given that, further on, in the case of oil it indicates that, "Colombia receives the lowest royalties from oil companies in the world: 8%. What's more, they keep 92% of the resource and are allowed to transfer all profits out of the country."[11] These companies generate an insignificant amount of income but cause high environmental and social damage to the indigenous, Afro-Colombian and peasant farmer territories.[12] Not without reason did the Venezuelan author and analyst, Arturo Uslar Pietri, call oil the "devil's manure".

This mining policy is already causing serious havoc for the communities due to its environmental, economic and social impacts. These impacts are likely to be similar to those that occurred when the communities' lands were taken over by paramilitary forces. Something is clearly not right with President Juan Manuel Santos' thinking, as it is obvious that this mining policy will only increase the

number of displaced people. It is just that this time they will be "environmentally displaced", because their lands - handed over in mining concessions - will become lunar landscapes, with contaminated water, devastated soils and destroyed wildlife, as we have already seen in Zaragoza (Dagua River, Valle del Cauca). Santos' devilry.

Indigenous peoples and Juan Manuel Santos' government

Unusually, the day that Juan Manuel Santos was inaugurated as President of the Republic, he travelled to Sierra Nevada de Santa Marta[13] to be inaugurated in front of the Mamos (indigenous priests). It was a symbolic act in recognition of the traditional indigenous authorities. During the ceremony in the Seiyua Temple, the Mamos presented him with a leadership baton and a necklace with four stones, representing the land that must be protected, the water that must be preserved as a source of life, the nature with which we must live in harmony and good government, which is essential for co-existence.

Many Colombians welcomed this demonstration of recognition and interpreted it as an apology for the disdain with which his predecessor Uribe had always treated the indigenous peoples.[14]

Criticism, however, was quick to follow. From the arrogant right-wing of Uribe, who felt insulted by the humiliating behaviour of the president,[15] to those who saw this as a simple piece of demagogic manipulation aimed at presenting himself as an honourable man, respectful of cultural diversity (let's not forget that the bodies of the indigenous Awajun, murdered at Bagua, in Peru, were not yet cold[16]).

Santos meets the Embera people

President Santos and his Minister of the Interior and Justice, Germán Vargas Lleras, accepted an invitation from the Embera people to participate in the 2nd Congress of the Embera Nation on 12 October, organised by the National Indigenous Organisation of Colombia (ONIC), in El Dovio, a small, forgotten village in the mountains to the north of Valle department.

The president spoke before an audience of 5,000 Embera from all regions of the Pacific, and including delegations from Panama's Darien and the Esmeralda Province

in Ecuador, and other regions of the country to which they have emigrated or been displaced by hunger, violence and internal conflicts, fleeing forced recruitment on the part of all sides in the armed conflict, or seeking minimum living conditions for their children. This was the arena chosen by the president to set out his government's indigenist policy. With great self-confidence, and lacing his speech with words from the Embera language, he came up with comments such as the following:

> *We, in the government, have the clear aim of safeguarding the 102 indigenous peoples of the country…and are committed to protecting human rights…*
> *We want to comply with Ruling 004 of the Constitutional Court, including the Ethnic Safeguarding Plans and to respect and fulfil ILO Convention 169 and the indigenous communities' right to prior consultation ….*
> *These are not words written on the wind: this is the sincere statement of the wishes of a government that believe in the indigenous authorities, respects and admires them!*
> *You, the depositaries of centuries of knowledge, have the possibility and also the responsibility of helping us look after our planet, look after our land, which is the heritage of all…*
> *May the spirits of the north, the spirits of the south, of the east and of the west be favourable to us.*
> *Aran bum bum (Let it be so).*[17]

The inauguration before the Mamos of the Sierra Nevada, the president's attendance at an indigenous event (the first time on the date of 12 October), this speech before the Embera people and a propensity to dialogue changed many indigenous leaders' perceptions of the new government, believing that new meeting spaces were opening up and that, after many years, the state was again showing its willingness to reconcile its differences with its indigenous peoples.

This positive perception on the part of the indigenous peoples was strengthened when the Head of State, albeit exceptionally (it cannot form a precedent for subsequent legislative bills), invited the indigenous peoples to participate in the Roundtable Discussions to produce the National Development Plan, 2010-2014. At the start of 2011, indigenous representatives will meet with different ministries to agree the key ideas in the bill of law on the National Development Plan to be presented to the Congress of the Republic. The indigenous peoples will also be

represented in the Congress of the Republic during the different stages of the bill, and the government has undertaken to support the indigenous proposal until presidential approval.

"Easier said than done"

President Santos' impressive speech on 12 October and the commitments he made to the indigenous peoples are in contrast to some of his other ideas. Let's take a look at some actions that call for great caution or which, as the elders say, are "*easier said than done*":

The Embera Congress was held at the same time as around 10,000 indigenous people, Afro-Colombians and peasant farmers were meeting in Bogota in the Congress of the Peoples, a political event promoted by the Association of Indigenous Councils of the North of Cauca (ACIN), an organisation that was characterised by its strong opposition to Uribe's policies. Attending the Embera Congress meant ignoring the Congress of the Peoples. This was corroborated by President Santos himself when he stated that his attendance at the Embera Congress was: 1) due to the "need to change the direction of the traditional indigenous protest of 12 October" 2) to invite the indigenous people "to form an integral, leading and vital part of National Unity"*;* 3) to establish an agenda of dialogue so that "non-legal recourse is no longer necessary"*;* and 4) to present the broad outlines of his government's indigenist policy*,* indicating that for this purpose he was going to set up two minorities commissions for indigenous and Afro-Colombian peoples and two higher presidential departments, one for each sector.

Although President Santos undertook to "respect and fulfil ILO Convention 169 and the right to prior consultation", he did not respond to the Embera demand to suspend the gold mining megaproject of the unscrupulous Caldas mining company, owned by the transnational Colombia Goldfields Ltd., which intends to undertake its activities over more than 30,000 hectares, and which would destroy Marmato, one of the colonial settlements most characteristic of the peaceful coexistence between indigenous and black peoples in Colombia. Nor did he answer the indigenous question of whether his government was going to annul Decree 441 of 2010, by which Uribe had arbitrarily declared the non-existence of Indigenous Reserves of colonial origin, within which can be found reserves of the Embera-Chamí people of Riosucio (Caldas). Nor did he clarify whether the Indige-

nous Territorial Entities were going to be included in the draft Organic Law on Territorial Organisation that the government is going to present. Nor did he address the issue, when asked, of whether spaces would be opened up for the political negotiation of the armed conflict, which is one of the causes of indigenous peoples' suffering, as the Constitutional Court wisely argued when it issued Ruling 004 of 2009 requiring the government to protect the fundamental rights of those indigenous peoples threatened by armed conflict. The president's announcement that the government's Presidential Programme on Indigenous Issues would be run by former Senator Gabriel Muyuy Jacanamijoy, an Ingano, was met with astonishment by the indigenous audience, as they had hoped that this would be a decision taken by the Roundtable. It remains unclear as to whether the state will effectively help the different Embera groups form a people. And also whether, as Luis Javier Caicedo, legal advisor to the Embera-Chamí from Caldas, says, "the parallelism of the Embera Congress with other indigenous and popular projects may not be the start of a new division within the indigenous movement".

- According to data from the National Indigenous Organisation of Colombia, 110 indigenous people were murdered between January and August 2010.[18] From then until December, now under the government of Juan Manuel Santos, 33 indigenous lives were lost, more than half of them at the hands of the state's armed forces, and many communities were affected by 210 military actions conducted by the state and armed groups on indigenous territories. These armed incursions left 69 people wounded, of which 18 were due to actions carried out by this government. It is also concerning, as noted by ONIC, that in 2010 and under this government, the violent displacement of indigenous peoples continued, with 1,146 people displaced.
- It remains to be seen, therefore, whether President Santos will be able to reign in these punitive sectors that were tolerated by the previous government and whether he will be able to control the reactionary sectors opposed to compensating the victims of paramilitary violence and, what's more, a land law that would distribute land ownership in favour of the rural population and put an end to the cattle ranches, a source of reactionary power that has prevented the country's economic and social development.
- As regards the Roundtable, which aroused many expectations amongst the indigenous organisations, and to which they diligently appointed their representatives, it is not yet clear whether the decisions taken in these spaces, in

line with principles of the common good and good faith, will be in accordance with the reality of indigenous peoples' lives. Although the Permanent Roundtable on Consultation has had some problems in terms of its functioning, there is a clear desire among the parties to make progress on agreements. The indigenous organisations involved in this space have, however, repeatedly indicated that the government has been presenting draft laws for prior consultation with the indigenous peoples at the wrong time. They have been very clear in warning that, despite the fact that they are negotiating and reaching agreements with the government, they will not hesitate to take any regulations and bills of law that have not been consulted in advance with the indigenous peoples to the Constitutional Court for procedural defects.

They have also stated in the Roundtable that, if the government does not show willing to consult and this space loses its effectiveness, and if the circumstances so merit, then demonstrations and social protest will replace the Roundtable.

What concerns the indigenous movement most, however is that differences may arise within the movement itself with regard to interpretations, visions of events and struggles or demands that affect decisions of issue and content to be addressed at the Roundtable, and, above all, that the indigenous representatives' negotiating capacity may thus be weakened. They have an enormous challenge as it is, in the face of a counterparty with different and contrasting interests, also represented on the Roundtable. Many leaders are worried that the indigenous movement will not emerge from this process institutionally stronger, as they are realists and know that the Uribe era destroyed many of the bridges between the organisations, bridges and communications that will have to be re-established if the decision-making bodies are to be strengthened.

- It remains to be seen, whether the political sectors now supporting the indigenous movement will abandon their ideological differences and stand shoulder to shoulder in support of the development of a multicultural indigenous movement in which different sectors and social, cultural and political expressions can join together under equal conditions. A movement that will help to overcome the political apathy created by years of authoritarianism under Uribe. A movement that recovers the voice of the communities and enables initiatives to be renewed.

By way of epilogue

We did not want to pass by an event of great significance for both Latin America and the indigenous peoples. We are talking of the well-deserved Nobel Prize for Literature awarded to the Peruvian writer, Mario Vargas Llosa. The Academy in particular hailed his latest novel "The Dream of the Celt", in which Vargas Llosa reveals how the Celt, Roger Casement, was appalled at the atrocities committed by the rubber barons against the indigenous population of Putumayo in the first decade of the last century: slavery, mutilation, rape, evictions and murders. Of more than 50,000 indigenous people (mostly Huitoto) only 8,000 survived, in bondage to the sinister Casa Arana as rubber tappers. Despite the indignation that these actions awaken in Vargas Llosa, however, they are in contrast to his political ideals, as his vehement and harsh criticism of the Peruvian Amazonian indigenous for their opposition to the entry of oil companies onto their territories is well-known. In one of his shocking speeches, in Bogota moreover, he "…made an unfortunate speech in which he compared the indigenous movement to terrorist groups on the basis of the 'tribal spirit', which appears 'a highly ridiculous anachronism' and an obstacle to development, civilisation and modernity."[19] No-one has been able to explain this apprehension towards the indigenous, and far less towards Peru, a country he has aspired to govern. But perhaps he gave us a hint when, during the award ceremony he stated that, "If not for Spain, I never would have reached this podium or become a known writer …". Fortunately Arguedas, Vallejo, Mariátegui, Alegría… are not around to hear these words from the nonetheless remarkable story teller and splendid writer, Mario Vargas Llosa. ❍

Notes

1 **Gaviria U., Alejandro, 2010:** La Corte Constitucional, *ELESPECTADOR.COM*, 11 December 2010

2 Extrajudicial executions of young people by the state security forces, presented as guerrillas brought down in combat.

3 When Petro visited the now elected President Santos to ask him to compensate the victims of violence, he was discredited by his party's leadership. Subsequently, Petro left *Polo Democrático*, with a group of leaders, and called on the Indigenous Social Alliance (ASI), the Indigenous Authorities of Colombia (AICO), the political parties of the Afro-Colombian peoples and other democratic forces within the country to form a democratic and pluralist party with an indigenous and black face.

4 Through the body responsible for compensating the victims of the internal armed conflict, the Colombian government acknowledged that some 6,000 paramilitaries (15.5% of the demobilised troops) had again taken up arms: *Reincidentes en la vida criminal, amenaza para la paz*. 2nd National Report on Disarmament, Demobilisation and Reintegration (DDR). National Commission for Reparation and Reconciliation (CNRR). 15 December 2010.
5 http://www.elespectador.com/opinion/editorial/articulo-245079-el-nefasto-legado-de-auc
6 To give but one example: the Comptroller's Office identified five possible fiscal impairments in the payment of royalties by Drummond. In order to exploit the nickel, this company received tax incentives of 920 billion between 1995 and 2007. In royalties, it paid just 283 billion over the same period.
7 Quoted by Daniel Samper Pizano: La manzana envenenada, *El Tiempo*, p. 11, Bogota, 24 October 2010.
8 Ibidem.
9 **De la Torre, Cristina, 2010:** Alma de esclavos. *El ESPECTADOR.COM*, 18 Oct 2010
10 Ibidem.
11 Ibidem.
12 See article by **Gossaín, Juan, 2010:** *Sancocho de ácido, carbón y mercurio... . Cartagena de Indias*, December 2010, El TIEMPO. COM
13 Traditional territory of four indigenous peoples: Aruakos, Koguis, Arsarios and Kankuamos.
14 The indigenous peoples had condemned the anti-indigenous mood of Uribe's policies ("not one metre more of land for the indigenous"..., "the indigenous are the true landowners in the country") and because he was one of the few leaders to abstain from signing the UN Declaration on the Rights of Indigenous Peoples. They also protested with mass marches in relation to laws that were affecting the lives and territories of indigenous and Afro-Colombian peoples. The Constitutional Court subsequently buried the Forest Law and the Rural Statute for lack of consultation with indigenous and Afro-Colombian peoples. He was then forced, in the face of international pressure, to remove his veto from the UN Declaration, albeit not without making a series of conditions.
15 Someone implied that the only thing missing was for Juan Manuel Santos to wash and kiss the Mamos' feet.
16 This event left President Alan García in a very difficult position internationally, another popular promoter of fanatical mineral exploitation as a development method.
17 These notes referring to the 2nd Congress of the Embera Nation were taken from comments made by Luis Javier Caicedo at this event (legal advisor to the Embera-Chamí from Caldas) and an unpublished manuscript by Aquileo Yagarí, governor of the indigenous Embera-Chamí reserve *Karmata Rua* (Cristianía) on this event, El Dovio, 14 October 2010.
18 The people most affected by the violence were the Nasa people, with 45 murders. Next came the Awá with 25, the Zenú with 18, the Wayúu with 14, the Sikuani with 6 and the Embera with 2.
19 **Rodríguez Garavito, César, 2010:** Los indígenas de Vargas Llosa. *ELESPECTADOR.COM*, 17/12/2010.

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VENEZUELA

Venezuela is a multicultural country that recognises and guarantees the existence of its indigenous peoples and communities. Indigenous peoples in Venezuela represent 2.2% of the national population and comprise: the Akawayo, Amorúa, Añú, Arawak, Arutani, Ayamán, Baniva, Baré, Barí, Caquetío, Cumanagoto, Chaima, E´ñepá, Gayón, Guanano, Hoti, Inga, Japreria, Jirajara, Jivi, Kari´ña, Kubeo, Kuiva, Kurripako, Mako, Makushi, Ñengatú, Pemón, Piapoko, Píritu, Puinave, Pumé, Sáliva, Sánema, Sapé, Timoto-Cuica, Waikerí, Wanai, Wapishana, Warao, Warekena, Wayuu, Wotjuja, Yanomami, Yavarana, Ye´kuana and Yukpa. The 1999 Constitution recognised the country's multi-ethnic and pluricultural nature for the first time and included a chapter specifically dedicated to indigenous peoples' rights, opening up indigenous spaces for political participation at national, state and local level. The Organic Law on Demarcation and Guarantees for the Habitat and Lands of the Indigenous Peoples came into force in 2001; ILO Convention 169 was ratified in 2002; and the Organic Law on Indigenous Peoples and Communities (LOPCI) was developed in 2005, broadly consolidating this framework of rights. Venezuela voted in favour of the UN Declaration on the Rights of Indigenous Peoples.

Despite important achievements, progress in the actual implementation of these laws has been limited, and the practical results have been doubtful due to the difficulties encountered by state officials in creating policies with an intercultural approach.

The indigenous movement, for its part, has found itself emasculated, with no concrete agenda and little independence, divided and, in some cases, at conflict with itself. Many leaders initially transferred to positions within state departments, following the line emanating from the national government. However, one decade

on, the lack of concrete progress in implementing effective public policies has created substantial discontent.

There were notable demonstrations during 2010 on the part of those decrying a lack of effective enforcement of recognised rights.

Haximú threatened again

During 2010, the Yanomami people from Alto Orinoco (Amazonas state) fell victim to the presence of illegal miners (*garimpeiros*) from Brazil, along with extremely lethal epidemics. Available information indicates a high mortality rate from malaria and alleged deaths following conflicts with *garimpeiros*.

Yanomami leaders from different communities in Alto Orinoco made their concerns known to the authorities regarding the lack of regular or appropriate care. The Haximú community were just one example: in the latter months of 2010, Ministry of Health staff confirmed seven fatalities. The area has been invaded by *garimpeiros* who have their operational base, along with an air strip, on the Brazilian side of the border.

The Yanomami community of Haximú had already suffered an attack by *garimpeiros* in 1993, leaving 16 dead and several more injured. It was precisely because of that massacre that the Venezuelan state signed a friendly settlement agreement with the Inter-American Commission on Human Rights (IACHR) in 1999 in which it undertook to design, finance and implement an Integrated Health Programme for the Yanomami people as well as promote the signing of an agreement with the Brazilian government to monitor and control illegal mining in the Yanomami area.

Epidemics in Maiyotheri, Awakau and Pooshitheri

From 31 July onwards, the Amazonas state health authorities began to receive news of an epidemic in the communities of Maiyotheri, Awakau and Pooshitheri, located in an area of difficult access in Yanomami territory.

In September, word came of numerous cases of illness and death but it was not until early October that a technical team, comprised largely of Yanomami health workers (no doctor), was able to reach Maiyotheri on foot. The team re-

1. Alto Orinoco 2. Yanomami territory 3. Sierra de Perijá 4. Machiques

turned with the news that 51 people had died, and the samples they brought back suggested 84% had tested positive for malaria.

A helicopter managed to land on 23 October, dropping off a health team to deal with the emergency. The official report notes 17 deaths in the three communities.

This epidemic could have been caught in time but organisational problems in the healthcare system delayed the arrival of assistance by more than two months, with the tragic results described.

Reports were subsequently received of outbreaks of malaria, and fatalities, in other sectors of the Yanomami territory, such as Haximú, Koyowë, Siapa and

Pirisipiwei. The response to these emergencies was far more effective, with medical teams dispatched by air and, from this point on, visits were regularly made to these remote areas, with the support of the Venezuelan Air Force.

Illegal mining and deaths in Momoi

In April, a number of Yanomami leaders denounced murders of indigenous people by *garimpeiros* in the communities of Ushishiwe and Momoi, Shimaraoshe sector. They stated that a similar situation had occurred in 2007, that the complaints made then were met with no response, and that these miners had been working in the sector for many years now.

This is a sector that had never been visited before, and the precise location of which was unknown. After several days' walk, a military patrol reached Momoi with the help of Yanomami guides. They established a helipad there that enabled a medical team to be sent in to provide health care to Momoi and the various neighbouring communities.

They found no *garimpeiros* but did find evidence of their presence and activities. They found no evidence of Yanomami deaths, however. This was to be expected as the Yanomami cremate their dead – destroying all physical evidence – and then do not refer to them again.

According to the Yanomami, it is estimated that the deaths took place in January. Nine deaths were noted in all, one of which was not confirmed by the Yanomami. The Yanomami say that the river that flows through the community is highly contaminated, which would indicate that the deaths may have occurred due to acute mercury poisoning.

The presence of *garimpeiros* is not a recent event and corresponds to a reinvasion of the area as mining activity has spread steadily across from Brazil towards Venezuela, stimulated by the current high price of gold. In the agreement signed before the IACHR, the Venezuelan state undertook to "promote the signing of an agreement with the Brazilian government, with the aim of establishing a joint and permanent monitoring and control plan to monitor and control the entry of garimpeiros and illegal mining in the Yanomami area".[1] To date, nothing has come of this.

Although the national government has shown its willingness to tackle these problems, the actions taken thus far are insufficient. The *garimpeiros* have now

established a permanent presence and represent a potential danger to the indigenous communities and to national sovereignty. The Venezuelan state institutions need to urgently adopt measures that will guarantee the life and integrity of the Yanomami people living along the border with Brazil.

Coltan: a new threat

After the President of the Republic's announcement, on 15 October 2009, of the discovery of large deposits of coltan,[2] Venezuela now includes the so-called "blue gold" on its list of strategic products.

"Coltan fever" commenced some three years ago, and is changing the lives of communities in the north of Amazonas and the south-west of Bolívar states, areas largely inhabited by the indigenous Piaroa, Jivi and Curripaco peoples, along with some Arawak communities (Baniva, Baré, etc.) in Guainía municipality, Amazonas state, on the border with Colombia.[3]

Increased global demand for tantalum has caused the price to rocket, triggering a proliferation of illegal mining and smuggling activity, the marketing networks of which sell to international buyers,[4] primarily via Colombia. Indigenous people are used as a source of labour, and a number of communities are now involved in this activity.[5]

In January 2010, President Hugo Chávez stated that the country's coltan reserves were likely to be worth up to US$100,000 million. He said that illegal mining, which involved the product being transferred to Colombia, meant that the area needed to be cordoned off by the security forces,[6] in what was known as "Operation Blue Gold", involving more than 15,000 members of the Armed Forces.[7]

The national government has announced that, through the Ministry for Heavy Industry and Mining, it is going to promote a special exploitation project in the municipalities of Cedeño, in Bolívar state, and Atures, Autana, Atabapo and Manapiare in Amazonas state, an area covering approximately 176,300 km^2.[8] To do this, it is going to create a national strategic minerals company and will consider China and South Africa as possible partners.[9]

According to the government, this exploitation will be in line with an "environmental code".[10] However, it is failing to take into account the fact that the region is the habitat and ancestral territory of at least 15 indigenous peoples, none of which have the title to their lands, placing them in a situation of legal vulnerability in rela-

tion to development projects promoted by the state. Moreover, neither their free, prior and informed consent nor their participation in project design and implementation have been envisaged; no environmental and socio-cultural impact assessments have been anticipated and the issue of benefit-sharing with the communities has not been considered.

The Caura Plan

In April 2010, the Vice-President of the Republic, Elías Jaua, announced the Caura Plan, aimed at putting a stop to the environmental devastation being caused by illegal mining in Bolívar, Amazonas and Delta Amacuro states.[11] According to Alejandro Hitcher, Minister for the Environment, the Caura Plan covers the whole area of high-value ecosystems along the right bank of the Orinoco River.[12] In order to protect this vast region, it was decided to increase the presence of the military through an operation to mobilise 2,800 members of the Armed Forces.

Official reports bear witness to the serious environmental contamination that is occurring because of the use of mercury, which is affecting the health of the poor rural communities that live along the banks of the rivers. The fish they eat contains mercury levels above those recommended by the WHO.[13]

Towards the end of August, more than 20,000 people involved in gold, diamond and coltan extraction were finally evicted, more than 30,000 hectares of land were recovered[14] and the international mafias were prevented from taking more than 1,200 kgs of gold and 4,000 karats of diamonds out of the country, with 299 mining camps shut down and 14 illegal air strips detected.[15]

The state versus Yukpa leaders

From the 1930s onwards, the Yukpa were displaced from their lands by cattle ranches. During the 1970s, the Yukpa began to recover their land in the foothills by occupying the ranches. The land occupations resumed in 2001 and, in 2004, the Yukpa organised to demand the suspension of expanding mining projects and the cancellation of coal concessions. They also called for the demarcation of the indigenous territories in Sierra de Perijá.

In October 2009, the national government issued property titles for three sectors of the Yukpa people: Tinacoa, Aroy and Shirapta, covering a total area of 41,630 ha. Four sectors remain: Toromo, Neremü, Khasmera and Tokuko, whose chiefs are rejecting the government proposal, considering that it deprives them of their rightful territory and because they are advocating for the self-demarcation of the Yukpa territory as a whole rather than as separate plots by sector. One of the main leaders in the struggle to recover the Yukpa's lands has been Chief Sabino Romero Izarra.

Days before the titles were issued, local radio stations were broadcasting a consensus of opinion in which the cattle ranchers and members of the *Frente Revolucionario Campesino* (Revolutionary Peasant Farmers' Front) accused Sabino Romero of stealing the land of a number of ranches.

Offended by the involvement of Chief Olegario Romero in the smear campaign, on 13 October 2009 Sabino Romero went "with everyone, with the family, to resolve the matter as Yukpa". He went unarmed and some of his sons and some women accompanied him. The meeting between the families of Chief Olegario Romero from *Guamo Pamocha* community and Chief Sabino Romero from *Chaktapa* community degenerated into violence with the result that two people were killed and five more wounded, including Sabino Romero Izarra himself. The Yukpa from *Chaktapa* indicated that Olegario Romero was the culprit and leader of the attacks.

On 22 October 2009, Judge Judith Rojas ordered the detention of Sabino Romero Izarra, Olegario Romero and Alexander Fernández for crimes of murder, conspiracy against the Venezuelan state, cattle rustling and injury. In addition, she ruled against the conflict of jurisdiction appeal submitted by the defence lawyers in favour of the indigenous jurisdiction, as established in Article 260 of the Constitution, which would have given them the right to be judged by the legitimate authorities of their own people.

Since then, they have been held in the Macoa Military Base in Machiques de Perijá. Held in sub-standard conditions, their health has deteriorated and they have received no adequate medical attention, in addition to which they have been unable to communicate with their families or defence lawyers. Three women from Sabino Romero Izarra's family complained that they were sexually assaulted by the guards at the base on a number of occasions when they went to visit him.

On 25 February 2010, the defence lawyers lodged an appeal for unconstitutionality before the Constitutional Chamber of the Supreme Court of Justice (TSJ), requesting that the case be heard by the special indigenous jurisdiction.

Four months later, the TSJ had still not issued a ruling. On 20 July, more than 80 Yukpa and members of the social movements therefore travelled to Caracas and took up position outside the TSJ to demand an answer.

Two days later, the TSJ, alleging that "this case has disturbed the peace and daily life of the indigenous community of Zulia state (Yukpa ethnic group)",[16] ordered the case to be referred to Trujillo state and the detainees to be taken to Trujillo Prison. With this decision, they moved the detainees hundreds of kilometres from their area of origin, restricting access to them on the part of their families and lawyers.

Finally, on 30 July, the Constitutional Chamber of the TSJ decided to declare the appeal inadmissible.[17]

On 24 August 2010, the court sat to hear the case in Trujillo. Chief Olegario Romero rejected the state's defence lawyer and agreed to be represented by the legal advisor to the Association of Cattle Ranchers of Machiques, the historical enemy of the Yukpa.

According to the Homo et Natura society, this case has been marred from the start, and simply seeks to condemn Chief Sabino Romero in order to remove him from the process of demarcating the Yukpa territory, and break the resistance and unity of the Yukpa who are defending their native territory.[18]

Hunger strike by Jesuit priest José María Korta

The imprisonment and trial of the three Yukpa triggered a series of protests in Machiques, Maracaibo, Trujillo and Caracas. On 18 October 2010, the Jesuit priest José María Korta, 81 years of age – an historical ally of the indigenous cause and founder of the Indigenous University of Venezuela (UIV) -, began a hunger strike outside the National Assembly in Caracas as a way of denouncing the failure to implement constitutional commitments on indigenous issues and of demanding the release of Chief Sabino Romero and the other Yukpa prisoners. A large group of indigenous people from different regions of the country took part in the protest, family members of Chief Sabino Romero and different allies of the indigenous cause.

Days after the start of the hunger strike, José Maria Korta, along with different indigenous people and allies, was received by the Minister of the Environment and the Minister for Indigenous Peoples, who promised to recommence the demarcation process.

Finally, the Vice-President of the Republic received Korta and they came to an agreement to produce a road map that would ensure the concrete implementation of indigenous rights. Noting the government's good faith in responding to their demands, Korta ended his hunger strike on 25 October.

On 8 November, more than 100 representatives of 12 indigenous peoples, social movements and other allies congregated in Bolívar Square, Caracas. Led by Korta, they marched through the city centre to the Vice-Presidency of the Republic where they handed over "the road map for indigenous peoples" to the Vice-President.

This road map sets out three basic demands:

1. Self-demarcation of the indigenous habitat and territories with the effective participation of the communities, regularisation of third parties and collective property titling.
2. The release of Sabino Romero Izarra, Olegario Romero and Alexander Fernández, and recognition of the special indigenous jurisdiction.
3. The creation of a Presidential Council for Indigenous Peoples that will ensure that the self-demarcation and indigenous jurisdiction are enforced and which will define specific policies.[19]

To date, not one of these commitments has been kept.

Demarcation of indigenous lands and the case of the Barí people

The national Constitution and other laws recognise the indigenous right to collective ownership of their habitat and territories. However, the slow nature of the demarcation process between 2005 and 2009, the fact that the self-demarcated areas submitted by various indigenous organisations have been ignored and the paralysis in the process since 2009 have all turned the issue into one of the main reasons for discontent among Venezuela's indigenous peoples.

On 30 November, the Political/Administrative Chamber of the Supreme Court of Justice published a judgment in favour of the indigenous Barí of Sierra de Perijá and the Bokshibika civil association – a body representing the Barí community of Bokshí – thus setting an important legal precedent by recognising that enforcement of the right to collective ownership of indigenous lands was inadequate and ratifying the government's obligation to demarcate the territories in question. It consequently ordered the Ministry for the Environment to proceed with the demarcation of the Barí's territories within a six-month period, and ordered the Attorney-General's Office to issue an officially recordable title to said lands once the anticipated procedure had been completed.[20] ❍

Notes

1 **Bello, Luis J., 2005:** *Derechos de los Pueblos Indígenas en el Nuevo Ordenamiento Jurídico Venezo*lano. IWGIA: Copenhague. Pág. 416.

2 The name "coltan" comes from an abbreviation for columbite and tantalite, minerals that contain niobium and tantalum, two metals with applications in the electronics, aerospace, medical and metallurgical industries, among others.

3 **Infante, L. M., 2010:** *El boom del Coltán y el exterminio de los pueblos indígenas*. <http://derechoypluralismo.blogspot.com/2010/12/el-boom-del-coltan-y-el-exterminio-de.html>

4 **González, D., 2010:** La fiebre por el oro azul. *El Nacional*, 15.12.2010.

5 **González, D., 2010:** Denuncian explotación de indígenas en extracción de coltán. *El Nacional*, 17.12.2010.

6 *Prensa MIBAM*, 18.01.10. <http://www.mibam.gob.ve/portal/index.php?option=com_content&view=article&id=314:venezuela-pudiera-ser-poseedora-de-una-gigantesca-reserva-de-coltan&catid=14:generales&Itemid=96>

7 Bolivarian Government of Venezuela. 2010. "Coltán el oro azul", Paréntesis. 4th Edition. Pg. 14.

8 Idem, 17-18.

9 **González, D., 2010:** La otra historia del descubrimiento. *El Nacional*, 14.12.2010.

10 **Bolivarian Government of Venezuela, 2010:** Coltán el oro azul, *Paréntesis*. 4th Edition. Pg. 18.

11 **González, M. E., 2010:** Activado plan Caura para combatir la devastación ambiental. *Prensa CVG*. 24.04.10. <http://www.mibam.gob.ve/portal/index.php?option=com_content&view=article&id=367:activado-plan-caura-para- combatir-la-devastacion-ambiental&catid=14:generales&Itemid=96>

12 **Bustamante, S. 2010:** Gobierno Bolivariano detiene la minería ilegal para recuperar los ecosistemas afectados. *Prensa Minamb*. 11.05.10. <http://www.minamb.gob.ve/index.php?option=com_content&task=view&id=2285&Itemid=43>

13 **Da Costa, Z., 2010:** La contaminación ambiental por mercurio es un hecho. *Nueva Prensa de Guayana*, 06.05.10.

14 *Venezuelan New Agency*. Mayor general Rangel Silva destaca éxito del Plan Caura. 29.08.10. <http://www.avn.info.ve/node/14193>

15 **López, M., 2010:** Plan Caura ha evitado la salida del país de 1 tonelada de oro y 4.000 quilates de diamantes. *El Correo del Orinoco*, 28.05.10.
16 TSJ – Criminal Appeals Chamber. 22.07.10. Decision Nº 298. Presenting Justice: Doctor Eladio Ramón Aponte Aponte. < http://www.tsj.gov.ve/decisiones/scp/Julio/298-22710-2010-A10-231.html>
17 TSJ – Constitutional Chamber. 30.07.10. Case Nº 10-0192. Presenting Justice: Luisa Estella Morales Lamuño. <http://www.tsj.gov.ve/decisiones/scon/Julio/810-30710-2010-10-0192.html>
18 *Sociedad Homo et Natura*. 2010. Notas sobre el caso del Cacique Yukpa Sabino Romero (III). <http://www.elpueblosoberano.net/2010/12/notas-sobre-el-caso-del-cacique-yukpa-sabino-romero-iii>
19 Hoja de Ruta – Versión Oficial. Declaración de los indígenas en defensa de la Revolución y de sus derechos reconocidos en la Constitución de la República Bolivariana de Venezuela. 08.11.10. <http://www.causamerindia.com /index.php?idart=34&s=5&cat=s>
20 TSJ – Political/Administrative Chamber. 30.11.10. Case Nº 2002-0500. Presenting Justice: Emiro García Rosas. http://www.tsj.gov.ve/decisiones/spa/Noviembre/01214-301110-2010-2002-0500.html

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SURINAME

Indigenous peoples in Suriname number 18,200 people, or approximately 3.7% of the total population of 492,000[1] (census 2004/2007), while an additional 2-3,000 live in neighbouring French Guiana after fleeing the "Interior War" in the late 1980s. The four most numerous peoples are the Kali'ña (Caribs), Lokono (Arawaks), Trio (Tirio, Tareno) and Wayana. In addition, there are small settlements of other Amazonian indigenous peoples in the south-west and south of Suriname, including the Akurio, Wai-Wai, Katuena/Tunayana, Mawayana, Pireuyana, Sikiiyana, Okomoyana, Alamayana, Maraso, Sirewu and Sakëta. The Kali'ña and Lokono live mainly in the northern part of the country and are sometimes referred to as "lowland" indigenous peoples, whereas the Trio, Wayana and other Amazonian peoples live in the south and are referred to as "highland" peoples.

The legislative system of Suriname, based on colonial legislation, does not recognize indigenous or tribal peoples. Suriname is the only country in the Western Hemisphere without any legislation on indigenous peoples' land and other rights. This forms a major threat to the survival and well-being and respect for the rights of indigenous and tribal peoples, particularly with the rapidly increasing focus that is being placed on Suriname's many natural resources (including bauxite, gold, water, forests and biodiversity).

Political developments

The year 2010 was dominated by the national elections for a new National Assembly (Parliament) which, in turn, elects the President as head of government. Both the process leading up to the elections and the outcome are significant for the indigenous peoples of Suriname.

Suriname has a semi-presidential political system in which the President and Vice-President are not elected directly through national elections but by a two-thirds majority of the National Assembly, consisting of 51 elected representatives from the ten administrative districts of Suriname. If a candidate is not elected in two rounds, the poll goes to a simple majority vote of the *Verenigde Volksvergadering* (VVV; "United People's Assembly"), which consists of all elected representatives at national, district and municipal level, 919 persons in total. This electoral system means that coalitions have to be formed among like-minded political parties in order to secure the election of their presidential candidate in the National Assembly and with that, participation in the government, since it is the President who selects and appoints members of the Cabinet of Ministers.

The political participation of indigenous peoples in Suriname has historically been marginal, and mainly through the major political parties, under whose "discipline" and policies indigenous candidates (if any at all) fall. Proper indigenous

peoples' political parties have until now not been able to gain seats on their own or participate in a government coalition. Having analyzed this situation, the Association of Indigenous Village Leaders in Suriname (VIDS, *Vereniging van Inheemse Dorpshoofden in Suriname*) decided to appoint a commission to talk to political parties about their policy intentions and political programmes, and about indigenous participation in the government, should that party get elected. Two indigenous village leaders ran for the position of district representative, in the districts of Marowijne and Para respectively, one of whom is a member of the Board of VIDS and the other a member of the Board of KLIM, a regional subsidiary of VIDS. Both got elected. For the first time in the political history of Suriname, two indigenous chiefs have hence been elected simultaneously to the Parliament, both for the NDP (National Democratic Party) political party, which won the elections (previously the largest opposition party). They were sworn in through a traditional indigenous ceremony in the National Assembly, also unique in Suriname's history.

The new government was installed in September 2010. Although electoral promises with regard to participation in government have not yet been fulfilled, there is still an expectation that, through the presence of these two indigenous representatives in the National Assembly and more frequent direct dialogue with the government, more influence will now be exerted on government policies in Suriname. The new President of the Republic, Mr. Desire Bouterse, has promised to introduce affirmative action for indigenous peoples and settle the land rights' issue.

International support for the indigenous peoples' struggle in Suriname was substantially less in 2010, particularly following the electoral victory of the NDP, which is not on particularly friendly terms with the Netherlands, a country which until 2010 was a major donor of development assistance to Suriname. No new official development assistance is expected from the Netherlands, and various non-governmental organisations that functioned as "co-financing organisations" of the Dutch government have also stopped supporting civil society organisations in Suriname. This situation is likely to have an impact on the struggle for legal recognition of indigenous peoples' rights in Suriname.

Adherence to international standards

Notwithstanding the change in political climate, the strategy of demanding recognition of indigenous peoples' rights by making use of regional and international

justice systems has not been abandoned. The new government is trying to accelerate the implementation of the judgement of the Inter-American Court of Human Rights in the Saramaka case,[2] which had a deadline of mid-December 2010. This judgement obliges Suriname to adopt national legislation and standards to demarcate and legally recognize the collective ownership of the Saramaka Maroon people over their traditional tribal lands, and to respect their right to free, prior and informed consent. Such recognition would obviously have repercussions for all Indigenous and Maroon peoples in Suriname and, in the talks with the new government on its implementation, VIDS is participating alongside the VSG (*Vereniging van Saramaccaanse Gezagsdragers*, Association of Saramaccan Traditional Authorities). The support of the UN Special Rapporteur on the Rights of Indigenous Peoples, Mr. James Anaya, has meanwhile been formally requested by the government in the process of drafting legislation on indigenous and tribal peoples' rights in Suriname.

It is yet to be seen whether the new government will indeed pursue national legislation and policies in favour of, and in accordance with international standards on, indigenous peoples' rights. Until now, policy intentions related to mining, infrastructure and decentralization, for example, have not shown an improved understanding of or respect for indigenous peoples' rights. Indigenous and tribal Maroon peoples' rights are not yet legally recognized in Suriname. In the absence of such legal protection, the announced plans to intensify mining operations in south Suriname, along with the construction of a trans-Amazonian road from Paramaribo to Brazil, new hydroelectric works in south-east and south-west Suriname and a proposal for the incorporation of traditional indigenous and tribal authorities into regional governmental structures may all form vital threats to Indigenous and Maroon peoples in Suriname.

A complaint of human rights' violations by the State of Suriname against the indigenous Maho community was submitted to the Inter-American Commission on Human Rights in 2010. This community has been suffering violations of its ancestral land rights due to the issuing of land titles and concessions to third parties by the (previous) government, and even the destruction of their crops by those third parties. Since there is no national legislation on indigenous peoples' land rights, the community had no other choice than to seek justice from the regional human rights body. When these violations showed no sign of stopping, the Commission issued precautionary measures against Suriname in December 2010.[3] A decision on another case against the State of Suriname, submitted in

2007 by eight indigenous communities in East Suriname and VIDS for similar infringements, is expected in 2011.

Development initiatives

In 2010, VIDS' introduction of bilingual intercultural education in primary school mathematics was extended to another indigenous community, Konomerume (Donderkamp), in addition to Galibi where this education had already been piloted the year before. The results of this pilot project, in which the children are taught mathematics in their own native language with visual materials from their own surroundings, will be monitored over a three–year period to compare their school results with those of children who are taught in Dutch, the official language of Suriname, which is not spoken widely in the interior of the country.

Another initiative that has raised high expectations is that of supporting indigenous women in two regions of West and Central (Para area) Suriname, to establish their own small-scale entrepreneurial activities. Indigenous women from various regions of Suriname have also been participating in a series of Caribbean meetings of indigenous women, which may soon result in the establishment of a Caribbean network of indigenous women.

Galibi, East Suriname, was the venue of a trans-boundary meeting of indigenous peoples from Suriname, French Guiana and northern Brazil, organized by VIDS Suriname and Iepé Brazil. This meeting discussed issues related to the continuing gold mining and its detrimental impacts on indigenous communities in all countries on the Guyana Shield, social issues affecting indigenous peoples and the land rights' issue. The similarity and solidarity between the indigenous peoples of the region were striking, and it was decided to continue this exchange and networking. The conference also adopted a strong declaration against the impacts of gold mining on indigenous peoples.[4] ❍

Notes and references

1 The population is ethnically and religiously highly diverse, consisting of Hindustani (27.4%), Creoles (17.7%), Maroons ("Bush negroes", 14.7%), Javanese (14.6%), mixed (12.5%), indigenous peoples ("Amerindians", 3.7%) and Chinese (1.8%). At least 15 different languages are spoken

on a daily basis in Suriname but the official language is Dutch, while the *lingua franca* used in informal conversations is *Sranan Tongo* (Surinamese).

2 http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf

3 http://www.cidh.oas.org/medidas/2010.en.htm

4 http://www.institutoiepe.org.br/noticias/47-eventos/167-problematica-do-garimpo-e-discutida-por-povos-indigenas-do-brasil-guiana-francesa-e-suriname.html

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ECUADOR

Ecuador's population numbers some 14,306,876 individuals and, of these, nearly two million belong to the 14 native nationalities - or indigenous peoples - and Afro-descendant peoples, who are linked in a network of local, regional and national organisations. There are two peoples living in voluntary isolation in the Centre-North Amazon: the Tagaeri and the Taromenane, who live in the Yasuní National Park and Biosphere Reserve. Article 1 of the Ecuadorian Constitution stipulates that, "Ecuador is a constitutional state of law and justice, it is social, democratic, sovereign, independent, unitary, intercultural, plurinational and secular". In the specific case of indigenous peoples, participation is a right that is exercised "...through their representatives in the official law-making bodies, by defining public policies that are of concern to them, and in the design of and decision-making for their priorities in the State's plans and projects" (Art. 57(16)). Despite these constitutional provisions, the actual possibilities for asserting these rights within state laws and policies still comes up against difficulties, and this limited compliance is a frequent cause of tensions and conflict between the state and indigenous peoples.

Three main elements have marked the relationship between the state and indigenous peoples in the period since Ecuador's new Constitution was approved in September 2008: first, the increasing distance and subsequent breakdown in the relationship between the government and the main indigenous organisation of the 1990s, the Confederation of Indigenous Nationalities of Ecuador (CONAIE); second, the socio-political rise of other organisations, such as the historic National Federation of Peasant, Indigenous and Black Communities (FENOCIN), the Council of Evangelical Indigenous Organisations and Peoples (FEINE) and the National Confederation of Peasant Social Security (CONFEUNASSC), which are all experiencing a period of revival in and renewal of their rhetoric and strategies; and, third, the co-existence of two trends within Rafael

Correa's government resulting in consequent fluctuations between an increasingly weak sector that favours promoting an agreement with the indigenous organisations through dialogue and a more influential sector that favours co-opting and subordinating the indigenous organisations to the government's project.

Disputes over water laws and resources

Against this backdrop, tensions at the start of 2010 revolved around approval of the laws on water and mining. In the first case, CONAIE decided, in Ambato, to call for a "gradual mobilisation" throughout the country and, as Marlon Santi, president of CONAIE, stated: "Given the lack of political will, to put an end to the dialogue with the government because no progress is being made (...). The government has turned a deaf ear; we make proposals but it does not want to consider them."[1] This was corroborated by Miguel Guatemal, the organisation's vice-president: "When we want to talk about the water law, plurinationality, the right to consultation or binding consent, the government refuses and we cannot accept this situation, where there is no political will on the part of the state."[2]

The controversy surrounding the water law hinged on two main issues: establishing the Central Water Authority and revising/redistributing current water concessions.

According to the government, the Central Water Authority will be made up of three bodies: the National Water Secretariat (SENAGUA), the Intercultural and Plurinational Water Committee and the Regulation and Control Board. The Secretariat would be established at the level of a ministry, with its senior executive appointed by the Head of State, and it would be responsible for formulating and implementing national programmes, plans, projects and works and for issuing rules for the technical regulation and control of water management, in accordance with the law. The Intercultural and Plurinational Water Committee would participate in the formulation, monitoring and evaluation of water-related public policies. It would comprise representatives from the central and the decentralised autonomous (GADs) governments and representatives from civil society: from the communes, communities, nationalities, community drinking water and irrigation systems, user organisations and consumer organisations, in equal shares (50/50).

This proposal was rejected by CONAIE's affiliated indigenous organisations. According to Delfín Tenesaca, president of Ecuarunari,

We hoped to work out critical issues such as the Water Law here, in the Assembly. There are more than 40,000 conflicts [sic] in the country in this regard and we still do not know when they will be solved. This is why a Central Water Authority should not be established but there should instead be an authority made up of a team of representatives. This is how CONAIE envisages the Plurinational Committee. Even though the Central Water Authority will have governance and control over water resources, the indigenous movement's position has not been listened to.[3]

According to Tenesaca, the indigenous proposal also seeks to guarantee the nationalisation of water (as stipulated in the Constitution), to ensure that a full audit of public and private concessions is conducted with the aim of achieving its fair redistribution, and to demand the decontamination of the water.

With regard to the second point, Humberto Cholango, former president of Ecuarunari, said: "Our main concern is that 80% of the water is in the hands of only 1% of the population"; technical studies corroborate this unfair distribution.[4]

In Ecuador, Article 12 of the current Constitution enshrines the human right to water, in addition to establishing that water forms a strategic national asset of public use, inalienable, imprescriptible, unattachable and essential for life. Article 318 of the Constitution also establishes the order of priority for water use as the following: human consumption, irrigation aimed at guaranteeing national food sovereignty, environmental conservation and production.

On 14 April, CONAIE decided to commence what it called "the resistance" to the draft Water Law under consideration by the National Assembly's Committee on Food Sovereignty, and presented a statement about the unconstitutionality of the proposal.

The organisations' position was harshly criticised by the minister responsible for coordinating the policy, Doris Soliz, who complained that, "Behind the opposition to the Water Law being debated in the National Assembly lies an attempt to destabilise the government on the part of political players opposed to the changes being instigated."[5]

Against a backdrop of doubts and uncertainty, CONAIE's member organisations held demonstrations in various parts of the Ecuadorian Sierra region at the start of May: in the northern zone, Imbabura Province, to the north of Quito, a hundred community members blocked the Pan-American Highway in Eugenio Espejo parish, at the entrance to San Pablo Lake. During the day of protest, the

so-called "Plurinational Parliament of the Peoples of the South" was established at Azuay, with the participation of peasant groups, environmentalists, workers, teachers and students. "Good news or bad, we will continue these protests. The Water Law must take account of the voice of the people," concluded the ensuing press release.[6]

Mining, consultation and the criminalisation of social protest

At the same time, during the first half of the year, conflict arose over the Mining Law. When this law was pushed through the Assembly by the ruling *Alianza País* party without any consultation, CONAIE lodged an appeal for unconstitutionality before the Constitutional Court. In its submission, the indigenous organisation raised objections to the institutional structure of the mining sector and the mechanisms for prospecting and granting concessions. The most contentious issue

within the appeal was, however, the process of ensuring the prior consultation of indigenous and Afro-Ecuadorian communities living in territories with mining potential.

In its judgment, the Constitutional Court ruled that the National Assembly was obliged to "organise and implement the pre-legislative consultation, aimed exclusively at the communes, communities, peoples and nationalities, before adopting a legislative measure that could affect any of their collective rights...".[7] The Court advised the Assembly to pass a law on consultation, as well as urging it to take the mechanisms established in the Law on Civic Participation into account,[8] as these include prior consultation.[9] Along the same lines, it also emphasised the obligation to conduct a consultation process before granting any concessions for natural resource exploitation that might affect the indigenous peoples.

CONAIE's and the Correa government's opposing positions regarding these laws ended up blocking the paths of dialogue and advocacy, and this led to frustrations on the part of the indigenous organisation when, on 25 June, during the meeting of the Bolivarian Alliance for the Americas (ALBA), headed by Presidents Evo Morales of Bolivia, Hugo Chávez of Venezuela and Rafael Correa of Ecuador, the organisation was excluded from participating. This meeting involved organisations from La Vía Campesina international peasant movement, the Latin American Coordinating Body of Rural Organisations (CLOC), of which FENOCIN is the Ecuadorian partner, and other indigenous organisations across the continent. According to its organisers, the aim of the meeting was to promote indigenous and black peoples' integration and development plans. CONAIE's exclusion, instigated by the Ecuadorian government, led the organisation to call a parallel meeting entitled the "Plurinational Assembly of Ecuador", in commemoration of the 20th anniversary of the "Indigenous Uprising of Inti Raymi", in order to discredit the claim that the summit was taking place "with the support of the social and indigenous actors".[10] At the end of the event, CONAIE led a demonstration of some 2,000 people through the streets of Otavalo - where the ALBA meeting was taking place - and tried to present a document containing its version of Ecuadorian socio-political reality to the Bolivian President, Evo Morales, amidst shouts and slogans of: Down with Correa! Racist and genocidal Correa![11] The march was prevented from delivering the document and clashes broke out between protestors and the police.[12] The Public Prosecutor's Office accused indigenous leaders Marlon Santi and Delfín Tenesaca of being responsible, and of promoting acts of sabotage and terrorism, according to the Criminal Code. A number of indigenous leaders

were also arrested in this and other incidents.[13] In all, over the course of the year, around 72 cases were brought against leaders opposed to the government, such as that of Carlos Pérez Guartambel, from the Azuay Union of Community Water Systems. It should be recalled that, in September 2009, in the context of the protests against the planned Water Law, incidents occurred in the Amazonian province of Morona Santiago that left one dead (Shuar teacher Bosco Wisuma) and 40 (police officers) wounded. The government accused the indigenous people of firing the shots from the outset.

"Why does the Correa government accuse the movements of being terrorists? Where is the need for a strong state, in Correa's sense of the word, that has a complete mastery of control and vigilance mechanisms?" asks the analyst Raúl Zibechi.[14] The International Federation for Human Rights (FIDH), the Ecumenical Human Rights Commission (CEDHU), the Regional Foundation of Human Rights Advisors (INREDH) and the Centre for Economic and Social Rights (CDES) all consider that "likening the indigenous Shuar, mobilised in defence of their rights, to 'terrorists' is a serious infringement of the international principle of the right to protest and runs counter to the international definition of what a terrorist act is."[15]

Disagreements and future prospects

The relationship between the state and the indigenous movement in the near future will most probably depend upon three things: first, the government's desire for reliable and permanent partners - in a context of threats to political stability – in order to ensure a successful end to its term in office and a consolidation of the reform process; second, the long-awaited outcome of the legal proceedings brought by Amazonian indigenous communities against the transnational company, Chevron Texaco; and, third, the government's announcement of a new call for tenders for oil concessions in the Amazon, along with initial investments in large-scale mining projects.

Through the Ministry for Non-Renewable Natural Resources, the government further announced its decision to activate an old oil project that seeks to develop exploration and exploitation activities over an area of 2,400,000 hectares within the territories of eight indigenous nationalities of the Central South Amazon (Pastaza and Morona Santiago provinces) and which, in recent decades, has been the scene of intense conflicts such as the one involving the Kichwa from the

Sarayaku community and the Achuar and Shuar nationalities against the Burlington oil company.

In the face of these announcements, various indigenous and environmental organisations stated their decision to form an "Alliance of Peoples and Nationalities in Resistance" in order to oppose the government's aims. These decisions once more highlight the contradiction between continuing with the logic of modernisation and extraction and the civilising option of *Sumak Kawsay* (good living). "Extraction", explain government spokespersons, "is not a political option but an economic necessity". "I do not believe that there is necessarily a dilemma. We can follow an extractivist model and we can gradually build a model that will enable a path to be found. If we do not do this, however, we will have a number of problems and it will not be possible to make 'good living' viable," stated René Ramirez, Minister for the National Secretariat of Planning and Development (Senplades).[20]

This statement leaves aside the transitory nature of Correa's government, as noted by Miguel Carvajal, former Minister for Security, who indicates in this regard that: "The indigenous movement grew under the banner of resistance and opposition to political power and, obviously, we, the Ecuadorian left, grew too. It is difficult for the indigenous movement to move from the discourse and practice of resistance and opposition to that of political agreements. There is a fear within the movement that anything that requires a political agreement with the government may have a negative impact on the leaders promoting it."[21]

Finally, the Venezuelan intellectual and researcher, Edgardo Lander, has indicated that: "This is not what the indigenous peoples expected from these governments and so the deep sense of unease is justified. From the point of view of the continuity and future of the indigenous peoples' struggles, however, the worst thing they could do now would be to ignore the extraordinary historic opportunity that has opened up to them in this process of change".[22] ❍

Notes

1 Cf. *La CONAIE anuncia un paro progresivo*, Quito, 27-02-2010 A3.

2 Personal observation, CONAIE, 02-02-11. In the context of a report prepared for the Indigenous Programme of Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ).

3 Statements to the Ecuavisa TV channel: Tenesaca: *Indígenas llaman a la desobediencia civil contra la ley de Aguas*, Thursday 22-04-2010. See video at http://www.ecuavisa.com/noticias-nacionales/23014-indigenas-llaman-a-la-desobediencia-civil-contra-la-ley-de-aguas.html

4 **Humberto Cholango:** Hay que terminar con el acaparamiento de las aguas, in *ecuadorinmediato.com*, 14-09-2009

5 Cf. *Gobierno de Ecuador denuncia acciones desestabilizadoras*, Statements by Doris Soliz, Minister coordinating the policy, Monday 10-05-2010, Guayaquil, Radio Sucre, http://www.radiosucre.com.ec/index.php?option=com_content&view=article&id=2454:gobierno-de-ecuador-denuncia-acciones-desestabilizadoras-&catid=1:politica&Itemid=24

6 Cf. *Diario El Tiempo*. Parlamento Plurinacional protesta por Ley de Aguas. Cuenca, 12 May 2010. For more information see http://www.eltiempo.com.ec/noticias-cuenca/40785-parlamento-plurinacional-protesta-por-ley-de-aguas/

7 Constitutional Court for the Transition Period, Judgment No. 001-10-SIN-CC, Case Nos. 0008-09-IN and 0011-09-IN, Quito, 18 March 2010, p.39.

8 The "Law on civic participation and social control" is the first law enacted in the country and it anticipates civic participation in accordance with the Constitution and the aspirations of the population. Mechanisms for direct participation include the people's legislative initiative, the people's constitutional reform initiative and other mechanisms for public hearings, people's councils, the "empty chair" mechanism, citizen review, observatories, consultative councils and prior consultation.

9 *Corte Constitucional declara Constitucionalidad Condicionada de Ley de Minería*, Saturday, 20-03-2010.

10 Cf. in CONAIE, *ALBA sin Pueblos no es Alianza*, in http://www.conaie.org/component/content/article/65-encuentro-de-alba-sin-los-pueblos-no-es-alianza-?showall=1

11 *Diario Hoy*. Las dos caras de la cumbre del Alba. 26.06.2010. Cf. http://www.hoy.com.ec/noticias-ecuador/la-pugna-correa-conaie-se-agudiza-en-cumbre-de-la-alba-415565.html

12 Indígenas alborotan Cumbre del ALBA. *BBC News*, 26-06-2010. Cf. http://www.bbc.co.uk/mundo/america_latina/2010/06/100625_ecuador_alba_ao.shtml

13 Cf. *El Comercio*, 02.07.2010. Fiscalía inició de oficio los 4 casos contra los dirigentes de la CONAIE. According to CONAIE, "That very day, 26 June, the police arrested six indigenous people in Guaranda, Bolívar province, for protesting against a mining company that was operating in the zone". http://www4.elcomercio.com/2010-07-02/Noticias/Politica/Noticias-Secundarias/EC100702P4INDIGENAS.aspx.

14 **Zibechi, Raúl:** Ecuador - El Estado fuerte y la criminalización a los movimientos, 9 March 2011, *Americas Programme*. http://www.cipamericas.org/es/archives/4087

15 FIDH, *Seria preocupación por el uso indebido de la figura del terrorismo*, the International Human Rights Federation (FIDH) http://www.fidh.org/Seria-preocupacion-por-el-uso-indebido-de-la

16 Decretan el estado de sitio en Ecuador y la policía tomó el Parlamento. *La Nación*. Buenos Aires, 30 September 2010; Hugh Bronstein and Alexandra Valencia, Reuters (30-09-2010 8:04pm EDT).

17 Ecuador investiga el origen de insurrección (html). *El Universal* del 2-10-2010; Intento de golpe de Estado en Ecuador. *Diagonal, journal*, 30-09-2010. Viewed on 04-10-2010.

18 *Flash: Intento de Golpe de Estado actualmente en Ecuador*, in http://www.voltairenet.org/article167131.htm

19 Ecuarunari, *Frente a los hechos del 30 de septiembre de 2010*, http://www.ecuarunariec.org/noticias/1-notis/201-frente-a-los-hechos-del-30-septiembre-conaie-ecuarunari-pachakutik-y-bloque-de-asambleistas

20 Cf. Interview with Tadeu Breda, Terra Magazine, *Ecuador apunta al biodesarrollo hacia 2025*, available at: http://www.pe.terra.com/terramagazine/interna/0,,OI3858002-EI8865,00-Ecuador+

le+apunta+al+biodesarrollo+hacia+el.html21Harnecker, Martha: *Entrevista a Miguel Carvajal. Las Complejas Relaciones del Gobierno de Correa con los Movimientos Sociales*, Interview conducted in Quito, 13 November 2010. Cf. http://www.rebelion.org/docs/118229.pdf

22 **Lander, Edgardo, 2011:** *Reflexiones sobre los (difíciles) retos de las organizaciones indígenas andinas ante los gobiernos de izquierda o 'progresistas'*. mimeo, Caracas, Central University of Venezuela, p.6.

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The 2nd Census of Indigenous Communities, carried out in 1,786 Amazonian communities during 2007, gathered information on 51 of the 60 ethnic groups existing in the forests. Nine of them were not recorded "because some ethnic groups no longer form communities, having been absorbed into other peoples; in addition, there are ethnic groups which, given their situation of isolation, are very difficult to reach".[1] An Amazonian indigenous population of 332,975 inhabitants was recorded, mostly belonging to the Asháninka (26.6%) and Awajún (16.6%) peoples. 47.5 % of the indigenous population is under 15 years of age, and 46.5% has no kind of health insurance. 19.4% stated that they were unable to read or write but, in the case of women, this rose to 28.1%, out of a population in which only 47.3% of those over 15 have received any kind of primary education. In addition, the Census noted that 3,360,331 people spoke the Quechua language and 443,248 the Aymara,[2] indigenous languages predominant in the coastal-Andes region of Peru. Peru has ratified ILO Convention 169 on Indigenous and Tribal Peoples and has voted in favour of the UN Declaration on the Rights of Indigenous Peoples.

On 25 February 2010, the ILO Commission of Experts on the Application of Conventions and Recommendations made a series of observations[3] to the Peruvian state, urging it to rectify substantial failures to comply with ILO Convention 169 on indigenous peoples, to establish a consultation mechanism with indigenous peoples and even to suspend the natural resource exploration and exploitation activities that are affecting indigenous peoples until said consultation mechanism can be implemented in a climate of complete trust and respect.

Despite such requests, Peru's APRA-led government, in its fifth and final year in office, due to end on 28 July 2011, simply affirmed its lack of political will to respect the rights of indigenous peoples and communities.

The mass media devoted more space to the Amazonian indigenous peoples throughout 2010, due to the level of protagonism they achieved during 2009 in the wake of the National Day of Amazonian Struggle and the painful events in Bagua.[4] In the run-up to the forthcoming elections, indigenous leaders have been exceptionally promoted as candidates for the local, regional and even, possibly, congressional governments in the April 2011 general elections.

Mistreatment of indigenous peoples' institutional structures

One of the clearest demonstrations of the mistreatment of indigenous peoples has been the way in which the government has handled the state-run body responsible for promoting the indigenous agenda: the National Institute for the Development of Andean, Amazonian and Afro-Peruvian Peoples (INDEPA). Over the course of the current government, INDEPA has found its functional autonomy and its cross-cutting nature restricted. In June 2010, INDEPA became a part of the Vice-ministry of Interculturality, within the recently created Ministry of Culture,which, with Supreme Decree (S.D. 001-2010-MC, of 25 September 2010) dissolved it and decided to "merge" it by means of its "absorption" into the Ministry of Culture. "INDEPA has not functioned throughout the whole of Alan García's government. We have lost five years, and ended up back at the starting point," stated lawyer and consultant Vladimir Pinto.[5]

Although one of the duties of the Vice-minister for Interculturality is to promote and ensure a sense of social equality and respect for the rights of the country's peoples, in accordance with ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples, a number of questions arise. The powers of the Ministry of Culture, for example, refer to promoting, including and protecting the cultural heritage of indigenous peoples but do not establish any responsibility to defend indigenous rights, as the law that created INDEPA had stipulated.

The new structure abolishes the Governing Board, a body with indigenous representation, as set out in the legislation that created INDEPA. Moreover, policies, plans and programmes for indigenous peoples will be subsumed within the Ministry of Culture's intended areas of action: 1) cultural heritage of the Nation, both tangible and intangible; 2) modern cultural creation and the performing arts; 3) cultural management and cultural industries; 4) the ethnic and cultural plurality of the Nation.[6]

1. Utcubamba Province
2. Barranquita
3. Bagua
4. Cordillera de Condor / Condor Mountains
5. Inambari Dam Project
6. Paquitzapango Dam Project
7. Mainique Dam Project

Law on Consultation

The Bagua conflict was a tragedy that rocked the country due to its fatal outcome. This clash between Amazonian inhabitants and the police resulted in the deaths of 34 police officers, indigenous people and *mestizos*.[7] One of the great social

lessons to come out of this conflict was the need to dialogue with, provide adequate information to, and consult indigenous peoples with regard to measures that might affect them, as stipulated by ILO Convention 169. In order to advance the process of healing wounds and reaching a *rapprochement* with indigenous peoples, excluded from national decision-making, a Dialogue Group was formed involving the state and Amazonian peoples.[8] This was one of the four committees which aim at seeking consensus around a draft Law on Prior Consultation.

The process for this legal initiative was a long and complex one, featuring progress and setbacks, and with many players and allies intervening, as recognised on numerous occasions by Denis Pashanashe, the young indigenous person responsible for coordinating Committee Three on Consultation. Once in Congress, the bill was channelled through two committees with very different atmospheres: the Committee on Peoples and the Constitutional Committee. The former is more familiar with indigenous rights and the second is chaired by Mercedes Cabanillas, known as the "*Baguazo* minister" as she was the Minister for the Interior at the time of the Bagua conflict, and thus accused of being the main politician responsible for these events.

Public opinion and some persuasive work on the part of the national indigenous organisations[9] resulted in an optimum result when the plenary session of the Congress of the Republic finally approved the "Law on Indigenous and Native Peoples' Right to Prior Consultation as recognised in ILO Convention 169" on 19 May 2010.[10] The indigenous organisations welcomed this adoption, which they considered a "first step towards enforcing indigenous rights in Peru" and they recognised that it was "the start of a responsible dialogue that will establish the route to reconciliation, building a culture of peace between the state and the peoples in the aftermath of the Bagua events".[11]

Unfortunately, the enormous efforts to build trust between the Andean and Amazonian organisations, the Ombudsman, non-governmental and specialist organisations were overturned when Head of State, Alan García Pérez, decided on 21 June not to enact the legislation, making eight observations in this regard.[12] These ranged from not recognising the Andean peasant farmer communities as indigenous peoples to attempting to implement the consultation process only within titled communities, exempting development plans and programmes from the need for consultation, reducing the consultation to a process which, were it to fail to reach an agreement, would assume that reparation was the legally correct

approach, an approach that is clearly based on an assumption that rights can be violated.

The government rejected the legislation approved by Congress despite the fact that, days earlier, the Minister for Work had, during the ILO General Conference in Geneva, described the Law on Prior Consultation as a step in the right direction and a demonstration of the Peruvian state's commitment to indigenous peoples.

One of the benefits of the Law on Prior Consultation was that it set out regulations for the concrete application of ILO Convention 169 on the basis of respect for seven principles and the fulfilment of seven stages of consultation. At the time of writing, this law has still not been enacted and the agenda for the plenary sitting of Congress has two reports awaiting discussion: one from the Constitutional Committee accepting all the government's observations and another from the Committee on Peoples insisting that the text approved on 19 May be enacted.

According to Congresswoman Gloria Ramos Prudencio, a failure to enact the Law on Prior Consultation will only serve to speed up the granting of hydrocarbon concessions over vast areas of the Amazon and to facilitate the promulgation of a new forestry law without the government having to observe consultation procedures, in the false belief that, without a law on consultation, the government does not have to implement such rights. Subsequent events would seem to confirm this assumption.

Dividing up the Amazon region

Different studies indicate that the Peruvian Amazon is experiencing a second "boom" in hydrocarbon exploration, with concessions set to cover 70% of the region, threatening both biodiversity and indigenous populations. One of these studies was conducted by researchers from the Institute for Environmental Science and Technology (ICTA) of the Autonomous University of Barcelona (UAB) and the NGO Save America's Forests, based in Washington DC. It documents the history of hydrocarbon activity in the region and makes projections for the coming five years.[13]

On 14 October 2010, the Ministry for Energy and Mines, through Perupetro, invited tenders for 25 oil concessions located in the Marañón, Ucayali, Santiago, Sechura and Huallaga river basins, of which a record 14 were allocated.

The spills continue

Between 2006 and October 2010, the Argentine company Pluspetrol recorded more than 80 spills, ranging from minor to severe. One of the worst accidents was a spillage of 528 barrels of crude oil into the waters of the Marañón River, which began on 19 June 2010 and affected an area of more than 100 kilometres.

The Peruvian state fined the Pluspetrol, Petroperú and Sanam companies more than 1,600,000 soles (approximately US$ 571,000). The Kukama Kukamirias communities of the Marañón river basin and the neighbourhood councils of the city of Nauta, in Loreto, are still fighting for just reparation and compensation and to ensure that their supplies of water and food are not cut off given that they are still suffering the effects of the spill. A similar situation has arisen among the indigenous communities of Villa Trompeteros, in the Loreto region, where people have had no water since an oil spill into the Corrientes River on 27 September. Pluspetrol played down the importance of this event, claiming that it related to scarcely three barrels of crude oil.

Unfunded supervision

Days before the Marañón spill, the Minister for the Environment, Antonio Brack, announced an imminent halt to the work of the Environmental Evaluation and Supervision Body (OEFA) for lack of funding. He warned that the OEFA would grind to a standstill if the Ministry of the Economy and Finances (MEF) did not transfer the additional resources requested. He explained that his sector required the sum of 34.06 million soles (approximately US$ 12 millions) for 2010, of which only 4.86 million soles (approximately US$ 1,7 millions) had been transferred, insufficient to cover the costs of this ministerial portfolio.

Hydroelectricity for Brazil

An even greater threat began to take shape in the Peruvian Amazon in 2010. The construction of a series of hydroelectric power stations is planned in the context of the “Agreement for the supply of electricity to Peru and the export of surpluses

to Brazil", signed on 16 June 2010. There are currently 15 hydroelectric power stations planned in the Peruvian Amazon and the government has taken concrete steps to commence two of them: Inambari, in the Puno and Madre de Dios regions, and Paquitzapango in the Junín forest. These works will cause the flooding of communities and villages, the destruction of tropical rainforest, irreversible damage to the biodiversity and will increase Peru's vulnerability to climate change.[14]

The Inambari project will affect the buffer zone of Bahuaja-Sonene National Park, one of the world's greatest areas of biodiversity. Moreover, it will displace more than 3,000 people and destroy their way of life by flooding almost 400 km^2 of forest and fields. It will also cause the migration of settlers into the region in search of work, speeding up deforestation and destroying more than 100 kms of the recently built Inter-Oceanic Highway.[15]

Social concern worsened at the end of the year when the government presented bill of law 4335 to Congress aimed at abolishing the requirement to implement Environmental Impact Assessments prior to granting a final concession for the construction of hydroelectric power stations. A press release from the social organisations denounced the fact that the bill was aimed at repealing basic environmental and financial safeguards and "eliminating society's right to participate properly in decisions on large-scale hydroelectric construction".[16]

No development plan for the Amazon

The Energy Agreement between Peru and Brazil is being increasingly challenged both by the social sectors potentially affected and by specialists who comment that it is not an energy integration agreement but rather an interconnection agreement aimed at selling electricity to Brazil. The commitment was made without Peru being clear as to its benefits, however, given that there is no concrete idea of what internal demand is likely to be, and the excess energy to be sold has not been identified, as noted by experts at a meeting in Brasilia.

In 2010, agronomist and forestry specialist, Marc Dourojeanni, together with lawyer and biologist, Alberto Barandiarán, and anthropologist, Diego Dourojeanni, published an important document entitled "*Amazonía Peruana en 2021: Explotación de Recursos Naturales e Infraestructura*" (The Peruvian Amazon in 2021: Natural Resource Exploitation and Infrastructure), in which they warn (with

good reason) that the social and environmental impacts of the different projects "could, in scarcely 10 years, change the Peruvian Amazon drastically for the worse". The text indicates that, in the period up to 2041, deforestation and degradation could have a severe impact on at least 56% of the forest and "in the worst-case scenario, which is the most probable", up to 91%.[17]

The authors propose a moratorium on further works, and on those already approved, and a freeze on negotiations with Brazil (which would grant it rights over the natural resources of the forest, particularly water) "until a Development Plan for the Peruvian Amazon has been approved", preparations for which should commence immediately.

Law on Forests and Wildlife

The process in 2010 to enact a new Forestry and Wildlife Act was a longwinded and frustrating one. The government has been striving to sponsor a new forestry law on the basis that it was a commitment made in the Protocol amending the US-Peru Trade Promotion Agreement, or the Free Trade Agreement (FTA). Some sectors of opinion believe that what is needed is not a new law but rather improvements to the existing legislation.

Back in 2008, the government had already tried to avoid the need for consultation on a new law when it issued Legislative Decree 1090 in the context of the powers granted to the Congress of the Republic to legislate on matters relating to the implementation of the FTA with the US. This was one of the so-called "*Baguazo* decrees" that led to the Amazonian indigenous protest, the Bagua events of 5 June 2009, and it was subsequently repealed through lack of consultation with the peoples involved.

The debate on the Forestry Act continued in Committee Two, which was responsible for evaluating and proposing solutions to the disputed legislative decrees. The government subsequently gave the Forestry and Wildlife Department of the Ministry of Agriculture the task of revising and updating Law No. 27308 in a public, 120-day process in which the contributions of the National Dialogue Group were also to be included.

The process culminated on 22 June 2010 in the dispatch of a draft Forestry and Wildlife Act (No. 4141) to Congress, where it received selective treatment since the bill was considered by the Agricultural Committee, and the presidency

also managed to prevent it from being considered by the Committee for Andean, Amazonian, Afro-Peruvian Peoples, the Environment and Ecology, despite requests from this body and from the indigenous organisations.

The Agricultural Committee organised five decentralised meetings plus one in Lima, following which it ostentatiously announced that it had complied with the right to prior consultation as established in ILO Convention 169. The committee closed the consultation stage and, on 15 December, approved its report by a majority vote, thus referring it to a plenary sitting of Congress for its final approval. Criticism was quick to arise and the Andean and Amazonian organisations, along with civil society and international organisations, claimed that the "good faith" of some indigenous organisations that had attended the informational chats (and with which the Agricultural Committee had tried to claim that it had complied with the need for consultation) had been abused. This led the Agricultural Committee to announce an extension of the discussion period for a further two months, which takes it up to the forthcoming congressional elections.

Criticism of the content

The fundamental criticism is, however, that the new Forestry and Wildlife Act avoids the prior need to title indigenous lands, trying to validate changes in use of forestry lands to agriculture, promoting biofuels and encouraging investment in extractive industries and infrastructure, thus exacerbating the superimposition of rights in these areas.

Shortly prior to approval of the report, the independent Environmental Investigation Agency (EIA) made a series of very precise observations in which it questioned the ambiguity, the lack of conceptual precision and the subjective interpretations of fundamental aspects of the classification and change in land use, the forestry authority's management, the controls and sanctions and the resource management, among other things affecting the indigenous peoples and communities.[18]

The government argued that there was a need to comply with the annex to the FTA with the United States and to speed up the enactment of a new Forestry Act, but the fact that it has not complied with equal enthusiasm to commitments related to its government responsibilities leaves much to be desired. Such responsibilities include increasing the staff to monitor forest areas, implementing an

anti-corruption plan in the forest sector, adopting dissuasive civil and criminal measures for anyone undermining forest resource management, drawing up a complete inventory of plant and wildlife, including the tree species protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and many other issues on which only limited progress has been made.[19]

In summary, the analyst Sandro Chávez considers that, "there has been no real political will to change the serious crisis that is shaking Peru's forestry sector".[20] Meanwhile, deforestation continues apace and a report from the Ombudsman indicates that deforestation of the Peruvian Amazon has now surpassed 150,000 hectares.[21]

An environmental disaster in the Andean region

The environmental impacts of extraction activities have not only been felt in the Amazon. A disaster of huge proportions occurred in the Andes on 25 June when a tailing dam collapsed at the Caudalosa Chica mine (producing lead, copper, silver and zinc), in the province of Huancavelica. The rupture of the dam led to 25,000 cubic metres of toxic waste spilling into the La Escalera, Huachocolpa, Opamayo, Lircay, Urubamba, Cachimayo, Mantaro and Cachi rivers, over a distance of more than 110 kms.

In spite of this eco-crime and the local population's demands that the mine be closed once and for all, the Caudalosa Company apparently began operating again after the Huancavelica Criminal Court agreed, on Tuesday 26 October, to an interim measure submitted by the company.

Repressive measures and human rights violations

Martin Scheinin, UN Special Rapporteur on the promotion and protection of human rights, has stated his concern at the package of legislative decrees enacted by President Alan García, particularly Legislative Decree 1097, which reinforces the climate of impunity in the country. This decree is aimed at granting a veiled amnesty to soldiers and police officers who have committed serious human rights violations. A forceful public letter from the author Mario Vargas Llosa, announcing

his resignation from the post of head of the Committee for Construction of the Museum of Memory, managed to get the government to backtrack on its proposal and repeal the decree.

Legislative Decrees 1094, 1095 and 1096 have, however, remained in force, despite their questionable impact on human rights. The social organisations have repeatedly stated their opposition to Legislative Decree 1095, which authorises the use of force on the part of the armed forces in social conflicts.

This climate of rights violations led the National Confederation of Communities Affected by Mining (CONACAMI) to present 15 cases for violations of fundamental rights, both individual and collective, to the Inter-American Commission on Human Rights, which accepted nine complaints against the Peruvian state for alleged violations of the rights of the country's peasant farmer and indigenous communities. Congressman Guido Lombardi, who chaired the congressional investigative committee into the Bagua events, conclusively maintained, in a TV interview, that the aim of the "*Baguazo*" was to teach the indigenous people a lesson and he emphasised the government's political responsibility in said events with the utmost clarity.

Other questionable measures

Another initiative put forward by the government is bill of law 3817, which aims to amend Law 28223 on Internal Displacements in order to legalise the option to move communities when there is a "public or overriding interest" for the development project to proceed. The Quechua congresswoman, Juana Huancahuari, warned that "the aim of the amended law on internal displacement, which currently protects people or groups affected by armed conflict or natural disaster, is to promote mining, hydrocarbon and dam megaprojects, which would be declared of public or overriding interest."[22] ❍

Notes

1 **Instituto Nacional de Estadística e Informatica (INEI). 2009**. Resultados definitivos de las comunidades indígenas. *National Census 2007*: XI on Population and VI on Housing, Lima, January 2009, p. 7

2 **Instituto Nacional de Estadistica e Informática (INEI), 2009:** Perú: resultados definitivos *National Census 2007*: XI on Population and VI on Housing, Lima, September 2008, Book 1, p. 563.
3 See observations of the CEACR at: http://servindi.org/pdf/OIT_CE_Peru2010.pdf
4 See *The Indigenous World 2010*.
5 Perú: Estado peruano tiene mala fe frente a las organizaciones indígenas, in: http://www.servindi.org/actualidad/34176. Vladimir Pinto is also author of *Perú: Informe Alternativo 2010 sobre el cumplimiento del Convenio 169 de la OIT* (Peru: Alternative Report 2010 on compliance with ILO Convention 169).
6 Perú: Cuestionan disolución del INDEPA y manejo de la institucionalidad sobre pueblos indígenas, in http://www.servindi.org/actualidad/33818
7 Servindi has started a blog providing information on this event and the background to it. See: http://bagua.servindi.org/
8 Supreme Resolution 117-2009-PCM of 10 June 2009 created the National Coordination Group for the Development of the Amazonian Peoples, which has established four working committees: Committee 1: Design and composition of an Investigative Commission into the Bagua Events; Committee 2: Evaluation and proposed solutions with regard to the disputed legislative decrees; Committee 3: Implementation of prior consultation for Amazonian indigenous peoples; and Committee 4: Development Proposal for Amazonian peoples.
9 Representatives from the *Asociación Interétnica de Desarrollo de la Selva Peruana* (AIDESEP), the *Confederación Campesina del Perú* (CCP), the *Confederación de Comunidades Afectadas por la Minería* (CONACAMI), the *Confederación Nacional Agraria* (CNA) and the *Confederación de Nacionalidades Amazónicas del Perú* (CONAP) undertook active lobbying work in Congress.
10 See approved text at: http://www.servindi.org/pdf/Peru_LeyConsulta_aprobada.pdf
11 Servindi, May 22 - 2010: *Resumen Semanal*. http://servindi.org/actualidad/26106
12 See observations at: http://www.servindi.org/pdf/Ley_Consulta_Observaciones21Jun2010.pdf
13 **Finer, Matt and Martí Orta-Martínez, 2010:** A second hydrocarbon boom threatens the Peruvian Amazon: trends, projections, and policy implications. *Environmental Research Letters*. Vol. 5, Num. 1: 014012. (Feb. 2010).
14 See: Perú: Informe Alternativo 2010 sobre el cumplimiento del Convenio 169 de la OIT, September 2010. Pages 9 and following, at: http://www.servindi.org/pdf/Texto_Final_del_Informe_Alternativo_2010.pdf
15 **José Serra Vega, 2010:** Inambari: La urgencia de una discusión seria y nacional. Pros y contras de un proyecto hidroeléctrico, published by *ProNaturaleza*, November 2010.
16 Servindi, 15 November 2010: *Peru: Sociedad civil rechaza proyecto pro centrales hidro eléctricas del Ejecutivo*. http://servindi.org/actualidad/35183
17 See: Amazonía Peruana en 2021: Explotación de Recursos Naturales e Infraestructura: http://www.dar.org.pe/amazonialibro.pdf
18 Observations from the EIA: http://www.servindi.org/img//2010/12/EIA-Aportes-PL4141-30-Set-2010.pdf
19 A table of compliance with these commitments can be found on the Ministry of Agriculture's website: http://www.minag.gob.pe/dgffs/pdf/Matriz%20de%20Cumplimiento%20Anexo%20Forestal%20TLC%20EEUU.pdf
20 **Sandro Chávez:** *Perú: 2010, un año más perdido en lo Forestal*, at http://www.servindi.org/actualidad/37893

21 Ombudsman. Report. La Política Forestal y la Amazonía Peruana: Avances y obstáculos en el camino hacia la sostenibilidad. *Serie Informes Defensoriales* Informe Nº 151. See : http://www.defensoria.gob.pe/modules/Downloads/informes/defensoriales/informe-151.pdf

22 Servindi, 24 de febrero, 2010. Perú: Congresista Huancahuari advierte intención del gobierno para desplazar nativos y campesinos. *http://servindi.org/actualidad/22678*

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BOLIVIA

According to the 2001 National Census, 62% of the Bolivian population aged 15 or over is of indigenous origin. There are 36 recognised indigenous peoples, the largest groups being the Quechua (49.5%) and the Aymara (40.6%), who live in the western Andes. The Chiquitano (3.6%), Guaraní (2.5%) and Moxeño (1.4%) peoples correspond, along with the remaining 2.4%, to the 31 indigenous peoples that live in the lowlands in the east of the country. The indigenous peoples have more than 11 million hectares of land consolidated as collective property under the legal concept of Native Community Lands (*Tierras Comunitarias de Origen* - TCO). Bolivia signed ILO Convention 169 in 1991. The UN Declaration on the Rights of Indigenous Peoples was approved on 7 November 2007, by means of Law No. 3760.

With the election of Evo Morales as President of what is now the Plurinational State of Bolivia with 64.2% of the vote in the December 2009 elections, his party - the Movement to Socialism (MAS) – now has a 2/3 majority in the Legislative Assembly. The impact of the vote, and the extent of the opposition's collapse, which could not even muster 30%, led sectors of the MAS to mobilise and consolidate their social and political hegemony in the local and departmental elections. Elections were held on 4 April to elect local mayors and councillors, plus governors and departmental assemblies. In an unnecessarily aggressive campaign towards the opposition, and even towards some allied political groups,[1] the President personally took up the challenge of extending his party's electoral base. As a consequence, the MAS lost a number of seats in the heart of its social base[2] and, in quantitative terms, more than a million votes, although it still retained control of more than half of the local governments and six of the country's nine departmental authorities. Unlike in the national elections,[3] indigenous peoples were this time able to exercise their political right to elect direct representatives to the departmental assemblies, in accordance with their own rules and procedures. Twenty-three indigenous representatives were thus directly elected

to assemblies in eight of the nine departments.[4] In the case of the local elections, the indigenous movement managed to gain its first council seats in a number of municipalities: five in Santa Cruz department and two in Beni, plus further seats in strategic municipalities in the Bolivian lowlands.

Implementing indigenous peoples' constitutional rights

Transitory Provision III of the Constitution establishes that the Plurinational Legislative Assembly must, within a 180-day period, approve the structuring laws for

the new Plurinational State.[5] With an ample majority in favour of the ruling party, it was hoped that parliamentary approval of these laws would be preceded by an equivalent level of national participation and debate. Apart from a few informational activities, however, in which little could be contributed, responsibility for the laws was handed over to consultants and approved through bodies which allowed for limited public participation.

The indigenous organisations of the lowlands, under the leadership of the *Confederación de Pueblos Indígenas del Oriente Chaco y Amazonía de Bolivia* (Confederation of Indigenous Peoples of the Eastern Chaco and Amazon of Bolivia - CIDOB) participated in the discussions on all five laws but gave priority to two of them: the Law on the Electoral System and the Framework Law on Autonomies. CIDOB therefore set up a technical/political committee to monitor processes in relation to these two laws and their drafting and discussion procedures. This committee coordinated the proposals agreed within CIDOB and other social organisations from Santa Cruz, Beni and Pando in the east of the country.

Despite the fact that the indigenous organisations contributed a proposed Law on the Electoral System, the law that was finally approved was virtually the same as its predecessor (Law 4021/09) in terms of the constitutional violations it contained, namely the violation of the right to elect indigenous representatives to the Legislative Assembly according to the peoples' own rules and procedures, and reduced seats in the departmental and plurinational assemblies. CIDOB was, in fact, one of the few organisations to produce complete proposals for the Law on the Electoral System and the Framework Law on Autonomies and Decentralisation, putting it in a legitimate position to claim that its rights had been violated and that it wanted greater influence over decision-making spaces. Its approval by the Chamber of Deputies was preceded by a two-day hunger strike on the part of recently-elected indigenous deputies who tried in vain to get the offending text removed from the regulations.

The Seventh Indigenous March and approval of the Law on Autonomies

The demand for autonomy has clearly been the mobilising element among the indigenous peoples of Bolivia in recent years, and so many of their expectations were focused on the discussion of the Framework Law on Autonomies, under-

stood as the key to unblocking or clarifying some general aspects of the Constitution and a law that would enable progress to be made towards full exercise of self-determination through territorial self-government.

The government produced almost 40 unofficial drafts of the Framework Law on Autonomies and Decentralisation to prevent a close monitoring of the discussions of the law. The indigenous organisations, for their part, produced a proposal and a series of important observations for each of the drafts, with the aim of reaching a unified government/indigenous proposal. When they realised, however, that the government was going to behave just as it had done in other dialogue processes, namely, distracting the organisations in order to prevent protest and, in the end, ignore their comments, they broke off the negotiations and called a protest. This decision triggered a government campaign attacking CIDOB and its advisors, including the *Centro de Estudios Jurídicos e Investigación Social* (Centre for Legal Studies and Social Research - CEJIS), accusing them of encouraging the use of force to violate the Constitution.[6]

The Sevenths Indigenous March set out on 21 June from Trinidad, the place where the historic first indigenous march "For territory and dignity" had commenced 15 years earlier. The Sevenths March was the first indigenous demonstration in clear protest against the government of Evo Morales. After various days of attacks and counter attacks between government officials and protesting organisations, the March arrived in Ascensión de Guarayos, Santa Cruz department. Three senators from the MAS, all members of the Senate Committee on Autonomies, the committee in which the Autonomies Law had been produced, came to meet the protesters. A team of committee advisors and members of the Political/Technical Committee of the March[7] worked with them for more than 17 hours, by the end of which they had reached a basic agreement on the wording of various articles and obtained a commitment from the senators that they would use their parliamentary majority to get these approved in the committee and that the changes would form part of the bill to be approved as Law. Subsequent follow-up provided by the indigenous deputies even ensured that the agreements would form a set of demands that could be used as a basis for changing or improving many other parts of the bill of law that were either directly or indirectly related to the agreements. The Seventh March thus managed to influence the following issues:

Definition of Peasant Farmer Native Indigenous Territory

There was a risk that the constitutional name given to the indigenous autonomies, "Peasant Farmer Native Indigenous Territory" (*Territorio Indígena Originario Campesino),* could imply a shared ownership of agrarian rights between indigenous peoples and peasant farmers over territories to which the former hold the title. With clearer drafting, it was possible to specify the exclusive nature of the ownership rights of titleholders.

Conditions for accessing autonomy

The official draft anticipated, among other things, that for autonomy to be established over an indigenous territory, the people had to have at least 3,000 members in the lowlands, a stipulation that would rule out more than 80% of the peoples in that region. This was a clearly liberal criterion, in contradiction with the current model of the Plurinational State. This requirement has been removed.

Approval of statutes of autonomy

Although the negotiators backed down with regard to the fact that the statutes would be approved via a referendum[8] in which non-indigenous people would also participate, these people will need to be registered in advance by the electoral body, in coordination with the indigenous government.

Boundaries

It was agreed that, where municipal jurisdictions overlap with those of the autonomous indigenous territories, the former will cede their boundaries in favour of the latter. In addition, the fact that a territory crosses departmental boundaries will not form an obstacle to establishing an indigenous autonomy as a joint indigenous community will simply be formed between both regional zones.

Economic/financial system

The negotiators managed to get a financial structure similar to that of the municipalities included (although pending a fiscal agreement) which involves incorporating variables that will benefit the indigenous autonomies and a modification of the liberal criteria for allocating public funds.

Approval of the Law on Racism

Following the approval of the five laws indicated in Transitory Provision III of the Constitution, the Law on Racism and all forms of Racial Discrimination came under consideration, a law that will transpose the relevant UN Convention into domestic law.[9] The national debate that was generated around this law served once again to bolster the confrontation between the government and opposition, ignoring central issues that would enable age-old practices of racism and political, social and cultural discrimination to be overcome, practices to which large segments of the Bolivian population find themselves victim.

Just two articles caused the controversy, calling into doubt the very need for a law that had been so long awaited by wide sectors of society. These articles related to an apparent attempt to violate the media's right to freedom of expression: Articles 16 and 23 of the Law. These articles led to demonstrations and protests on the part of the private media, particularly those whose owners form part of the power sectors that are involved in the media clashes with Evo Morales' government.

Racist attacks and political discrimination in the east[10] formed a fundamental part of the strategy of political and social confrontation employed by the opposition, and the victims of this were indigenous people, Andean migrants and people not politically aligned with the region's "official" position.

The indigenous peoples, popular sectors and human rights organisations defended a law that would be of benefit to them, despite participating little in the debate, which became unnecessarily politicised. The Office of the UN High Commissioner for Human Rights in Bolivia made various statements clarifying doubts as to the relevance and appropriateness of a law that the state had undertaken to approve many years ago and which was required to comply with the international bodies.

Approval of the Law on Jurisdictional Demarcation

The Law on Jurisdictional Demarcation, Law No. 102 approved on 22 December, was intended to provide criteria by which to define the boundaries of and coordination between the indigenous jurisdictions recognised in the Constitution and ordinary jurisdictions. The draft Bill of Law underwent an important prior consultation process, although subsequent parliamentary consideration and changes

made to the text without consultation led to comments from the indigenous organisations and their parliamentary representatives. These comments could be summarised as follows: a) application of indigenous jurisdiction only to indigenous peoples, reducing the special jurisdictions to ghettos; b) lack of definition of the coordination and cooperation mechanisms between legal systems; c) establishment of liberal participation criteria in the exercise of the indigenous jurisdiction;[11] f) prevention of the indigenous jurisdiction from hearing cases of violence against women, as well as being banned from applying punishments to certain other groups such as children, teenagers and the elderly. Indigenous justice would thus effectively only hear cases involving men between the ages of 18 and 65 years of age. CIDOB has already proposed revising this Law which, as it stands, is inapplicable in many indigenous jurisdictions whose systems are already in full operation.

Approval of the Law on Mother Earth[12]

The Law on Mother Earth was considered in a number of arenas, first in the organic spheres of the native indigenous peoples and peasant farmer organisations, which managed to get elements of a social, economic and political nature included. In order to have an impact on the discussions, the organisations resorted to re-convening the Unity Pact.[13] The Law on Mother Earth which was initially proposed by these organisations, contained a series of original elements, in addition to being the only one of its kind and the first to propose, for example: a) the equality of man and nature, meaning that Mother Earth is considered the subject of rights; b) its relationship with the model of *vivir bien* "Living Well" as an alternative to capitalism, for which reason it attempts to propose an economic model based on the communitarian nature and not the market-based nature of land.

The Law on Mother Earth that Evo Morales took to the UNFCCC summit in Cancún was not, however, that which was discussed and agreed with the Unity Pact organisations. In fact, a document of general principles, unknown to the organisations, was approved in the rush prior to the President's trip to the Climate Change Summit. It did, however, include a number of aspects of the agreed Bill of Law. The Law on Mother Earth, approved under No. 071 of 21 December, contains constitutional aspects such as consultation of the indigenous nations and peoples, now renamed prior and informed consent, the creation of state bodies that will now serve as niches for the peoples' institutions within the state, and

the reaffirmation of the plural economic model noted in the Constitution, which proposes that communitarian economies should not be subject to degrading forms of capitalism.

Progress in the process of regularising and titling indigenous territories

Despite opposition from the large landowners, the Bolivian state managed to achieve the release of a number of Guaraní families who had been held in virtual slavery on a number of ranches in the Chaco region. In the context of the process to regularise lands in the Alto Parapetí territory, the Caraparicito (15,262 has),[14] Buena Vista-Isiporenda (4,894 has) and San Isidro (3,790 has) ranches were seized without compensation. These lands will now form part of the Alto Parapetí territory (Native Community Land – TCO).

It is, however, clear that there are problems to be faced following the release of the Guaraní families if the process is to be prevented from failing, given that the so-called Temporary Interministerial Plan came to an end in 2009 with no other programme to replace it. This is creating difficulties in the effective consolidation of the lands and in terms of providing support to production activities and the establishment of minimum housing for the freed families.

The Great Assembly of Indigenous Peoples (GANPI)

The Great Assembly of Indigenous Peoples (GANPI) was held from 23 to 26 November 2010. This is the highest decision-making body of CIDOB, renewed every four years.

The election of a new leadership team in 2010 gave rise to a conflict that degenerated into a schism within the organisation for almost two months. The difficulty came about because of questions over how elections were handled by the electoral committee, and changes made to CIDOB's statutes to enable Adolfo Chávez Beyuma (Tacana from the La Paz department, who was elected to head the organisation in 2006) to stand for re-election as president, despite questions over his management.[15] The elections still took place and the opposition leaders agreed to a vote under these conditions, trusting that their prior agreements would guarantee them electoral victory.

They were soundly defeated by the re-elected president, however, and so the leaders of the organisations in question refused to recognise the new management team, rejecting the legitimacy of the election. They managed to physically take over CIDOB's offices and establish a Temporary Leadership composed of representatives of the three dissident organisations. They stood fast until 12 January 2011, when a meeting was called by Adolfo Chávez' leadership team, which offered three portfolios to the organisations that had taken these extreme measures.[16] The conflict came to an end with the acceptance of a longer presidential term (five years instead of four), albeit with the promise that the Assembly of Guaraní People (*Asemblea del Pueblo Guaraní*) would head the organisation from 2015 on. No area of the organisation's programme, political or structural, formed part of the negotiations or agreements.

The problems in the GANPI are a reflection of a wider situation that a large part of the Bolivian indigenous movement has been experiencing for some time now. Elements of a structural nature have an impact on this situation, as do aspects of political leadership within the organisations' management teams. The pressure exerted by national government, regional power sectors and international cooperation over the leaders is another reason behind the crisis. These latter are permanently trying to mould their position and influence their decisions, given the symbolic role the indigenous people have in this process and, above all, in the region.

Although unity and peace seem to have returned to the indigenous movement, none of the problems that were at the root of the crisis have been resolved; on the contrary, they have been left dangerously hanging, their settlement postponed. ❍

Notes

1 As was the case of the Movement without Fear (MSM), the main group that formed part of the pro-government alliance and which controls the strategic city of La Paz, until the MAS broke with the alliance during the campaign for the April elections.

2 The MAS was defeated in La Paz, Oruro, Potosí, as well as other symbolic towns such as Achacachi, the main Aymara settlement in the Altiplano, all won by its former ally, MSM.

3 The indigenous representatives in the Plurinational Legislative Assembly had to be elected via a universal vote and nominated via political parties, in violation of the constitutional provisions.

4 Four representatives were elected in Beni, two of them peasant farmers.

5 These are: the Law on the Electoral Body, Law on the Electoral System, Law on the Judicial Body, Framework Law on Autonomies and Decentralisation and the Law on the Plurinational Constitutional Court.
6 The campaign of attacks on demonstrators included accusations of being funded by US cooperation, USAID, as well as accusations that their promoters represented a kind of social base for the oligarchic right in the east of the country, the government opposition.
7 The Committee, led by the Chiquitano José Bailaba, also comprised Álvaro Infante, (CIDOB advisor), Leonardo Tamburini and Iván Bascopé (CEJIS advisors) and Ramiro Valle (CIPCA NGO advisor).
8 The 7th March was asking that an autonomous territory be approved through the usual procedures of the indigenous people of that territory, while the government was proposing a referendum.
9 International Convention on the Elimination of all Forms of Racial Discrimination, 4 January 1969.
10 Departments in the east of the country, i.e., Santa Cruz, Beni, Pando and Tarija.
11 For example, guaranteeing women's participation in administration, which is totally alien to the indigenous reality of many peoples.
12 CEJIS Regional La Paz. *"Hacia la construcción de una política integral y sustentable de los RRNN desde los derechos de la Madre Tierra".* January 2011. Base document.
13 Alliance between the indigenous confederations (CIDOB-lowlands; CONAMAQ-highlands), peasant farmers (CSUTCB) and settlers, who now call themselves "intercultural communities" (CSCB).
14 Ranch of Ronald Larsen, a US citizen who was involved in kidnapping a joint government/Guaraní committee that was trying to commence the process of land regularisation in Alto Parapetí in February 2008.
15 The questions came from the Assembly of the Guaraní People (APG), the Coordinating Body of Ethnic Peoples of Santa Cruz (CPESC) and the Coordinating Body of Mojeño Ethnic Peoples of Beni (CPEM-B).
16 Nelly Romero was the vice-president, Ernesto Sánchez, from the CPEM-B, the economic development secretary and Manuel Dosapey from CPESC the natural resource secretary.

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BRAZIL

Brazil covers an area of 851,195,500 hectares, and the Indigenous Lands (*Tierras Indígenas* or TIs), 654 of them in all, account for 115,499,953 hectares of this; in other words, 13.56% of the national territory is set aside for indigenous peoples. Most of the TIs are found in the region of the Legal Amazon: 417 TIs totalling approximately 113,822,141 hectares. The remaining 1.39% is divided between the north-east, south-east, south and centre-west of the country.

The indigenous population of Brazil numbers some 734,127 people, or 0.4% of the national population; of these, 383,298 live in urban areas. They are grouped into 227 peoples, half of which comprise less than 500 individuals in all. Only four – the Guaraní – have a population of more than 20,000. It is estimated that there are 46 peoples living in isolation or voluntary isolation.[1]

2010 was marked by the election of a new Brazilian president, Dilma Roussef, and by various controversies over the Growth Acceleration Programme (PAC), a key policy focus of the presidential campaign and one that will have a direct impact on the indigenous territories.

The eight years of Lula's government were characterised by a massive disregard for indigenous issues: fewer indigenous territories were titled and the Growth Acceleration Programme was commenced, involving 426 hydroelectric projects that will have a direct or indirect impact on the indigenous lands (see, for example, the Belo Monte case)[2], thus violating the indigenous peoples' right to free consultation,[3] as established in ILO Convention 169.

In addition, a record number of indigenous leaders were murdered over this period, while struggling for their traditional territories.

The indigenous peoples voiced their discontent at last year's events, demonstrating their opposition to the hydroelectric power stations and the lack of implementation of their constitutional rights.

1. Rio Brilhante Municipality
2. BR 463 Federal Highway
3. Paranhos Municipality
4. Coronel Sapucaia Municipality
5. Sidrolândia Municipality
6. Xingu Indigenous Park
7. Belo Monte Hydro-Electric Project
8. Juruna Hydro-Electric Complex
9. Madeira River Hydro-Electric Complex
10. Estreito - Tocantins Hydro-Electric Project
11. Bacia do Rio Tibagi Hydro-Electric Plant

Demarcations and conflicts on indigenous lands

2010 was no different to previous years. Demarcations and promised new land titling did not materialise. The state's indifference with regard to the demarcations

can be seen from the following figures: of the 988 lands inhabited by the indigenous population, 323 have no legal status and 146 are under consideration but have not yet been identified as indigenous lands (TI). With regard to the lands in the process of being demarcated: 20 have been identified; 60 have been declared; 35 have already been approved and 366 have been registered.[3] According to Roberto Antonio Liebgott, vicepresident of CIMI (Conselho Indigenista Missionario): [4]

> (...) *the demarcation process is at a standstill. (…) as of August 2010, Lula's government had not identified any lands out of the 327 indigenous lands without legal status. In contrast, the government has been suspending some lands already recognised and declared as TIs. In the eight years of his government, only 88 indigenous lands were approved, totalling 14,339,582 hectares.*[5]

A good example of the government's wilful and arbitrary paralysis of this matter is the fact that, of the 15 million dollars available for the demarcation of indigenous lands, only 8.41% was used.

The following examples will illustrate this more clearly:

- The Xucuru Kariri people: on 14 December 2000, Justice Minister Luiz Paulo Barreto declared the Xucuru Kariri TI in Palmeiras dos Índios municipality, Alagoas, as the permanent possession of the Xucuru Kariri people. The land was identified in 1973, and only now, 37 years later, has it become a permanent area for this people.
- The Tupiniquim and Guaraní peoples: on 8 December 2010, the Comboios and Tupiniquim TIs were approved in Aracruz municipality, Espírito Santo state, the Tupuniquim TI with an area of more than 14,200 hectares and that of Comboios with 3.8 hectares.
- The Pataxó hã-hã-hãe people from Caramuru Catarina Paraguaçu community requested regularisation of their lands some 28 years ago but now live in fear of their lives, under threat from armed men.
- Constant complaints are being made by the Yanomami people with regard to invasions of their land[6] by precious stone and mineral prospectors and ranch owners, threatening not only their territory but also the health of their people. Cases of malaria have risen alarmingly.[7]

- Tekohá Ypo`i y Triunfo, Paranhos municipality: conflict over the land of São Luiz estate. Eighty Guaraní individuals were cruelly evicted between 1 and 3 October 2009. Although they have now recovered their lands, they are being threatened by armed men hired by the ranch owners.
- Nothing was done in 2010 about the 36 Kaiowa-Guaraní indigenous lands that should have been declared by 30 June 2010. This resulted in the National Indian Foundation FUNAI being fined the sum of 400,000 Brazilian reales (approximately 252,000 US$), in accordance with the provisions of the Conduct Adjustment Agreement (TAC).
- Taquara TI: in line with a preliminary ruling of the Supreme Federal Court, Minister Paulo Barreto suspended Decree 954 of 4 June 2010, which had declared the Taquara Indigenous Land as a traditionally indigenous land, conferring permanent ownership of the area on the indigenous Guaraní-Kaiowa group.
- Tumuné Kalivono village – Cachoeirinha TI: the Terena people are urgently calling for a regulation to enable demarcation of their traditional lands as this village is on a 1,918-hectare area of land claimed by the Petrópolis and São Pedro do Paratudal estates, registered as the property of the former governor of what was then Mato Grosso state, Pedro Petrossian. FUNAI has identified an area of 36,288 hectares as Terena, affecting 54 ranches, although the Terena people currently only occupy 2.68 hectares of this.

Mato Grosso del Sur state, which is considered to have the most land conflicts in the country, is suffering the most from this paralysis and the ambiguous policies of the government.

Growth Acceleration Programme

The Growth Acceleration Programme (PAC), flagship policy of Lula's second term in office, is a developmentalist project focused primarily on the construction of highways and hydroelectric power stations. 44% of the hydroelectric power being planned by the government is based on indigenous lands. There are 83 hydroelectric power stations already in operation and 247 more planned for the Amazon, potentially affecting as many as 44,000 people.[8]

The 2007 UN Declaration on the Rights of Indigenous Peoples, signed by Brazil, establishes that the indigenous population has the right to free, prior and informed consent. Similarly, ILO Convention 169 guarantees indigenous peoples the right to be adequately consulted before any legislative or administrative measures are adopted, including infrastructural works, mineral exploitation or the use of water resources. However, this position has not been respected by the Brazilian government.

Hydro-electric power stations

"We are not fish living in the river, nor birds or monkeys living in treetops. Leave use in peace," said the indigenous Munduruku people in a letter to President Luiz Inácio Lula da Silva stating their opposition to the construction of five hydroelectric power stations in the Tapajós River basin.

- Belo Monte: on 1 February 2011, the initial licence was granted for the construction of a hydroelectric power station in Belo Monte,[9] in clear violation of the UN Declaration on the Rights of Indigenous Peoples and of the rights of the communities affected by the project, given that the Brazilian government did not undertake any prior consultation of the people in question. In October 2010, the UN Special Rapporteur on the rights of indigenous peoples, James Anaya, recommended that the country hold hearings and take the results of these consultations into account when deciding whether or not to build the dams. For the Belo Monte hydroelectric power station project, it is anticipated that 1,522 km^2 of forestland will be destroyed, 516 km will be flooded and 1,066 km will be left without water following the permanent diversion of the Volta Grande do Xingu, along with actions that will directly affect the region's plant and wildlife. This is in addition to the actions planned on the Tocantins, Araguaia, Uatumã, Madeira, Xingu, Tapajós and Trombetas rivers.
- The initial construction licence for the Teles Pires plant was granted to IBAMA on 11 December 2010, without any prior consultation of the indigenous peoples affected. The Teles Pires power station will be built between the towns of Paranaíta (Mato Grosso) and Jacareacanga (Pará), in the area known as Cachoeira Sete Quedas. The dam will cover a total area of 151.8 km and will include an associated 500 kV power line, seven kilometres long, running along the left bank of the river.

- The São Manoel and Foz do Apiacás hydroelectric power stations are immediately down river, right on the boundary of the Kayabi TI, which the preliminary studies considered to be an Area of Indirect Influence. Past this, further down river, lies the Munduruku TI which – along with 16 important archaeological sites - will also be affected by the Teles Pires, São Manoel and Foz do Apiacás plants. In Jacareacanga municipality (Pará state), 59% of the land is indigenous. The Teles Pires plant will affect 66,000 km^2 of remote, often indigenous, land that is home to some 20,000 people and which has an indigenous vegetation.
- Jurema hydroelectric complex: a complex of 11 micro hydroelectric power stations (PCH) along a 130-km stretch of the Jurema River is threatening the lives of the Enawie-nawê people. The work is directly threatening the river and its fisheries. One of the Yaõkwa people's main rituals takes place in this area, and this is now under threat. One of the PCHs, Dardelos, destroyed an ancient cemetery of the Arara people of the Branco River.
- Tucuruí power station: the Marabá Federal Public Prosecutor's Office began proceedings against Eletronorte to force it to pay compensation for and mitigate the damage caused to the Assuriní people following the construction of the Tucuruí hydroelectric power station. Amongst other things, there has been deforestation and a degradation in the headwaters and banks of the rivers that supply the Indigenous Land, with sedimentation and an alteration in the water quality.[10]
- Tapajós hydroelectric complex: this will flood 9,500 hectares of forest in the Amazonia national park. Five hydroelectric power stations are planned, and these will directly affect the Munduruku people.
- Indigenous peoples in isolation are also being threatened by the hydroelectric power stations:[11] the work on the Río Madeira complex is having a serious impact on indigenous peoples living in voluntary isolation, particularly those living in the environmental reserves of Serra de Três Irmãos and Mujica Nava and the basins of the Jaci Paraná and Candeias rivers. The main threats are the Urucu-Porto Velho gas pipeline, the activities of logging and soya production companies, plus the Madeira River hydroelectric power station. The Río Madeira-Santo Antonio hydroelectric complex will directly affect the Karitiana and Karipuna peoples, who are mobilising to protest against the rise in water level and the damage that will be done to the region's plant and wildlife.

Main activities of the indigenous movement

Throughout the year, the indigenous organisations continued to call for the implementation of measures that had already been approved but which were still being overlooked, in clear disregard of the indigenous peoples' national institutions.

- The 7th Free Land Camp (16-19 August) was one of the main indigenous actions in Brazil last year. It was held in August at Campo Grande, Mato Grosso del Sur, and criticised the central government, the states and local authorities for the slow pace of indigenous land demarcation. It was decided: to reject PAC I and II, which have a direct impact on indigenous lands; to demand a more humane treatment of indigenous peoples within the health systems, ensuring respect for their specific needs; to call for ongoing and permanent quality education in the villages and the nearby indigenous lands, in accordance with the needs of each people and with the appropriate infrastructure, human resources and materials. The meeting rejected the way in which the Brazilian government had been taking administrative decisions on matters affecting indigenous peoples, such as (among other things) the restructuring of FUNAI, without ensuring their free, prior and informed consent.
- The Aty Guassu (Grand Assembly) of the Kaiowa Guarani (17 to 21 March) was one of the main meetings of the Guaraní people, at which the following demands were made: compliance with the Conduct Adjustment Agreement and faster implementation of the land demarcation process, as delays had led to overpopulated villages with high rates of violence, suicide and drugs trafficking. Mato Grosso del Sur is considered the most violent state, due to the actions of large landowners.
- The 3rd Continental Meeting of the Guaraní People was held in Paraguay from 15 to 19 November, at which representatives of the different Guaraní organisations from Argentina, Bolivia, Brazil and Paraguay met to discuss the issues of Land-Territory, Autonomy and Governability, demanding, amongst other things, that the governments recognise the Guaraní nation and its trans-territorial and cross-border nature. They called for the same rights to health, education and work in all four countries.[12-13]

- The Indigenous Organisations of the Negro River (FOIRN) held an assembly from 27 April to 1 May on the issue of collective rights. In November, FOIRN also produced a proposal for indigenous higher education in the north-west Amazon.
- From 1 to 7 November, the 4th General Assembly of HUTUKARA, a Yanomami association was held, on the theme of climate change.

Education

Over the year, the Ministry of Education, together with indigenous leaders, began to discuss new prospects and policies for indigenous school education, via the creation of Ethno-educational Territories, i.e. territories of ethnic similarity. They hope, in this way, to ensure that the Brazilian state will recognise each people's indigenous school education on the basis of its own territorial organisation. The ethno-educational territories form part of a national policy on organising indigenous schools, established in Decree No. 6861 of 27 May 2009.

Health

On 19 October, the Special Ministry for Indigenous Health was created by means of the draft Conversion Law. This department will report directly to the Ministry of Health, and has been a demand of the indigenous organisations given the constant irregularities suffered, ranging from a lack of care to the diversion of the National Health Foundation's (FUNASA) funds. Measures to ensure that indigenous people are not left without care at this crucial moment are, however, being implemented irresponsibly with the result that, of 200 children born to the Xavante people of Campinópolis, Mato Grosso state in 2010, 60 died of malnutrition. ❍

Notes

1 Data from the Socio-environmental Institute (ISA), Missionary Indigenist Council (CIMI) and Brazilian Institute for Geography and Statistics (IBGE).
2 www.socioambiental.org
3 Idem.

4 www.cimi.org.br
5 Idem.
6 Yanomami documentan minas clandestinas. *Noticias Socioambientais*, 12 January 2001.
7 Hutukara Yanomami Association.
8 See: www.socioambiental.org
9 http://picasaweb.google.com/telmadmonteiro/BeloMonteLP?authkey=Gv1sRgCLO5kav3u9X2YQ&feat=flashalbum#5433693688724169634
10 www.prpa.mpf.gov.br/noticias/2010/noticias/mpf-processa-eletronorte-por-danos-da-usina-de-tucurui-aos-indios
11 telmamonteiro.blogspot.com
12 www.cimi.org.br

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PARAGUAY

The 2008 Indigenous Household Survey (EHI 2008)[1] gives an approximate indigenous population of 108,803, or around 2% of the Paraguayan population. There are 20 recorded indigenous peoples, belonging to 5 different linguistic families: the Guaraní (Aché, Avá Guaraní, Mbya, Pai Tavytera, Guaraní Ñandeva, Guaraní Occidental); the Lengua Maskoy (Toba Maskoy, Enlhet Norte, Enxet Sur, Sanapaná, Toba, Angaité, Guaná); the Mataco Mataguayo (Nivaclé, Maká, Manjui); the Zamuco (Ayoreo, Yvytoso, Tomáraho); and the Guaicurú (Toba Qom).

Paraguay enjoys a favourable legal framework for the recognition of indigenous peoples' rights, having transposed ILO Convention 169 into its domestic legislation in 1993.Paraguay also voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007.

The Inter-American Court of Human Rights ruled against Paraguay in relation to violations of the human rights of two Enxet communities and one Sanapaná community in 2005, 2006 and 2010 respectively.

The remote state[2]

The Yvyra'ijá indigenous community of the Pa Tavyterã people comprises some 32 families settled on 1,200 hectares of land in the Yvy Yaú district, Concepción department, the land title for which is held by the Paraguayan Indigenous Institute (INDI). The community does not have state-recognised legal status and virtually none of its members have identity documents. There is no health service and only a very basic school teaching up to fourth grade.

On 4 September 2010, this community was invaded by an armed group comprising, according to various consistent witness statements, 10 men bearing weapons of varying sizes and calibres who burst into the community settlement, firing into the air. The armed group proceeded to detain three people, namely Obdulio Ferreira, Salvador Arce and Cornelio Ferreira, who were subjected to physical torture, including burn-

ing one of them with hot coals, in addition to degrading humiliation. The victims' houses were burnt to the ground, with all of their belongings inside, and the attackers went on to shoot the three individuals in the presence of their families and other community members. They then continued firing at the rest of the community in order to evict them from the settlement. Under such circumstances, the indigenous people fled the area, leaving their houses and all their belongings behind.

The crime was reported the same day to the area's police station and to the Attorney-General's Office. The authorities took no action until 30 hours later, however, and then only to remove the bodies that were lying scattered in the settlement. The Public Prosecutor, Camila Rojas, from Yby Yaú, took up the case and, although some formal investigations were conducted in the days that followed, no concrete results - such as the arrest of those responsible or references to those suspected of being behind the actions – were ever forthcoming.[3]

Illegal evictions: arbitrary court actions continue

In 2010, the judge of the Caaguazú Court of First Instance, Carlos Giménez, ordered the eviction of the community known as "*15 de enero*", a community of Mby'a Guaraní people settled in the Margarita colonization in Mariscal López district. This order was fulfilled on 7 September 2010.[4] This case is symbolic not only for its violation of the right to collective ownership of habitat but for its clearly discriminatory application of the law.

The judge never took into account the property rights of the evicted community, arguing only on the basis of the property rights of the individual who was claiming ownership of the building for himself. Nor did he take into account the property rights of the community to which the evicted Mby'a families were transferred (Joyvy community in Yhu district, in the same department), which was forced to accept strangers into its midst without any consultation and without its consent, without the due agreement of the homeowners. To understand this situation better, imagine this was a judge evicting a cattle rancher or soya farmer from his estate and then ordering his forced transfer to another property owned by another cattle rancher or soya farmer, thus restricting the latter's enjoyment of his own lands, imposing the presence of the evicted farmer on him without any warning and without his consent, on the legal basis that both "are the same" (cattle rancher and soya farmer), and so they can live and work together merely because they share an apparent identity, failing to consider the different legal statuses in both cases.

1. Ayoreo
2. Ishir
3. Nivaclé
4. Maká
5. Manjui
6. Enlhet (Enxet)
7. Guaná
8. Sanapaná
9. Angaité
10. Toba Maskoy
11. Qom
12. Guaraní occidentales
13. Guaraní Ñandéva
14. Pai Tavyterâ
15. Mbyá
16. Avá Guaraní
17. Aché

New court ruling against Paraguay

On 24 August 2010, the Inter-American Court of Human Rights declared Paraguay internationally responsible for failing to guarantee the right to communal property, for failing to provide judicial guarantees and judicial protection, for violating the rights to life, to physical integrity and to recognition of legal status, as well

as the rights of the child, and for failing to comply with the duty of non-discrimination, all to the detriment of the Xákmok Kásek indigenous community. This community comprises 66 families, or a total of 268 individuals,[5] settled on 1,500 hectares of land loaned by a community of the Angaité people, whilst awaiting the 10,700 hectares that the state must now return (IACHR, 2010).

In 1990, the members of this community began proceedings through what was then the Institute for Rural Well-being (IBR), now the Institute for Rural Development and Land (Indert), with the aim of recovering a part of their traditional lands. They were claiming an area of 10,700 hectares within the Salazar estate as their traditional territory, in an area known as Retiro Primero or Mompey Sensap. Given the failure of these administrative proceedings, and following various frustrated negotiations, the community unsuccessfully turned to Congress in 1999 to request expropriation of the said lands. At the end of 2002, part of the indigenous territory (3,293 ha) was subsequently purchased by a Mennonite cooperative. In 2008, the government declared 12,450 hectares of the Salazar estate a Protected Wildlife Area under private ownership (Decree 11804/08), without consulting the community members or considering their territorial claim, despite the fact that 4,175 hectares of this reserve overlaps with lands being claimed since 1990. That same year, the community submitted an appeal for unconstitutionality to the Supreme Court of Justice (CSJ) in relation to this decree, but this appeal has yet to receive a decision from the highest court in the country.

Throughout these long years of struggle and domestic and international proceedings, as established by the IACHR itself in its resolution, the Xákmok Kásek community lived on the Salazar estate but found their use of their territory restricted by the private owners of the lands they were occupying. They continued to move around the land, however, practising some subsistence activities, and many community members worked on the farm. In recent years, the community found its way of life, its traditional subsistence activities and its movements around its traditional lands increasingly limited. Hunting was completely banned, the private owner had hired security guards to monitor movements into, out of and around the estate, and the people were unable to fish or gather food. (cf. IACHR, 2010: paras. 74 and 75).

This resolution is the third ruling from the Inter-American system against the Paraguayan state. In 2005 and 2006 it was convicted in the cases of the Yakye Axa and Sawhoyamaxa communities. The Court's two first rulings remain unimplemented, and so now, with three rulings against it in relation to similar issues,

Paraguay has a notorious reputation within the Inter-American human rights protection system in terms of violating the rights of indigenous peoples.

The discriminatory and rights-denying position that Paraguay's country delegation took during the case before the IACHR must also be noted. On the basis of an extremely weak argument, it suggested that the indigenous deaths had been caused by the people's "lack of interest" in attending healthcare centres (the community in question is some 400 kms from the health centre that the state indicated it should use). It also stated that the fact that these people did not pay taxes was an obstacle to returning their land since the state could not collect the money necessary to subsequently provide them with aid. The trial itself was plagued with discriminatory acts, such as calling on the title holder, a person with whom the indigenous community is at dispute, to gather statements from community members working on his farm; and refusing to allow the victims to speak before the IACHR in Guaraní. Such attitudes demonstrate the state's stupidity in refusing to acknowledge the clear violations of indigenous peoples' rights that have occurred and to show any willingness to grant reparations.

The Inter-American Court's resolution contains points that are clearly a result of the state's inaction with regard to its previous rulings, such as imposing fines should there be any delay in complying, and frequently recalling points already ruled on by the court.

Land security

On a positive note, the lands occupied and ancestrally owned by the Enxet community of Kayawe Atog Kelasma were finally secured on 29 July when INDI received the final transfer of ownership of some 10,030 ha in the Chaco. The purchase was made in favour of the community, following a process that has taken 19 years. The land in question forms part of the Enxet's traditional habitat and its return will benefit some 61 families settled in the places known as San Fernando, Paso Lima and Kurupayty, approximately 65 km to the north-east of Pozo Colorado, in the Presidente Hayes department.[6]

Another such case is that of the Cerro Pytã community which, back in 1996, managed to get Congress to expropriate the area being claimed by them (Law 989/96), although the procedure for the final titling of their land was not completed until 5 August this year.[7] INDI reached an agreement over the price and paid this

amount, with which ownership of the property was finally transferred, enabling the lands to be secured on behalf of the community through their definitive titling.

Visit of the Inter-American Commission's rapporteur

From 3 to 7 September, the Inter-American Commission on Human Rights' rapporteur on the rights of indigenous peoples visited Paraguay. The North American commissioner, Dinah Shelton, headed a delegation whose packed agenda included, in addition to interviews with state officials and civil society, field visits to the communities of Yakye Axa, Sawhoyamaxa, Kelyenmagategma and Y'ãka Marangatu.

She was able to see for herself the poor living conditions in these communities, the case of the Enxet living in Puerto Colón being particularly illustrative. The delegation faced innumerable problems and risks to their security in visiting this community due to the insufficient guarantees provided to the mission by the state, even though it was the government itself that invited it.

Ms Shelton was able to fully note the complaints made by members of Kelyenmagategma regarding the conditions of overcrowding and the restrictions placed on their movements, involving the impediments of visits, including from their lawyers. In fact Ms Shelton, along with her whole delegation, was detained by armed guards as soon as they arrived at Puerto Colón.[8]

The state has shown itself incapable of imposing its sovereignty in this case, leaving this Enxet community at the mercy of a private individual. They have been suffering all kinds of arbitrary actions for several years, especially since 2003, as reported in previous issues of *The Indigenous World*.

Public policies: the tests continue

The government this year made known its proposed Social Development Policy for 2010-2020. Among other things, this contains various specific programmes considered to be "emblematic".[9] One such programme, entitled "Territory, participation and development: indigenous peoples secure their territory", proposes giving indigenous communities access to land (Social Cabinet, 2010).

Whether the intended outcomes will be achieved or not remains to be seen, as they will largely depend on the actual budget allocated to this programme in 2011. Nonetheless, as a road map for addressing the main problems requiring a concrete response from the state, this is a new instrument that the social movement should take on board in terms of ensuring its monitoring and enforcement.

One criticism is that its wording lacks any rights-based focus, and this becomes clear when one reads that the action has emerged on the basis of the "detected needs" rather than the state's obligations. Although they may initially appear to be the same thing, this is not the case, as this reveals a conception that goes no further than dealing with urgent social issues, despite the potential the different state bodies have either to adapt themselves or to create new institutions imbued with human rights values and principles.

On the issue of land, in particular, none of the "emblematic" programmes include the state's obligations resulting from the IACHR resolutions. With regard to access to land, the IACHR ruling called for a revision of legislation in this regard, having noted the ineffectiveness of current laws, which are completely out of line with international standards.

One positive point was the establishment of the General-Directorate for Indigenous Health (DGSI) within the Ministry of Public Health and Social Well-being (MSPBS). This inaugurated its work this year with a congress that was massively attended by indigenous community leaders and members. Progress made in its planning has not yet been made known, however, and so this will be analysed in subsequent reports.

Outrages against the defenders of uncontacted Ayoreos

Iniciativa Amotocodie, an organisation that defends the rights of indigenous Ayoreo living in voluntary isolation in the north of the Paraguayan Chaco, was subjected to a search by the Public Prosecutor José Luis Brusquetti on 1 December 2010, after an unfounded and arbitrary search warrant was issued by the courts.

This was just another in a long line of harassments of this human rights defence organisation. The campaign of terror being conducted by numerous actors linked to cattle ranchers and large estate owners has been well-known for some time. Their sights are set on the profits to be gained from the regions' wealth of

forests. The cattle frontier is expanding over the area at an alarming rate, and the region is now a priority area for hydrocarbon exploration.

In addition, more recently, in the light of the scientific expedition that the Natural History Museum in London planned to conduct to areas under the occupation and ancestral ownership of the Ayoreo people, and where there is credible evidence of the presence of uncontacted people, Iniciativa Amotocodie drew national and international attention to the risks of involuntary contact and the consequences this could have for both the indigenous peoples and the expedition members themselves.

This action attracted significant public attention and was the last straw for state officials and the pro-corporate media, who unleashed an unprecedented campaign against Ayoreo defenders who were demanding compliance with UN rulings on the rights of uncontacted indigenous groups, along with the proper involvement of their people's organisations and communities, who were being ignored in the whole process of producing and planning the visit to their territories. This situation was acknowledged by the Ministry for the Environment itself when it ruled that the so-called "Dry Chaco 2010" expedition should be suspended.

This represents a particularly serious episode in Paraguay's current political situation, bearing in mind the succession of attacks that the human rights movement has been suffering on different levels, either from government individuals or the pro-corporate press, who have endeavoured to create a negative opinion of the work of human rights defenders, particularly in the last two years.

In the case of Iniciativa Amotocodie and its members, the state is failing to comply with its duty to respect their rights and protect their work, aimed at promoting and defending the fundamental rights of indigenous peoples, particularly groups of Ayoreo still living in isolation, and who require special treatment, as indicated by the United Nations.

Indigenous movement

The Coordinating Committee of Indigenous Organisations in Paraguay (MCOI-Py) was founded on 19 and 20 October this year, bringing together such important regional and national organisations as: the Federation of Guaraní Communities, the National Indigenous Organisation (ONAI), the Union of Indigenous Communities of the Yshir Nation (UCINY), the Indigenous Peoples' Commission (CPI)

and the Coordinating Body of Indigenous Leaders of the Lower Chaco (CLIBCh) with the main aim of coordinating the struggle for the return of the traditional lands and territories of Paraguay's different peoples on a national level. This is noteworthy given that the state will need to maintain a dialogue with this new coordinating body, whose first action was to make its analysis, recommendations and demands regarding indigenous health known, for the consideration of the General-Directorate for Indigenous Health.

The MCOI-PY thus joins the ranks of other organisations such as the Committee for the Self-Determination of the Indigenous Peoples (CAPI), which is also an umbrella organisation of local associations. ❍

Notes

1 http://www.dgeec.gov.py/

2 "*Matones de Pavão ejecutan a tres indígenas en la zona de Yby Yaú*" ABC Color newspaper, Asunción, 6 September 2010. Available at: <http://www.abc.com.py/nota/matones-pavao-ejecutan-indigenas/>, accessed on 30 October 2010.

3 Cf. State investigation file entitled: "*Triple Homicio en Yby Yaú, Unidad Fiscal en lo Penal Nº 1 de la localidad de Yby Yau, Dpto. de Concepción, a cargo de la Agente fiscal Camila Rojas, secretaría de Ricardo Moreno*".

4 "*Desalojan a indígenas del inmueble de un alemán".* ABC Color newspaper, Asunción, 8 September 2010. Available at: <http://www.abc.com.py/nota/desalojan-indigenas-inmueble-aleman/>, accessed on 30 October 2010.

5 Cf. Community census updated on 16 October 2009.

6 Cf. http://www.indi.gov.py/noticia.php?noti_id=20

7 "*INDI transfiere título de propiedad a la comunidad indígena Cerro Pyta*". Published on: <http://www.indi.gov.py/noticia.php?noti_id=25>, accessed on 30 October 2010.

8 "*Dos representantes de la CIDH son retenidos por guardias armados en el Chaco*". Última Hora newspaper, Asunción 5 September 2010. Available at: <http://www.ultimahora.com/notas/355574-Dos-representantes-de-la-CIDH-son-retenidos-por-guardias-armados-en-el-Chaco>, accessed on 30 October 2010.

9 "*El Gobierno aprueba 11 programas emblemáticos que buscan mejorar calidad de vida de los compatriotas*". Available at: <http://www.presidencia.gov.py/v1/?p=12963>, accessed on 30 October 2010.

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ARGENTINA

Argentina is a federal state comprising 23 provinces with a total population of almost 40 million. The results of the Additional Survey on Indigenous Populations, published by the National Institute for Statistics and Census, gives a total of 600,329 people who recognise themselves as descending from or belonging to an indigenous people.[1] The indigenous organisations do not believe this to be a credible number, however, for various reasons: because the methodology used in the survey was inadequate, because a large number of indigenous people live in urban areas where the survey could not be fully conducted and because there are still many people in the country who hide their indigenous identity for fear of discrimination. It should also be noted that, when the survey was designed in 2001, it was based on the existence of 18 different peoples in the country whereas now there are more than 31. This shows that there has been a notable increase in awareness amongst indigenous people in terms of their ethnic belonging. Legally, the indigenous peoples have specific constitutional rights at federal level and also in a number of provincial states. ILO Convention 169 and other universal human rights instruments such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are also in force, with constitutional status.

Argentina is a country of enormous cultural wealth, with more than 30 first nations and over 20 languages that pre-date Spanish and have persisted to this very day, maintaining the link with our natural worlds, rules of justice and co-existence, health, education and production systems. And yet this reality is despised as something shameful that should be concealed.

This reality does, however, gain visibility in terms of denouncing the violations of the right of indigenous peoples to physical integrity, under the constitutional mandate of "recognising the ownership and property of the lands they tradition-

ally occupy" and being consulted in advance of any initiative that might affect the natural resources on their territories. Although these violations are being accompanied by society's increasing sympathy towards indigenous demands, the same cannot be said for the state's response: the security forces harass indigenous leaders who, fed up with waiting for the problems affecting their communities to be resolved, are daring to make their demands public; the institutions and special commissions created by law to address these demands are proving powerless in the face of local government forces, which are often protected by shifting partisan alliances or alignments; an immense bureaucracy dangerously masks the real situations being suffered by indigenous community members. The state institutions are expanding in terms of both human resources and plans/programmes but without any coordination between them: in health, for example, there are five programmes aimed at indigenous peoples but the population receives no healthcare assistance, the health centres have no resources to attend to their needs, and children are dying of malnutrition and diarrhoea, both of which could be avoided if there were a serious, coherent and responsible health service. When scandalous events such as the deaths of 11 Wichí children in Salta Province do make it into the mass media, the parents are blamed for not bringing their children up in a clean, healthy environment and yet nothing is said about the subjugation of their territories, the plundering of the resources that would have enabled them to face up to these illnesses, or the irrational distribution of budgets that serves to maintain a corrupt state bureaucracy.

In sum, over the course of 2010, through its struggles, the indigenous movement demonstrated the wide gap existing between the country's theoretical position on indigenous issues and the reality, plagued by unresolved situations. After intensive demands and meetings with national and provincial officials (National Institute for Indigenous Affairs, INAI; National Institute against Discrimination, INADI; National Parks Administration, APN), the leader of the Qom people, Félix Díaz, along with members of La Primavera community, set up home along Highway 86 in Formosa Province to demand an answer to their call for regularisation of the ownership of the lands they traditionally occupy and in protest at the establishment of part of the Formosa National University on their ancestral territory. On 23 November, the families settled alongside the highway were besieged by the provincial police who used indiscriminate violence to implement a court order, brutally assaulting women, children and the

elderly, and resulting in the death of one man. This was followed by the state's arguments justifying the police action, the persecution of Félix Díaz and a consequent redoubling of his efforts, this time on a personal and family level, to continue with the protest because it seems that the justice system is not willing to take indigenous issues seriously.

Another example is the lack of attention indigenous peoples receive from the international justice system, to which they are forced to turn when they are ignored in their own countries. Such is the case of Lhaka Honhat, an organisation of five indigenous peoples from Salta Province whose repeated yet disregarded demand reached the Inter-American Commission on Human Rights, IACHR, in 1998. The international case has now taken 13 years; the friendly resolution process ended six years ago and, since then, the IACHR has been asked to issue its in-depth report and refer the case to the Inter-American Court. In October 2009, the IACHR promised that the report would be published in March 2010. In March it said it would be published in July and in July it said it would be October; then it said it would definitely be ready for consideration in March 2011. If the report is not forthcoming yet again on this date, such delays can only be interpreted as a refusal of the Inter-American human rights system to render justice in this case.

Such was the indigenous context as the country prepared to celebrate its 200th anniversary as a republic.

March of native peoples to the Plaza de Mayo

Argentina's bicentennial celebrations were a turning point in the political agenda of the country's indigenous peoples. Two activities were organised aimed at giving the indigenous peoples a strong and active presence at a specific time in Argentina's history that would not be repeated for many years. Firstly, a firm alliance of the country's main indigenous organisations and the social organisation, Tupac Amaru, made up of indigenous communities from different peoples but with a solid base in the Kolla and Guaraní peoples of Jujuy Province, mobilised. This resulted in a march that took its starting points as four different places around the country: Mendoza, Neuquén, Jujuy and Misiones. This march took 10 days to arrive at the historical location of the Plaza de Mayo, in front of the national government office in Buenos Aires. Having completely ignored the

1. Wichí
2. Chorote
3. Tapiete
4. Chulupi
5. Chané
6. Toba
7. Guaraní
8. Tonocoté
9. Pilagá
10. Kolla
11. Atacama
12. Vilela
13. Lule
14. Ocloya
15. Tilián
16. Omaguaca
17. Diaguita-Calchaquí
18. Mocoví
19. Huarpe
20. Rankulche
21. Mapuche
22. Tehuelche
23. Ona

first nations during the celebrations for the first centenary, the presence of almost 25,000 indigenous people, now waiting to be heard, hit home hard. Their main demands focused on: recognition of their territories and a policy of territo-

rial restitution that would provide reparations for the dispossessions of recent decades; regulation of the right to free, prior and informed consent; immediate application of Law 26,160 suspending the evictions of indigenous communities from their lands and organising a territorial survey of the lands traditionally occupied by the communities; official recognition of indigenous languages; a declaration of the intangibility of the glaciers in order to protect the water sources; promotion of the Climate and Environmental Court of Justice; repeal of the Mining Code and the creation of a Permanent Special Fund to implement indigenous life plans on their territories.

The second activity was organised by the Council for Indigenous Participation (CPI), a body involved in INAI and the Committee for Monitoring Territorial Organisations (CSOT). This brought together around 300 representatives from different indigenous peoples to produce a position document and demands focused on territorial claims, policies and the creation of institutional policy organisations.

Both representations were received by President Cristina Fernández de Kirchner, and the 25,000 people filling the Plaza de Mayo awaited the official response with great expectation.

The presidential response to the National March

The agenda presented to President Cristina Fernández de Kirchner is, however, still awaiting a response. The indigenous organisations do not consider the president's announcement regarding the "creation of a committee to regulate communal property" sufficient, given that the March demanded an urgent policy of territorial restitution and application of the Emergency Territorial Law, approved five years ago! Nor is the president's announcement of "20,000 student grants" sufficient when the indigenous agenda demanded the transformation of a racist education system into one of intercultural and multilingual learning. The proposals to promote intercultural universities and to recognise the different nations' languages as official languages have been ignored by the national government. This is why we are saying that the presidential announcement that it would "create a Department for Asserting Indigenous Rights" within INAI's structure is not enough, when the March established the need to give hierarchical structure to indigenous public policy by creating an Intercultural Ministry of

Indigenous Policy. Nor did the presidential announcement of the "discovery of oil in Las Yungas" create any excitement among the people, when the March called for the safeguarding of the glaciers and the repeal of the Mining Code, given the impact of the extraction industry on indigenous territories.

It was thus clear, from an indigenous perspective, that the conditions for recognising their human rights would not be met until this vicious circle of "development", "progress" and "economic growth" at the expense of our Wajmapu/Pachamama/Mother Earth was broken. In addition, given the impact it had on Argentine society, this historic march led to renewed hope that it would be possible to live in a modern society founded on the ancestral knowledge and wisdom of the first nations, its back turned on a primitive capitalism that draws us ever stronger into its death throes. The organisations and communities that called this march subsequently set up a political and organisational body called the Indigenous Plurinational Council in Argentina (CPIA). Although it is one of the current political expressions that brings together the country's main indigenous organisations, the CPIA does not claim to be fully representative of all peoples, and nor should it. This kind of organisation does not yet exist in the country.

Initiatives for indigenous peoples in the National Congress

One encouraging sign over the course of the year was the successful advocacy work undertaken within the National Congress. It is a cruel irony that, despite the fact that the existing regulatory and constitutional laws are systematically violated, indigenous peoples need to continue to work to obtain new laws. Over the past year, however, indigenous organisations and a new legislative chamber that has visions of another Argentina have made significant progress in this regard, such that we are at the point of obtaining important laws that will make a culturally diverse coexistence possible. Among the most important are: 1. obtaining constitutional status for ILO Convention 169; 2. creating an Historic Reparation Fund for Development with Identity; 3. providing implementing regulations for the right to free, prior and informed consent; 4. recognising the public and legal status of the pre-existing nations and, consequently, expanding the reductionist status of "communities"; 5. providing implementing regulations for communal property.

Action on the international scene – the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

2010 was the year in which the Argentine state had to submit its progress report on the application of the International Convention on the Elimination of All Forms of Racial Discrimination in the country. North-West Argentinian Lawyers in Human Rights and Social Studies (ANDHES), the Centre for Legal and Social Studies (CELS) and the Neuquén Indigenous Peoples Human Rights Observatory (ODHPI) submitted an Alternative Report to the 19th and 20th reports presented by the Argentine state. In this alternative report, they bore witness to the progress (or lack thereof), failures and omissions of the Argentine state in terms of its obligation to implement the rights contained in the Convention. At the end of each of the chapters of the Alternative Report was a section with questions and recommendations on each of the issues addressed, so that the Committee could consider them both on the occasion of the status hearing anticipated for the 76th period of sessions and also when issuing its Concluding Observations on the progress report.

This alternative report was supported by a delegation sent to the 76th period of sessions and to the progress report hearing comprising a *Werken* (spokesperson) from the Mapuche Confederation of Neuquén. The result of this policy and advocacy work with the CERD was evident in the Concluding Observations issued to the Argentine state in March 2010, which noted the most severe gaps in public policy with regard to its obligations to indigenous peoples. The following is a summary of the main recommendations made to Argentina:

- Implement Law 26,160 on Territorial Surveying and ensure that the necessary measures are taken to put a stop to the violence and forced evictions occurring throughout the country; guarantee communal property, and align the National Registry of Indigenous Communities (RENACI) with the provincial registers, given that there are numerous duplications of the communities' legal status.
- Investigate and punish those responsible for deaths and injuries occurring in the forced evictions in the provinces. Intensify efforts to ensure that the indigenous communities make effective use of the free legal advice services accessible to the whole population.

- Approve a law strengthening the role of INAI, giving it greater political power to promote an indigenous agenda at national but also at provincial level, where most of the conflicts occur.
- Produce statistical and disaggregated information on the investigations and cases heard and on the penalties imposed for crimes of racial discrimination.
- Take the necessary measures to consult with the communities affected by development and natural resource exploitation projects, with the aim of obtaining their free, prior and informed consent.

Indigenous peoples and protected areas

At the end of 2010, the CPIA held a meeting in Buenos Aires to organise a Workshop on Protected Areas and Indigenous Peoples in Argentina. This workshop was convened by the Lof Newen Mapu (Mapuche Confederation of Neuquén-CMN) and took place with the participation of the authorities of the Kolla (Salta), Avá Guaraní (Jujuy), Mapuche (Neuquén), Mbya Guarani (Misiones), Toba Qom (Formosa), Warpe (San Juan/Mendoza) and Diaguita (Tucumán) peoples.

The aim was to analyse the policy of the National Parks Administration (APN) in relation to the protected areas superimposed on pre-existing indigenous territories. This policy has been making headway in the country and is reflected, among other things, in the following actions: the return of the communal lands of the Cayun and Curruhuinca communities and of the *rewe* (sacred symbols) of the Ñorkinko community in the Lanín National Park; the creation of a management committee comprising the APN, the Mapuche Confederation of Neuquén and communities linked to the Lanín National Park (Resolution HD Nº 227/00) in order to implement the joint management policy for community areas; the agreements with the Indigenous Community of the Kolla Tinkunaku people (Resolution HD Nº 116/06) and the Meguesoxochi Association (Resolution HD Nº 111/07) and the creation of the Indigenous Participation Council (CAPI) within the Governing Board, as the body responsible for implementing free, prior and informed consent within the jurisdiction of the APN (Resolution HD Nº 475/07).

The creation of CAPI (mentioned above) was a result of the "2nd Latin American Congress on National Parks and other Protected Areas", held in Bariloche in November 2007, which had not been implemented until now. Hence the decision

to form CAPI and hold a urgent meeting with the current president of the APN, Patricia Gandini to inform her about the urgency of making progress on these areas, which are not reflected in APN's current policy, and which are creating numerous territorial conflicts, as documented in a proposed working agenda.

National Census 2010

A long-awaited event on the part of the indigenous peoples was the holding of the National Census of Population, Households and Housing. The state was required to create a mechanism to identify the country's indigenous population and this was envisaged in a question that was included on the extended census form. The question on indigenous self-identification was not asked in towns of over 25,000 inhabitants, however, thus denying the inhabitants the right to self-identify as indigenous and the government to ascertain the true extent of the indigenous population.

Following pressure from human rights institutions and the Mapuche Confederation of Neuquén, the CERD itself, in its Concluding Observations to the Argentine state when reviewing its progress report, had stated with regard to point 18 on the census:

As in its concluding observations of 2004, the Committee would remind the State party that such information is needed in order to assess the implementation of the Convention and to monitor policies benefiting minorities and indigenous peoples. The Committee requests the State party to publish the results of the next 2010 census and hopes that it will include, inter alia, information on indigenous peoples and persons of African descent. Furthermore, in the light of paragraph 8 of the reporting guidelines and general recommendations No. 4 (1973) and No. 24 (1999), the Committee recommends that, in its next periodic report, The State party provide information on the demographic composition of the population, including, in particular, information on indigenous peoples…

Avoiding the use of the extended form and not asking the question on indigenous self-identification in the main cities, which are home to the country's greatest indigenous population, has enormously affected the government's stated commitment to identify all the members of our peoples. This will result in false figures and these will lead to false policies, budgets and programmes. It will main-

tain the fiction of a white, European Argentina as opposed to the reality of an intercultural and plurinational country.

Conclusion

In light of the above, 2010 will go down as a period in which the state's historic debt to its first nations experienced unprecedented growth and intensification. By way of summary, the following situations can be indicated:

1. Hundreds of communities (throughout the whole country) are being evicted by the security forces, causing physical, cultural and psychological violence to women, men and children.
2. The murders of indigenous leaders (in Tucumán, Río Negro and Formosa), at the hands of the security forces and provincial landowners, without any reaction from the national authorities, unlike other events which they have described as "political assassinations". To this must be added the dozens of deaths caused by diseases that have now been eradicated in all areas except our indigenous territories, such as tuberculosis, chagas and dengue, which still occur in the Chaco, Salta, Misiones and Formosa.
3. Hundreds of communities have been excluded from the Territorial Surveying Programme due to a lack of political will on the part of the provincial governors. They realise that this programme will overturn the systematic dispossession of the land that our peoples have suffered and so they are seeking to protect the landowners, those close to the circles of power and the transnationals who enriched themselves through this "legal" robbery, under the protection of the state itself.
4. The body responsible for implementing the Surveying Programme is INAI but, in order not to affect the clientilist relations it enjoys with some provinces, it has not fulfilled its institutional role as required by Law 26,160. This political attitude has led to irreparable situations in some territories, through its support of impunity and the provincial governors' abuses of power.

In short, these events clearly illustrate the contradictory situation in which Argentina's indigenous peoples live: a country rich in cultural wealth, with a legal framework that formally recognises the first nations' status as indigenous peoples and with a series of promising government initiatives, and yet in which horrendous violations of their specific rights persist. ❍

Note

1 Instituto Nacional de Estadística y Censos (INDEC). Results of the Additional Survey of Indigenous Peoples —ECPI— conducted from 2004 on. http://www.indec.mecon.ar/webcenso/ECPI/index_ecpi.asp

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Observatorio de Derechos Humanos de los pueblos Indígenas de Neuquén

CHILE

Nine indigenous peoples are legally recognised in the country:[1] the Aymara, Lickanantay, Quechua, Collas and Diaguita, the inhabitants of the Andean highlands and valleys of the north; the Rapa Nui from the Polynesian island of *Te Pito o Te Henua* (Easter Island); the Mapuche from the temperate and rainy *Wallmapu* in the south; and the Kawashkar and Yamana, from the southern Patagonian Channels. The population that self-identifies as belonging to or descending from one of these peoples numbers 1,188,340, or 7% of the country's total population.[2]

Chile voted for the adoption of the UNDRIP in 2007 and on 15 September 2008, Chile ratified the ILO Convention 169

2010 went down in the collective conscience as a year of tragedies that put the country's capacity to rise from its own ashes to the test. The earthquake and tsunami of 27 February hit the most populated area of the country. The loss of almost 600 lives bore no relation to the magnitude of the phenomenon nor to the material damage caused over an area of around 1,000 kms, including the region of Araucanía or *Wallmapu*, home to the Mapuche. In addition to the lamentable loss of life, the earthquake also forced more than 500,000 Chileans (indigenous peoples included) below the poverty line, exacerbating the increasing poverty already noted in the 2009 Casen survey.[3] This survey - published in May - noted a one percentage point increase in indigenous and Chilean poverty over the three-year period 2006-2009, precisely when the country was obtaining its highest revenues as a result of the price of copper on the international market. This revelation of the unfair distribution of internal wealth must be added to the scant progress observed in terms of human rights. Legal reforms that would have guaranteed the exercise of rights were not introduced, and nor were public policies for indigenous peoples in line with international standards and recommendations.

New government, old practices in indigenous policy

In March 2010, Sebastián Piñera, the Coalition for Change's candidate, took over the presidency of the country. The political right has not won a majority by democratic means since 1958. In terms of indigenous peoples, Piñera's government programme noted an intention to continue the policies implemented by President Bachelet in the last phase of her mandate. Over this period, the formal relationship between policies and indigenous rights was abandoned and, in the case of the Mapuche, policies were refocused around poverty reduction, conflict prevention and institutional reforms. The move from Bachelet's *"Social Agreement for Multiculturality"* to Piñera's *"Araucanía Plan"* had begun before the government handover and reveals a political agreement for transition.[4]

The nomination by the new government of senior civil servants linked to both the coordination and financing of public policies for indigenous peoples, who in the past had questioned Chile's approval of the international legal instruments for indigenous peoples (Sebastián Donoso as head of indigenous affairs[5] and Felipe Larraín as Minister of Finances[6]) made it possible to foresee not only a stagnation, but even a setback with regards to the development of domestic policies related to the exercise of indigenous rights.

The way in which the National Corporation for Indigenous Development (CONADI) administered the Lands Fund demonstrated that these fears were not unfounded. Under the leadership of a director of Mapuche origin, supervised directly by Sebastián Donoso from the Ministry of the Interior, CONADI had the worst budgetary implementation since its creation in 1993. Of the almost 158 million dollars that made up its annual budget for 2010 - 98 million of which was for the Lands Fund – almost 100 million dollars had to be returned to the Treasury[7] for lack of implementation, most of this corresponding to the budget for land purchases.

This dreadful management cannot be explained away as merely an issue of administrative negligence; it also reflects a change in the direction of the land policy, the tangible effects of which could be seen in the rules for the *"12th Tender for subsidies for the purchase of indigenous lands 2010"*.[8] Article 8 established a misunderstood criterion of equity which equalled the amount of funds available for families applying to these subsidies individually to the amount available for collective applications. This decision specially affected those communities applying for subsidies considered in Article 20(b) of the Indigenous Law of 1993 (cases in-

volving land conflicts), whose possibilities of receiving state funds to purchase ancestral lands or lands which had been usurped, were financially limited. In accordance to this new modality, state subsidies are not aimed at the reparation of indigenous peoples or oriented to the implementation of an indigenous right, but are oriented towards the acquisition of lands for productive purposes only. The

application of this financial criterion restricts the communities' possibilities of recovering their ancestral lands, affecting, first and foremost, 115 Mapuche communities to whom the state had made a commitment to purchase lands in a process that was due to be concluded at the end of 2010.

Hunger strike: reforms to the military justice system and the anti-terrorist law

In July, 34 Mapuche being prosecuted for offences related to social protest actions under the anti-terrorist law began a hunger strike to draw the public's attention to the lack of guarantees of due process in the cases raised against them. In a number of these cases, people were being tried before the military courts for the crime of assault and battery of police officers, and then again before the civil courts for crimes under the anti-terrorist law.

The numerous public demonstrations in support of their demands and international pressure with regard to their procedural situation and humanitarian conditions forced the government to begin a negotiation process that finally ended in an agreement signed with the hunger strikers on 1 October. Based on democratic principles, the domestic legal code, international human rights law and ILO Convention 169, the agreement committed the government to "abandoning all lawsuits for terrorist crimes and reconsidering such actions under the rules of common criminal law",[9] and to continue promoting, through the National Congress, "reforms to the Military Justice Code so that civilians are tried before the ordinary courts, thus avoiding a double court case, [and] bringing it into line with the principle of due process."[10]

In order to put an end to these double prosecutions, Congress received a legislative initiative from the government in October and approved a law that partially modified the military criminal court's jurisdiction by excluding civilians and minors (Legislative Bulletin 7203-02). According to a transitory system included within the same law, the Mapuche cases being heard before the military courts should therefore be transferred to the ordinary justice system within a period of no more than 60 days following the law's entry into force.

The part of the text of the agreement that brought the hunger strike to an end committed the government to abandoning lawsuits for terrorist crimes and reconsidering them as common law crimes. In Chile, according to the anti-terrorist law, common crimes against property, such as arson or damage to vehicles or ma-

chinery may be considered a terrorist crime if the judges determine that the crime was committed with the aim of instilling terror in the population. According to the National Human Rights Institute (*Instituto Nacional de Derechos Humanos* INDH), one aspect that caused great controversy in the debate on the draft reform was protection of the right to property, particularly with regard to arson of uninhabited buildings, which is classified and punished in the criminal code. The importance of the debate revolves around the fact that, if we look at the cases pending before the Cañete and Lautaro courts, it can be seen that 16 Mapuche community members have been accused of the crime of terrorist arson, while 32 more are being investigated for the crime of common arson.[11]

Alongside the government's commitment to drop the cases relating to terrorist crimes, Law No. 20,467 was published in the Official Bulletin on 8 October 2010, introducing amendments to the anti-terrorist law. Broadly speaking, this reform removes the assumption that a crime has a terrorist aim simply because of the means used to commit it (for example, the use of incendiary devices), a relationship that in future will have to be proved. It also establishes a ban on applying the procedure established in the anti-terrorist law to minors, to whom the procedure and reduced penalties of the Law on Juvenile Criminal Responsibility should be applied, along with a provision that allows the defence to directly question "faceless" witnesses and experts. This amendment, however, did not impede the inclusion of faceless witnesses which seriously harms due process rights.

The system for extending the period of detention was maintained, along with the possibility of decreeing further exceptional precautionary measures such as detention in special places, restricted visiting regimes, interception of the detainee's communications and a six-month period of secrecy.

Although the reform was viewed favourably for its positive aspects, the anti-terrorist law retains standards which are not only far removed from international human rights standards but which are also questionably effective in terms of the objective of re-classifying the crimes of which the Mapuche are accused, as they do not necessarily prevent its arbitrary use in current and possible future cases.

Police violence and violations of rights on Rapa Nui (Easter Island)

The island of Rapa Nui (Te Pito or Te Henua, *the centre of the world* in the language of its inhabitants) is situated in Polynesia, 3,800 kms from the South American

coast. The Rapa Nui people signed a voluntary agreement with the Chilean state in 1888 in which, according to the Rapa Nui version, the ownership of their ancestral lands was guaranteed to them. The state, in contravention of this agreement, proceeded in 1933 to register the island's lands in the name of the state, arguing, in accordance with Article 590 of the Civil Code, that they were vacant lands.

In mid-2010, groups of Rapa Nui families began a process of peaceful occupation of public and private buildings as a way of pressurising the government to recognise their ancestral property rights to the land on which these buildings are located and, also, to respect the island's territory, which belongs to them by ancestral right. In reaction to the social protest commenced by the clans, the government established working groups charged with addressing their demands, including the situation of occupied lands, immigration problems, the production of a development plan and the island's rank as special territory. The clans' representatives criticised this approach or its lack of consistency with the territorial demands and for the lack of consultation procedures, in accordance with current legislation and, in particular, the provisions of ILO Convention 169.

Alongside this, the government chose to use pressure to clear the disputed buildings. These measures were implemented on 7 September, a day before the formal constitution of the working groups. Another eviction took place on 3 December and left numerous islanders injured - some with shot wounds. Finally, on 29 December, a group of 70 islanders who were protesting in Riro Kainga square were evicted by a hundred heavily armed police officers who beat up around 20 people, including women and children.[12]

In this context, on 16 December, in hearings held in two cases before the Easter Island Criminal Court, the Public Prosecutor formally charged five members of the Tuko Tuki clan with alleged crimes of peaceful seizure and violation of dwellings. The stated crimes had been reported by officials from the Ministry of Public Works (MOP) who were living in buildings located on the ancestral territories claimed by the clan and which are up for discussion in the working group proposed by the Vice-president of the Republic.

In carrying out these evictions, which were in violation of fundamental guarantees and conducted under a cloak of legality, the actions of the police, the public prosecutor and the judge on Easter Island have created an atmosphere of mistrust among the Rapa Nui who, despite complying with the legal rulings against them and presenting their demands to the working groups set up by the govern-

ment, claim that they have been the victims of threats and the disproportionate use of force on the part of the authorities.

The UN Special Rapporteur on the rights of indigenous peoples, James Anaya, stated his concern at these evictions and violent clashes, recommending to the government that "the police presence on the island should not exceed what is necessary and proportionate to ensure the safety of the island's inhabitants,"[13] and urging it moreover to make the utmost efforts to conduct a good faith dialogue with the Rapa Nui representatives on underlying issues given

> *that this is particularly pressing in relation to the recognition and effective guarantee of the right of the Rapa Nui clans to their ancestral lands, based on their customary ownership, in accordance with ILO Convention 169, to which Chile is a party.*[14]

Indigenous peoples and natural resources: situation in the north of the country

On the basis of specific legislation adopted to govern the use and management of natural resources – based on a system of private concessions protected by the right to property - the state has guaranteed the expansion of the global economy into the indigenous territories, continually backing the numerous investment projects planned by individuals or promoting large public projects located on indigenous territories without considering the wishes of the communities living there, with serious social, cultural and environmental consequences.

In the north, the indigenous Lickanantay, Quechua and Aymara living in the area of the Loa River have seen their access to this river affected due to the monopolisation of water rights by water and mining companies. The group of local indigenous communities administers 34% of the water rights established in the basin, 36% are in the hands of water companies and 30% in the hands of mining companies. The large mining investment projects planned in the basin will herald an expansion of the urban population and thus increase pressure on water resources, which will most probably have a negative impact on the indigenous communities.

In addition, the state has encouraged the mass expansion of geothermal energy projects on northern indigenous territories in order to satisfy the demand for energy created by the growth in large-scale mining. For this reason, and by

means of Law 19,657 on Geothermal Energy Concessions, privatisation of this resource has been permitted, protecting the concession holders' rights through the right to property. The law also declares 20 thermal water sites ancestrally owned by the indigenous peoples as probable sources of geothermal energy. During 2009, 20 concessions were awarded in just one go, without the affected communities having been consulted and even against their wishes. During 2010, 90 geothermal concessions were under negotiation, the majority of them compromising indigenous territories.

In the south of the country, the Sollipulli area has been included in the call for tenders for a geothermal exploration area. This area covers various mountainous communities of Araucanía, affecting around 17 Mapuche communities and a protected area (Villarrica National Reserve). As in the north of the country, the actions of the administrative authorities and all the procedures have been undertaken without implementing the consultation established in ILO Convention 169. The affected communities have begun administrative and legal proceedings to defend their territorial rights without, however, any concrete results to date.

Large mining projects have also had an impact on non-renewable water reserves such as the glaciers. The Pascua Lama gold megaproject being implemented on the ancestral territory of the Diaguita de los Huascoaltinos community by CMN Nevada Ltd. (a subsidiary of Barrick Gold Corporation) is particularly critical given its size and because its impact may herald the disappearance of the main water reserves contained in the mountain glaciers (Estrecho, Toro I and II, Esperanza and Guanaco), particularly as the mining project is located under the ice. In addition, it is causing contamination of the water table of these glaciers (El Estrecho and Chollay rivers), affecting all the river communities downstream.

The environmental approval granted to the Barrick Gold Company by the Regional Environmental Commission (COREMA) in order to develop a limestone mine to supply Pascua Lama is only exacerbating the environmental degradation yet more, not to mention the fact that the location of this mine will directly affect the Diaguita indigenous territory.

In the case of Pascua Lama, a complaint is pending before the Inter-American Commission on Human Rights, aimed at establishing the Chilean state's international responsibility for violating the rights enshrined in the American Convention on Human Rights by authorising the project against the wishes of the indigenous communities and without safeguarding their territorial rights. This case was declared admissible on 12 February 2010, and has given rise to Case No. 12,741. ❍

Notes

1 Indigenous Law No. 19,253 of 1993.
2 Government of Chile. Encuesta Caracterización Socioeconómica Nacional, CASEN, 2009. Unlike in previous years, the survey summary published in May 2010 omitted to list the population of each indigenous people.
3 http://www.mideplan.gob.cl/casen2009/RESULTADOS_CASEN_2009.pdf
4 *Informe alternativo 2010 respecto del cumplimiento del Convenio 169 sobre pueblos indígenas y tribales de la OIT, al cumplirse un año de su entrada en vigencia en Chile*, 1 September 2010. Available at: http://bit.ly/dVSqLs [Consulted on: 25-01-2011]
5 Two articles by Sebastián Donoso criticising the ratification of Convention 169 and the application of *special measures* in favour of indigenous peoples can be found in: *Chile y el Convenio 169 de la OIT: reflexiones sobre un desencuentro* from 2008, available at: http://bit.ly/c3HxfQ [Consulted on: 25-01-2011], and; *Lo negativo de la discriminación positiva* from 2004, available at: http://bit.ly/9RfDaD [Consulted on: 10-01-2011]
6 For Felipe Larraín, international law on indigenous rights encourages separatism. See his opinion in: *Comisión de Verdad Histórica y Nuevo Trato: opinión de minoría*. Available at: http://bit.ly/f1RpT7 [Consulted on 10-01-2011]
7 Although numerous public authorities acknowledged the lack of budgetary implementation, the amounts returned were never specified. The figure of 50,000 million pesos (100 million dollars) is an estimate made by the Governor of the Region of Araucanía, Andrés Molina, in statements to the press. See: *Bio-Bio La Radio*.- Intendente de La Araucanía califica como histórico el gasto presupuestario del 2010. Available at: http://bit.ly/ezWMoD [Consulted on: 10-01-2010]
8 **CONADI, 2010**: *12º concurso subsidio adquisición de tierras por indígenas año 2010*. Available at: http://bit.ly/fKsZnp [Consulted on: 10-01-2010]
9 *Texto del Acuerdo*. Concepción, 1 October 2010. Available at: http://bit.ly/eMTJVs [Consulted on: 10-01-2011]
10 Idem.
11 INDH, stated report, p. 110.
12 *Violento desalojo en Rapa Nui 29 dic 2010*. Video available at: http://bit.ly/hzHPtY [Consulted on:25-01-2011]
13 *Declaración del relator especial de la ONU sobre los derechos de los pueblos indígenas, James Anaya, ante los desalojo de indígenas rapa nui*. 12 January 2011. Available at: http://bit.ly/dR19ls [Consulted on: 25-01-2011]
14 Ibidem.

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THE PACIFIC

AOTEAROA (NEW ZEALAND)

Māori, the indigenous people of Aotearoa, represent 17%[1] of the 4.3 million population. Māori cultural identity is strong despite the fact that most Māori live in urban centres. The gap between Māori and non-Māori is pervasive: Māori life expectancy is almost 10 years less than non-Māori; household income is 72% of the national average; half of Māori males leave secondary school with no qualifications and 50% of the prison population is Māori.

There are two versions of the Treaty of Waitangi, an English-language version and a Maori-language version. The Treaty was signed between the British and Māori in 1840. It granted right of governance to the British, promised that Māori would retain sovereignty over their lands, resources and other treasures and conferred the rights of British citizens on Māori.

The Treaty has, however, limited legal status in the courts and Parliament; accordingly, protection of Māori rights is largely dependent upon political will and the ad hoc recognition of the Treaty.

The current National government endorsed the UN Declaration on the Rights of Indigenous Peoples in 2010.

Indigenous Peoples' Declaration endorsed

In April 2010, the government of Aotearoa changed its position and endorsed the United Nations (UN) General Assembly's Declaration on the Rights of Indigenous Peoples (Declaration).[2] This move was welcomed by Māori, who had actively participated in the drafting of the Declaration. However, the government has indicated that it will implement the Declaration within Aotearoa's existing legal and constitutional framework, suggesting that it does not anticipate legal or constitutional change in order to give effect to its obligations. Since endorsing the Declaration, the government has also missed a number of opportunities to enforce the

rights affirmed in the Declaration. For example, it failed to consult with *iwi* (tribes) and *hapū*(sub-tribes) of the East Coast of the North Island prior to granting offshore mining permits for the Raukumara Basin to Brazilian company Petrobras International in June 2010, despite the Declaration's affirmation of indigenous peoples' right to participate in decision-making with regard to matters affecting them.[3]

Special Rapporteur identifies ongoing challenges

The UN Special Rapporteur on the rights of indigenous peoples (Special Rapporteur), James Anaya, undertook a country mission to Aotearoa from 18 to 23 July 2010. Special Rapporteur Anaya visited Aotearoa at the invitation of the government, and with the encouragement of Māori leaders, to follow up on the steps taken to implement the recommendations made by his predecessor, Rodolfo Stavenhagen, who visited Aotearoa in 2005.[4] In his brief preliminary statement on the visit, Special Rapporteur Anaya acknowledged some positive legal and policy developments and the recent endorsement of the Declaration but highlighted a number of ongoing challenges, including: the grievances perpetuated by the Treaty of Waitangi (Treaty) settlement process; the need for an adequate dialogue with Māori on the repeal and reform of the Foreshore and Seabed Act 2004; the need for constitutional protection of the principles of the Treaty and related internationally-protected human rights; and the action required to address the extreme

socio-economic disadvantage of Māori.[5] Special Rapporteur Anaya will release his full report on his mission to Aotearoa in 2011.

Treaty settlement process remains problematic

Treaty settlements progressed in 2010. Legislation giving effect to the Ngāti Apa (North Island) settlement and the Waikato River settlement concerning the river interests of Waikato-Tainui, Te Arawa, Ngāti Raukawa and Ngāti Tuwharetoa was enacted in 2010.[6] Several *iwi* (tribes) also initialled and signed Deeds of Settlement with the Crown in 2010 and two *iwi* had their settlement bills introduced into Parliament.[7]

The settlement process remains problematic. Special Rapporteur Anaya pointed out that many of the complaints he had received from Māori about the settlement process during his 2010 mission mirrored those reported to Special Rapporteur Stavenhagen back in 2005. These included complaints about the unequal position of Māori in the settlement negotiations, the failure of settlement packages to provide adequate redress, and the restrictions on the possibility of transferring lands back to Māori.[8] One apposite illustration of these concerns during 2010 was the Prime Minister, John Key's, unilateral decision to reject the possibility of returning lands within Urewera National Park to Tūhoe *iwi* as part of their Treaty settlement package.[9] In his preliminary statement, Special Rapporteur Anaya urged the government to reconsider this decision.[10]

Discriminatory Foreshore and Seabed Bill

The Marine and Coastal Area (Takutai Moana) Bill (Bill) was tabled in Parliament in 2010 to repeal and replace the Foreshore and Seabed Act 2004 (FSA).[11] It was tabled by the government with the support of the Māori Party, bar Māori Party Member of Parliament (MP) Hone Harawira.[12] The Māori Party, which entered Parliament in 2005 on the back of the ground swell of Māori opposition to the previous Labour government's FSA, has touted the Bill as a step forward.[13]

Although the Bill seeks to repeal the FSA, as many Māori sought, it does not however remove its inequities. As with the FSA, the Bill confiscates Māori rights to the marine and coastal area. It removes Māori interests over those areas and

vests them in a new construct called a "common space". As with the FSA, it also discriminates against Māori. In effect, it only applies to areas where Māori may have an interest, and specifically excludes the bulk of foreshore privately held by others. Further, the "customary title" provided for in the Bill is a new form of subordinate title that is less than freehold title. The Bill does differ from the Act in that it restores to Māori their right of access to the Courts – Māori have six years to lodge a claim to have their "customary title" in the "common space" recognised. However, in addition to the restrictive time limitation, in order to establish title Māori have to prove continuous use of the relevant area since 1840, which will be almost impossible for most. This onerous "continuous use" test will need to be met even where Māori opt to negotiate title directly with the Crown.[14]

The Māori Affairs Select Committee, which heard submissions on the Bill in 2010, is expected to present its report in February 2011. It is unclear whether the Bill will be passed. At the end of 2010, the government only just had sufficient support to push it through. If the Bill lapses, the Prime Minister has stated that the FSA will remain in force.[15] In the current political climate, equitable recognition of Māori title over the foreshore and seabed appears a long way off.

Treaty central to constitutional review

In early December 2010, the government announced the terms of reference for a cross-party constitutional review that focuses significantly on Māori representation and the Treaty. The review, which is anticipated to take three years, was agreed as part of the confidence and supply agreement between the National and Māori parties. The review will consider: Māori representation, including the Māori Electoral Option, Māori electoral participation, Māori seats in Parliament and local government, and the role of Māori customs and the Treaty in the constitutional arrangements of Aotearoa. As Special Rapporteur Anaya pointed out following his visit, constitutional protection of the principles of the Treaty is vital, as their current vulnerability to political discretion leaves them unstable and insecure.[16] The review will also consider the size and term of Parliament, Bill of Rights issues, and whether Aotearoa should have a written constitution.

Deputy Prime Minister Bill English and Māori Affairs Minister Pita Sharples will lead the constitutional review, in consultation with a cross-party reference

group of MPs and with the support of an advisory panel with Māori and Pakeha co-chairs. The government has advised that any significant proposals that come out of the review will need either to pass a referendum or receive broad cross-party support in order to be implemented.[17]

An independent Māori-driven Working Group on Constitutional Transformation has also been brought together by Professor Margaret Mutu and Moana Jackson as a parallel process to engage with Māori and to work on developing a model constitution for Aotearoa based on Māori *kawa* (protocol) and *tikanga* (custom), the 1835 Declaration of Independence and the Treaty.[18]

Māori interests versus mining interests

Mining and exploration issues were also a core concern for Māori in 2010. In addition to the government granting offshore mining permits to Petrobras International, early in 2010 it proposed opening up more than 7,000 hectares of conservation land to mining. However, following significant public outcry, including from many Māori, the plan was shelved.[19]

In December 2010, the Waitangi Tribunal also released the pre-publication version of its report on issues relating to the management of petroleum.[20] The report is the product of an urgent inquiry conducted earlier in 2010 at the instigation of the Ngaruahine and Ngāti Kahungunu *iwi* and was released pre-publication in order to inform the government's soon-to-be-developed policy on the matter. In its report, the Tribunal found both the current regime for management of petroleum and its outcomes to be in breach of the principles of the Treaty. It found "…that decision-makers tend to minimise Māori interests, and elevate other interests, in their decisions about the petroleum resource." This renders Māori unable to protect and exercise guardianship over their lands, waters and other *tāonga* (treasures), as they are entitled to under the Treaty.[21] The Tribunal made a number of recommendations, including that regional *iwi* advisory committees be established and that the current statutory regime be amended to require decision makers to act consistently with the Treaty principles.[22] It remains to be seen how the government will respond to the Tribunal's non-binding recommendations; the government has shown a willingness to ignore the Tribunal's findings in the past.

Māori language at crisis point

The Waitangi Tribunal took the unusual step of pre-releasing its chapter on *te reo* Māori (the Māori language) from the Wai 262 inquiry, which concerns indigenous flora and fauna, in October 2010.[23] The report is scathing of the Crown's failure to meet its duty to protect *te reo* Māori under the Treaty, which it argues is now at crisis point. The Tribunal has called for urgent action to prevent the language from being wiped out, including recommending that the Māori Language Commission be given more powers to compel public bodies to contribute to the language's revival. As with the Tribunal's report on the management of petroleum, it is unclear whether - and to what extent - the Tribunal's non-binding recommendations will be taken up by government. The Minister of Māori Affairs, Pita Sharples, responded to the release of the chapter by indicating that the government could provide more and better support for *te reo* Māori, but the Attorney-General Christopher Finlayson has indicated that the government will wait for release of the full report before taking any action.[24] ❍

Notes and references

1 Most of the population statistics cited here are based on the *New Zealand Census 2006.*

2 **The Hon. Dr Sharples, Pita (Minister of Māori Affairs), 2010:** Statement to the Ninth Session of the United Nations Permanent Forum on Indigenous Issues. 19 April 2010 available from http://www.mfat.govt.nz/Media-and-publications/Media/MFAT-speeches/2010/0-19-April-2010.php (last accessed 29 December 2010).

3 See Articles 18 and 19 of the United Nations Declaration on the Rights of Indigenous Peoples**,** General Assembly Resolution 61/295, 13 September 2007; Gifford, Adam. 2010. *Māori ignored as Petrobras signed up*. 3 June. Available at http://waatea.blogspot.com/2010/06/maori-ignored-as-patrobras-signed-up.html (last accessed 29 December 2010); Tahana, Yvonne. 2010. Māori to protest with beach fires. *NZ Herald,* 26 June. Available at http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10654430 (last accessed 29 December 2010); Tracey Whare, joint intervention on behalf of Aotearoa Indigenous Rights Trust and Te Runanga o Te Rarawa under Agenda Item 4, at the United Nations Expert Mechanism on the Rights of Indigenous Peoples' third session 12-16 July 2010, available from http://www.docip.org (last accessed 29 December 2010).

4 See *The Indigenous World 2007*.

5 Special Rapporteur Anaya's *Preliminary note on the mission to New Zealand* is available at http://www2.ohchr.org/english/issues/indigenous/rapporteur/countryreports.htm (last accessed 29 December 2010).

6 The settlement legislation for the river interests of Maniapoto was not enacted in 2010.

7 Ngāti Makino and Ngāi Tamanuhiri both initialled a Deed of Settlement with the Crown in 2010. Ngāti Porou, Ngāti Pahauwera, Ngāti Apa ki te Rā Tō, Rangitāne o Wairau and Ngāti Kuia each

signed Deeds of Settlement with the Crown during 2010. Ngāti Manawa and Ngāti Whare both had their settlement bills introduced in 2010. For information on the settlement process and settlements reached in 2010, see the Office of Treaty Settlements website available at www.ots.govt.nz (last accessed 29 December 2010).

8 Above note 5 at para 6.

9 Tracey Whare, joint intervention on behalf of Aotearoa Indigenous Rights Trust and Te Runanga o Te Rarawa under Agenda Item 4, at the United Nations Expert Mechanism on the Rights of Indigenous Peoples' third session 12-16 July 2010, available from http://www.docip.org (last accessed 29 December 2010).

10 Above note 5 at para 7.

11 See *The Indigenous World 2010* and *The Indigenous World 2009*. A copy of the Bill is available from the New Zealand Legislation website: http://www.legislation.govt.nz/bill/government/2010/0201/latest/DLM3213131.html (last accessed 29 December 2010).

12 **Triegaardt, Kim, 2010:** The Letdown. *Te Karaka* Issue #48 October, available from http://www.tekaraka.co.nz/Blog/?page_id=1585 (last accessed 29 December 2010).

13 Ibid; **Hon. Turia, Tariana, 2010:** Speech: First Reading Marine and Coastal Area (Takutai Moana) Bill. 15 September 2010 available at http://www.maoriparty.org/index.php?pag=nw-&id=1294&p=speech-first-reading-marine-and-coastal-area-takutai-moana-bill-hon-tariana-turia.html (last accessed 30 December 2010).

14 **Jackson, Moana, 2010:** *A further primer on the foreshore and seabed: The Marine and Coastal Area (Takutai Moana) Bill*, 8 September 2010, available at http://www.converge.org.nz/pma/mj080910.htm (last accessed 29 December 2010); **Jones, Carwyn, 2010:** *Marine and Coastal Area (Takutai Moana) Bill*, 13 September 2010, available at http://ahi-ka-roa.blogspot.com/2010/09/marine-and-coastal-area-takutai-moana.html (last accessed 29 December 2010).

15 NZPA. 2010. *Foreshore legislation won't be revisited Key says*, 13 December 2010 available at http://nz.news.yahoo.com/a/-/top-stories/8501839/foreshore-legislation-wont-be-revisited-key-says/ (last accessed 29 December 2010).

16 Above note 5 at para 9.

17 Editorial: Treaty central to talks on constitution. *NZ Herald,* 16 December 2010, available at http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=10694597 (last accessed 29 December 2010); **Sharples, Pita, 2010:** Make decisions about constitution as a family. 9 December 2010 available at http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid-=10692985 (last accessed 29 December 2010); **English, Bill, 2010:** Govt begins cross-party constitutional review, 8 December 2010 available at http://www.national.org.nz/Article.aspx?ArticleId=34772 (last accessed 29 December 2010).

18 **Peace Movement Aotearoa (PMA), 2010:** Iwi to hold own constitutional review. 15 December 2010, available at http://www.converge.org.nz/pma/cr151210.htm (last accessed 29 December 2010).

19 Kay, Martin. Mining in conservation land – proposal, available at <www.stuff.co.nz/business/3488434/Mining-in-conservation-land-proposal> (last accessed 27 December 2010); Watkins, Tracy and Martin Kay. 2010. Government confirms mining backdown, 20 July 2010. (last accessed 27 December 2010).

20 **Waitangi Tribunal, 2010:** Waitangi Tribunal Report 796: The Report on the Management of the Petroleum Resource: Pre-Publication. Available at http://www.waitangi-tribunal.govt.nz/reports/?type=date&keywords=2010 (last accessed 29 December 2010).

21 Ibid at page xv.

22 Ibid.

23 **Waitangi Tribunal, 2010:** Waitangi Tribunal Report 262: Te Reo Māori: Pre-Publication. Available from http://www.waitangi-tribunal.govt.nz/scripts/reports/reports/262/056831F7-3388-45B5-B553-A37B8084D018.pdf (last accessed 29 December 2010).

24 **Tahana, Yvonne, 2010:** Tribunal warns te reo Māori near crisis point, 20 October 2010, available at http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10681810 (last accessed 29 December 2010).

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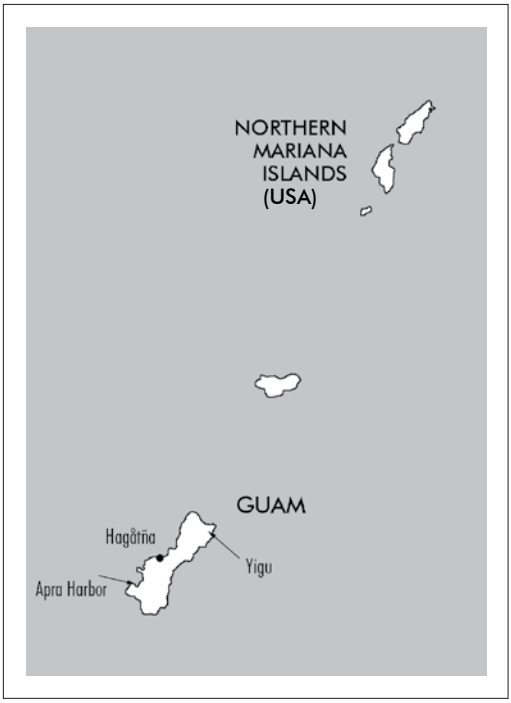
GUÅHAN

Guåhan (meaning "we have"), more commonly known as Guam,[1] is the largest and southernmost island in the Mariana Islands archipelago, encompassing approximately 212 square miles. The Chamorus came to the Marianas over 4,000 years ago. Since 1521, Guåhan has been under the colonial rule of Spain (1521-1898),[2] the United States (1898-1941), Japan (1941-1944) and, again, the U.S. (1944-present) and is the longest colonized possession in the world. Currently under the U.S., Guåhan is an unorganized unincorporated territory and does not have its own constitution but does have what is known as the Organic Act, which was created in 1950 and granted U.S. citizenship to the Chamorus of Guåhan. Only part of the U.S. Constitution applies to the Chamorus of Guåhan, as the people are not allowed to vote for the U.S. president and do not have a voting delegate in the White House.[3] Guåhan has been on the U.N. list of Non-Self-Governing Territories (NSGTs) since 1946, meaning that its indigenous Chamorus have yet to practise their right to self-determination.[4] The Chamorus of Guåhan comprise around 37% of the 175,000 population, making them the largest ethnic group on the island, albeit still a minority. Other ethnic groups include those of the Asian community (Filipinos, Japanese, Koreans, and Chinese to name a few), the outsider Micronesian community (Marshallese, Chuukese, Palauans, Yapese, Kosraens, and Pohnpeians) and Caucasians. The Chamorus are currently being challenged by the re-militarization of their islands, which has come to be known as the "military buildup," a devastating move by the U.S. against the indigenous population and the place they call home.

War reparations

In 2010, Congresswoman Madeleine Z. Bordallo attempted to include the World War II (WWII) Loyalty Recognition Act into the United States (U.S.) National



Defense Authorization Act (NDAA) of 2011. The WWII Loyalty Recognition Act was aimed at recognizing the atrocities endured by the Chamorus during WWII. In 2009, war reparations were similarly included in the U.S. House of Representatives' defense bill but Bordallo's refusal to compromise on including reparations for the descendents of those Chamorus as well as the survivors led the Senate to omit the language from the enacted NDAA of 2010. In 2010, although the compromised language was included in the House version of the NDAA of 2011, the Senate again blocked the inclusion of the measure. Bordallo, local government leaders on Guåhan, WWII survivors, and the local community were deeply disappointed and frustrated with this outcome.[5] Bordallo once again vowed to work toward its inclusion in the next fiscal year's NDAA.[6]

Political status

The year 2010 also included the enactment of Bill H.R. 3940, the "Political Status Education" bill, which clarifies the availability of existing funds for political status education on Guåhan and provides Congressional intent, giving the Secretary of the Interior the authority and obligation to conduct such programs.[7] Bordallo stated that "the passage of this bill…recognizes the importance of political self-determination for the people of Guåhan."[8] Additionally, there have been efforts to build

the decolonization registry, which includes those individuals who are considered "native inhabitants", who will be able to vote for the political status of Guåhan.[9] Efforts by local leaders, such as Guåhan Senator vicente "ben" c. pangelinan, who has held many decolonization registry drives at numerous island-wide events throughout 2010, have aided in the process.[10]

Chamoru conference

I Mina` Kuåttro na Konferensian Chamoru (the fourth annual Chamoru conference) was held in October 2010, bringing Chamoru organizations, scholars, leaders, activists, community organizers, professionals and thinkers from all over the Mariana Islands together to discuss important Chamoru issues, including education, language, culture, youth, sustainability, economy, environment, health and spirituality, and leadership. The conference concluded with the formation of a Chamoru Council, which is planned to lead future conferences and other endeavors toward the perpetuation of the Chamoru culture, language and people.[11]

The buildup plans continue…

The proposed military buildup ("the buildup") on Guåhan was, perhaps, the most controversial and crucial event of 2010 on the island. The Record of Decision (ROD) states that an increased immigrant population of around 79,000 people is to be expected by 2014, along with three major military projects: live-firing ranges and hand grenade training sites at the ancient Chamoru village of Pågat, the further dredging of Apra Harbor (currently owned by the US military), and the construction of a U.S. Army Air and Missile Defense site.

After the Draft Environmental Impact Statement (DEIS) for the buildup was released in November 2009, the people of Guåhan had only three months to submit their comments on the 11,000-page document. In January and February 2010, the Joint Guam Program Office (JGPO) hosted four public hearings on Guåhan, which gave hundreds of Guåhan citizens the opportunity to speak their minds. The United States Environmental Protection Agency (USEPA) gave the DEIS the worst rating possible, stating that the document was unsatisfactory, contained inadequate information, and that the environmental impacts of the buildup

would be detrimental to Guåhan and its people. When the Final Environmental Impact Statement (FEIS) was issued, over 10,000 comments submitted by the various communities on Guåhan were compiled and the USEPA reversed its decision on the Final EIS, finding the document adequate and satisfactory, as long as an adaptive program was established and the infrastructural and funding needs were met.[12] The Guam Legislature passed Resolution 444, which stated that the FEIS poorly addressed the unresolved issues and concerns of the people of Guam and formally objected to the current expansion and mitigation plans set forth in the FEIS.[13] Shortly thereafter, the ROD was released. Currently, the Guam Preservation Trust, the National Trust for Historic Preservation, and We Are Guåhan have filed a suit in Honolulu, Hawai`i, against the Department of Defense regarding the selection of Pågat, a site of cultural and historical significance to the Chamoru people, to for use as a live-firing range.[14] ❍

Notes

1 The Chamorus are the indigenous people of the Marianas Islands. Chamoru also refers to the indigenous culture and language of the Marianas. In the early 1990s, there was debate over the spelling of Chamoru. The various spellings of Chamoru included the following: Chamoru, Chamorro, and CHamoru. The author chooses to use "Chamoru".

2 Some people say that Guåhan was not formally colonized by the Spanish until the 1600s. However, the first point of contact between the Spanish and the Chamorus was in 1521, when Magellan landed on Guåhan. It was at this time that the Portuguese explorer and his crew killed many Chamorus.

3 Chamorus are only able to send a non-voting delegate to the U.S. Congress.

4 According to Article 3 of the U.N. Declaration on the Rights of Indigenous Peoples, "Indigenous peoples have the right to self-determination."

5 See **Thompson, Erin, 2010:** *Survivors disappointed at reparations cut*. http://www.Guåhanpdn.com/article/20101224/NEWS01/12240303.

6 See **Aguon, Mindy, 2010:** *Guåhan reparations cut out of defense bill*. http://www.kuam.com/story/13730485/2010/12/22/Guåhan-reparations-cut-out-of-defense-bill.

7 See *President Signs H.R. 3940 – Political Status Education Bill Into Law*. http://www.house.gov/list/press/gu00_bordallo/hr3940pass.html.

8 See **Hart, Therese, 2010:** *Congress OKs Guåhan political status bill*. http://www.mvariety.com/2010100330695/local-news/congress-oks-Guåhan-political-status-bill.php.

9 Based on existing Guåhan law and the 1950 Organic Act, native inhabitants refers to those individuals who became U.S. citizens as a result of the enactment of the 1950 Organic Act and their descendents.

10 See *Pangelinan seeks to build decolonization roster*.

http://mvGuåhan.com/index.php?option=com_content&view=article&id=13282:pangelinan-seeks-to-build-decolonization-roster&Itemid=1.

11 See Catahay, Michele. *Chamorro conference held at Nikko* http://www.kuam.com/story/13306272/chamorro-conference-being-held-at-nikko?redirected=true

12 See **Ridgell, Clynt:** *US-EPA Reverses Its Stance on Buildup EIS*. http://www.pacificnewscenter.com/index.php?option=com_content&view=article&id=7860:us-epa-says-feis-is-adequate.

13 See Guam Legislature Resolution 444. http://guamlegislature.com/COR_Res_30th/Adopted/Res.%20No.%20R444-30%20%28LS%29.pdf.

14 See **Aguon, Mindy, 2010:** *Lawsuit filed over Pagat-as-firing ranges*. http://www.kuam.com/story/13522721/2010/11/17/trust-we-are-guahan-discuss-lawsuit.

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EAST &
SOUTH EAST ASIA

JAPAN

The two indigenous peoples of Japan, the Ainu and the Okinawans, live on the northernmost and southernmost islands of the country's archipelago. The Ainu territory stretches from Sakhalin and the Kurile Islands (now both Russian territories) to the northern part of present-day Japan, including the entire island of Hokkaido. Hokkaido was unilaterally incorporated into the Japanese state in 1869. Although most Ainu still live in Hokkaido, over the second half of the 20th century, tens of thousands migrated to Japan's urban centres for work and to escape the more prevalent discrimination on Hokkaido. Since June 2008, the Ainu have been officially recognized as an indigenous people of Japan. As of 2006, the Ainu population was 23,782 in Hokkaido and roughly 5,000 in the greater Kanto region.[1]

Okinawans live in the Ryũkyũ Islands, which now make up Japan's present-day Okinawa prefecture. They comprise several indigenous language groups with distinct cultural traits. Japan forcibly annexed the Ry ky s in 1879 but later relinquished the islands to the US in exchange for its own independence after World War Two. In 1972, the islands were reincorporated into the Japanese state, but the US military remained. Currently, 75% of all US forces in Japan are located in Okinawa prefecture, a mere 0.6% of Japan's territory. 50,000 US military personnel, their dependents and civilian contractors occupy 37 military installations on Okinawa Island, the largest and most populated of the archipelago. The island is home to 1.1 million of the 1.3 million living throughout the Ryũkyũs.

In 2007, Japan voted in favour of the UN Declaration on the Rights of Indigenous Peoples.

The Ainu

After the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, the Japanese government recognized the Ainu as an in-

digenous people of Japan by passing a resolution[2] in June 2008. To the disappointment of many activists, the Resolution did not accord indigenous rights, self-determination, or a formal apology for past injustices. Meanwhile, rights recovery is proceeding at a glacial pace.

Several weeks after the resolution's approval, the government announced that the reference to the Ainu as an "indigenous people" in the resolution was not synonymous with "indigenous peoples" as referred to in the UNDRIP (see *The Indigenous World 2010).* In its July 2009 report, the government-appointed "Expert Meeting Concerning Ainu Affairs" sought to clarify this confusion. The report contained a Japan-specific interpretation of "indigenous peoples" as those "who reside[d] in fixed regions, prior to the extension of the nation's rule, and who possess culture and identities differing from the majority peoples who comprise the nation-state, and who, thereafter, in spite of their differing culture and identity undergo the rule of majority peoples, and continue to reside in these same regions without forfeiting their originary culture and identity".[3] Moreover, the Expert Meeting stringently avoided reference to Hokkaido as a colonial territory. Instead, in the language of the report, Ainu culture was described as having been "dealt a severe blow" by the onset of modernity. This report now serves as the blueprint for crafting nationwide Ainu policy. Expanding Ainu policy beyond Hokkaido represented an important step forward in unifying the Ainu community nationwide.

In January 2010, the government-appointed Council on Ainu Policy Promotion, including five Ainu representatives, commenced work drafting policy reforms. Committee responsibility was divided between two groups: 1) the "Symbolic Space of Ethnic Coexistence" working group and 2) the "Non-Hokkaido Ainu Survey on Ainu Livelihood" working group. In December 2010, the "Symbolic Space of Ethnic Coexistence" working group announced its selection of the town of Shiraoi as host. Detailed plans for what this space will encompass have not been formally announced. Efforts to formulate a livelihood survey suitable for Ainu outside Hokkaido continue.

Lobbying the government against ecologically harmful development

The national government's ambivalence toward extending indigenous rights to the Ainu was reflected in the Hokkaido government's handling of a development proposal that threatens to pollute Ainu traditional waterways in eastern Hokkaido. Local Ainu and residents were galvanized into action by news that an industrial waste processing facility was planned upstream on the Monbetsu (*Mo-pet* in the Ainu language) river. This river is a sacred site for the Monbetsu Ainu community, containing spawning grounds for salmon. Every fall, local Ainu host a *Kamuy Cep*

Nomi (Ceremony to pray for salmon spirits) on this river. In recent years, Ainu had used the river for reviving heritage canoes, environmental education and ecotourism. A coalition of concerned citizens calling itself the *Mopet Sanctuary Network* organized petition drives to raise awareness and stop the Hokkaido government from issuing a permit.

The campaign for the Mopet River represents a crucial development for Ainu across Japan. Aside from the Nibutani Dam case,[4] environmental protection campaigns have been marginalized while efforts have focused on political and economic rights. In its petitions, the Mopet Sanctuary Network emphasized Article 29 of the UNDRIP as essential in safeguarding Ainu lands.[5] Unilateral approval of the facility without Ainu consent would constitute a violation of the UNDRIP. Disregarding the petition, the Hokkaido government issued a development permit for the facility in July 2010, and the groundbreaking ceremony was held in September 2010. The most significant obstacle facing the Monbetsu Ainu is that land has not been restituted here. The Monbetsu Ainu are now contemplating legal action to assert their rights to their ancestral land as guaranteed under UNDRIP. Land restitution would provide a basis for future legal action to challenge the legitimacy of the industrial waste facility.

Grassroots mobilizing for indigenous rights

In October 2010, the *Indigenous Peoples Summit in Aichi* was organized to address concerns raised at the UN Convention on Biological Diversity in Nagoya. Together with indigenous representatives, the *World Indigenous Peoples Network-Ainu* (organizers), jointly drafted a declaration demanding protection for self-determined development, an end to destruction of biodiversity in Hokkaido, protection from genetically-modified species, and policy reform to ensure that heritage practices which support biodiversity be maintained.

The Okinawans

The most notable developments in the Ryũkyũ islands in 2010 revolved around the effort by the US and Japanese governments to construct a new US military complex and related facilities on Okinawa Island, and the now 15-year-old cam-

paign to stop it. The issue continues to highlight the extent to which the US relies on Japan's colonial relationship with the Ry ky s, and Tokyo's willingness to wield political and economic pressure in the islands. But it also highlights the strength of Okinawans' resistance. A number of political shifts took place because of the ongoing dispute, including an unprecedented level of popular and official opposition to the base project within Okinawa, ruptures in relations between Washington and Tokyo and within Japan's new ruling coalition and, ultimately, the toppling of the administration of Japan's prime minister, Yukio Hatoyama.

Background to the Futenma-Henoko issue

The Japanese and US governments' current plan is to construct a massive marine and naval complex in a remote part of Okinawa Island's Nago City in exchange for closing the Marine Corps' Futenma Air Station, dangerously located in the middle of crowded Ginowan City. The plan to move Futenma's military functions to Nago City was first announced in 1996, presented as an altruistic response to public outcry over the kidnap and gang rape of a 12-year-old Okinawan girl by three US servicemen.

The non-violent campaign against the new base, which has grown into a local, national and global effort, forced Japan and the US back to the negotiating table in 2005. However, US and Japanese leaders expanded the project as part of a 2006 agreement, the "Roadmap to Realignment", nearly doubling the size and military functions of the original plan. Nonetheless, historical documents discovered by Okinawan activists reveal that this plan is not new at all; the 2006 location and design is nearly identical to a design the US military developed in 1966 during its formal occupation of the Ryũkyũs.

If built, it would be 1.8km long, with two runways and a deep-water port. Construction involves significant landfill of Nago City's remote Henoko and Oura Bays, known for their diverse ecosystem of coral reefs and coastal tidelands. The plan includes building six large helipads in nearby Takae village for training of the new and crash-prone MV-22 Osprey aircraft. Together, the facilities not only threaten the habitats of several endangered species (the Okinawa dugong, or sea manatee, the Noguchigera Woodpecker and the flightless Okinawa Rail), but also fishing resources, impacting nearby communities' economic and cultural relationship with the sea.

The 2006 agreement also included a plan to move 7,000-8,000 Marines from Okinawa to the US territory of Guam, which the US government continues to use as leverage. It insists that Futenma will not be closed and that the number of Marines will not be reduced unless Okinawans accept the new military base complex at Henoko.

Recent developments

Many were cautiously hopeful after the landmark election of Yukio Hatoyama as Japan's prime minister in September 2009. It shifted power away from the long-ruling conservative (and pro-US) Liberal Democratic Party and towards the Democratic Party of Japan, which promised to renegotiate the 2006 "Roadmap" agreement so that the new base would not be built on Okinawa. Under pressure from Washington and conservative Japanese politicians, however, Hatoyama began backtracking on his promise soon after the election.

As an unusually tense back-and-forth between Tokyo and Washington unfolded, Okinawans continued to mobilize. Frustration among the general population and even conservative leaders over the 2006 expansion has not waned. Voters ousted Nago City's pro-base mayor in January 2010. Okinawa's Governor Hirokazu Nakaima opposes the plan, while both the Okinawa Prefectural Assembly and Okinawa's mayors unanimously passed resolutions calling for the immediate closure of Marine Corps Air Station Futenma and redeploying the air units outside Japan. In April, 100,000 people gathered in Ginowan after it became clear that Hatoyama would likely abandon his campaign promise. 17,000 encircled Futenma Air Station a month later.

By spring 2010, Hatoyama's support among the entire Japanese electorate had plummeted. This was partly due to Japan's economic woes, partly to a political funding scandal, but also because Hatoyama was vacillating on the Futenma-

Henoko issue. Although most Japanese support the US-Japan alliance more generally, not capitulating to Washington on the Henoko base was one of the few decisions for which Hatoyama still had public support.

In what contributed to Hatoyama's undoing, the two governments issued a statement in May 2010 reaffirming the 2006 "Roadmap", specifically that Futenma's functions would be moved to Henoko. It reiterated the conditional relocation of 8,000 Marines to Guam, which would depend on "tangible progress…toward completion of the replacement facility [at Henoko]." The statement also names Tokunoshima, an island 200 km north of Okinawa Island, as a possible site for some of Futenma's training exercises. Despite promises of massive financial incentives and public works projects, Tokunoshima has been the site of protests against the proposal. Also notable is that the statement does not refer to Futenma's *closure*. Instead it refers to its "return", and not to Okinawans, but "to Japan as part of the Alliance transformation and realignment process." This is important because the two countries plan to expand the shared use of facilities between their military forces. This may mean an influx of Japan's Self-Defense Forces into Okinawa, perhaps as the recipients of facilities, like Futenma, that the US identifies for "return".

Indeed, representatives of Hatoyama's successor, Naoto Kan, recently hinted that Okinawans might have to endure Futenma indefinitely, and that perhaps schools and hospitals would have to be relocated out of Ginowan. The government also suspended Nago City's part of the budget allocated to municipalities that "host" bases. Kan has thus so far spent his tenure seeking to bring Okinawans in line. But Okinawans continue forging their own path. ❍

Notes and references

1 Population figures taken from the 2006 Survey of Ainu Livelihood conducted by Hokkaido Prefectural government in cooperation with the Ainu Association (Hokkaido Government, Environment and Lifestyle Section. 2007. *Hokkaido Ainu Survey on Livelihood Report*, Accessed 20 March 2011, http://www.pref.hokkaido.lg.jp/file.jsp?id=56318). Many with Ainu ancestry do not publicly identify as Ainu due to discrimination and stigma in Japanese society. Ainu observers estimate the actual population of those with Ainu ancestry to be between 100-300,000.

2 The Resolution was passed during a joint session of both houses of Parliament. Resolution to Acknowledge the Ainu as an Indigenous People, 6 June 2008. The Japanese version is available at <shugiin.go.jp/itdb_gian.nsf/html/gian/honbun/ketsugian/g16913001.htm>

3 Expert Meeting Concerning Ainu Affairs Final Report. 2009 http://www.kantei.go.jp/jp/singi/ainu/index.html, Accessed 14 January 2011, page 23.

4 The Nibutani Dam legal case, which culminated in recognition of Ainu as an indigenous people and ruled that the dam compromised the inherent right of local Ainu to continue traditional practices, was an important milestone in this regard (see discussion in Levin, Mark A. 1999 Kayano et al. v. Hokkaido Expropriation Committee: "The Nibutani Dam Decision", *International Law and Politics* 38(394).)

5 Article 29 of the UNDRIP prescribes that, "States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior, and informed consent." (United Nations Declaration on the Rights of Indigenous Peoples. 2007 http://www.un.org/esa/socdev/unpfii/en/declaration.html, Accessed 10 January 2011.)

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CHINA

According to the last census of 2000, there are 105,226,114 people belonging to ethnic minority groups, and they comprise 8.47% of the total population of China. The government officially recognizes 55 ethnic minorities. There are 20 ethnic minority groups in China with populations of less than 100,000 people and, together, they number about 420,000 people. The Chinese government does not recognize the term "indigenous peoples". Although it has not been clearly established which of the ethnic minority groups can be considered as indigenous peoples, it is generally understood that they mainly comprise the ethnic minority groups living in the south-west of the country and a few groups in the north, east and on Hainan Island. Many of these belong to the category of small ethnic groups. They are mostly subsistence farmers belonging to the poorest segment of the country and they have illiteracy rates of over 50%.

State policy to promote ethnic unity

In order to understand the Chinese government's policy direction and focal areas regarding ethnic minority peoples over the past year, it is important to examine its official publications. One public release was on the main news events of 2010 with regard to China's ethnic minority groups, as compiled by the State Ethnic Affairs Commission.[1] This documented information indicated that the Chinese government had been busy conducting a national campaign of "Ethnic Unity" to counter a string of ethnic riots and violent protest incidents that had occurred in 2009.

The campaign included many publicity and public education actions to promote program activities for "ethnic unity, progress and new change". These are aimed at the overall stated goals of "maintaining ethnic unity, social stability and national unification". Other publicity programs arising out of this also included a

national competition to find the best posters to display on the theme of "Ethnic Unity". Following an evaluation by experts and a public vote, a total of 88 posters were selected. The winning entries were put on display as part of the "Ethnic Unity Painting Exhibition" at the Ethnic Cultural Palace in Beijing. Another activity was that of promoting national heroes of ethnic minority origin. This took place in the form of honoring Gongqu Zeli, a Tibetan military officer who died on the job a year earlier. A publicity program, through news broadcasts, was conducted for Gongqu Zeli, documenting his personal dedication to the cause of ethnic unity and his diligent work that saw him rise to the rank of general and other top posts throughout his military career.

The national campaign has also been linked to the implementation of government policy programs. One program is that of incorporating the theme of "Ethnic Unity" into the state education curriculum, and to boost text book content on this topic. A set of national school text books was introduced, catering for different levels of state education. There were two text books for elementary schools, entitled "The Big Chinese Family" and "Understanding Ethnic Minority

Groups". In junior high school, the text book used was "Understanding Ethnic Policies", while "Understanding Ethnic Theory and Practice" was used in senior high school.

Another government policy has been to codify the spirit and intention of "Ethnic Unity" into law. As such, the Education Ordinance on Ethnic Unity for Xinjing Uighur Autonomous Region is the first local ordinance law in China which emphasizes the promotion and strengthening of the goal of ethnic unity. This particular education ordinance stipulates that all citizens have the sacred duty and honored obligation to oppose separatist actions, to promote ethnic harmony and to maintain the unity of the state. It is forbidden for any individual or organization to disseminate information that is contrary to the cause of ethnic unity. Those who act in breach of such law shall be confined and punished by the authorities, and any offender committing crimes against ethnic unity shall bear criminal responsibility.[2] This ordinance thus incorporates educational work on ethnic unity into the legal system, in order to standardize it and monitor it under administrative control. When people's daily lives are subjected to the constant monitoring and restriction of such ordinances, this actually indicates that the much vaunted concept of "Ethnic Unity" is only being passively obeyed and has to be enforced, thus not reflecting the real unity of the ethnic peoples.

There are worrying signs that, under the state-enforced "Ethnic Unity" ideology, assimilation of ethnic minority groups in China will forge ahead at an even faster pace. China's public education and publicity campaigns aimed at ethnic unity are largely rigid image-making propaganda, and program implementation is driven by government officials from the top down. The many years of campaigns, indoctrinated actions and regulated behaviour will have the effect of pushing ethnic minority peoples gradually into the melting pot of the unifying Chinese nationalism.

One example is the Planning for Ethnic Minority Enterprise under the 11th Five-Year National Plan.[3] Bilingual education for ethnic minorities is being implemented under this program. The main emphasis is placed on reforming the teaching of the Chinese language and ensuring that Chinese is the second language of ethnic minority students. The program calls for the gradual implementation of Chinese language teaching for pre-school children. The underlying objective of this bilingual education program is to reduce the regular use of their mother tongue on the part of ethnic minority children, encouraging them to think and speak in Chinese.

The impact of natural disasters

Over the past year, the ethnic minority peoples in China experienced several natural disasters. Faced with broken homes and ruined properties, they had to tackle the difficult task of rebuilding. The concept and expression of "Ethnic Unity" has, however, found capacity for development in these rebuilding efforts.

The major disaster encountered was a devastating drought that hit China's south-west provinces. Said to be the worst drought in the last 100 years, it started in the autumn months of 2009 and persisted through to the spring of 2010. Throughout these months, Yunnan, Guizhou, Guangsi and Sichuan provinces received hardly any rainfall. This had a huge impact on many sectors. According to official accounts, a total of 900,000 hectares of farmland were seriously affected. An estimated 17 million people and 13.3 million head of livestock lacked drinking water due to the drought.[4] Most of the affected populations were ethnic minority peoples, especially the Yi, Hani, Dai, and a number of other ethnic groups in these south-west provinces. The drought lasted a long time, and caused serious problems leading to increased poverty, such as reduced vegetation cover and insufficient drinking water, crop failure and food scarcity, and overall health problems.

In its report on the "Great Drought of the Southwest", the Chinese government sought to assess the cause and effect of this natural disaster. It found that the drought exposed serious problems in the water conservation and irrigation infrastructure of the south-west provinces. The proposed solution is to enhance these hydrological facilities and implement more engineering projects in order to increase the capacity to fight drought.[5] According to government plans, these drought-combating engineering projects include building large- to medium-capacity dams, strengthening small-scale dams and boosting the facilities of small retaining dams for reservoirs, along with drilling deep wells to access underground water. It is certain that, following this major drought, the south-west provinces will see many engineering projects being undertaken. Some experts have, however, questioned this approach. They are asking whether building more dams will really solve the serious crisis of decreasing water resources and the increasing occurrence of drought in recent years.

Climate change in a particular region is closely related to changes in its environment and ecosystem. When one looks at aerial maps of China's south-west

region, it becomes clear that much of the forest cover has been lost. This is evident when comparing the south-west provinces with the still lush green areas of the countries across the border – Burma, Laos and Vietnam. It seems the Chinese government has, however, not yet taken into account the environmental devastation of the south-west provinces, most of it due to economic development and over-exploitation of the land. If this vital issue is not tackled, more and improved dams and reservoir facilities will be no match for the forces of nature when the next drought strikes. The Chinese government must therefore ponder the consequences of its actions, and realise that the drought this past year may be more a man-made disaster than a natural one.

Following the drought in the south-west provinces, a 7.1-magnitude earthquake struck Yushu Tibetan Autonomous Prefecture of Qinghai Province on 14 April 2010. Then a deadly landslide hit the Quzhou area of China's north-west province of Gansu. These disasters caused great loss of life and property. Both occurred in areas inhabited by ethnic minority peoples, where adequate road access is lacking and most of the population are poor rural villagers living in areas of steep and rugged mountains, lacking gentle slopes and flat land for farming.

Due to the geographical features of the affected areas, it was difficult for the local population to deal with the consequences of the disasters and the relief effort. They have only meager resources and are therefore dependent on the relief provided by government agencies. When faced with the enormous task of rebuilding, they also required the manpower, material support and financial assistance of the government.

On the other hand, the state government demands the unity of all ethnic minority peoples and the stability of society. The relationship between the Chinese state and ethnic minority peoples is always hanging in a delicate balance and constantly shifting. Over the past year, a balance seems to have been maintained on the basis of a relationship of mutual dependence. ❍

Notes and references

1 "Top news and events of 2010", *China Ethnic News,* 24 December 2010, page 1

2 "Xinjiang Peoples Deputy meeting approves the nation's first education ordinance on ethnic unity", Information from China State Ethnic Affairs Commission, retrieved at http://www.seac.gov.cn/gjmw/index.htm

3 The 11th Five-Year Plan refers to the State Economic and Social Development Five-Year Plan for the period 2006 to 2010

4 Chen Lei 2010. Assessment and plan implementation for dealing with the drought of southwest province, *Current Affairs Report*, May, 2010, p. 9.
5 Ibid. p. 11-12.

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TIBET

The Tibetan people consider themselves an occupied nation rather than an indigenous people but share many characteristics with indigenous peoples. Tibet was brought under full control by the People's Republic of China in 1959. The popular uprising in Tibet's capital Lhasa on 10 March 1959 led to the flight of Tibet's spiritual and political leader, the 14th Dalai Lama, and with him thousands of Tibetans, into exile. The Dalai Lama has established a Tibetan Government in Exile in India while Tibet remains under Chinese occupation. The approximately 127,000 Tibetans in exile account for about 3 percent of the total Tibetan population of an estimated six million, of which around a half lives in the Chinese-labeled Tibet Autonomous Region (TAR), while the other half lives in Eastern Tibetan autonomous regions in a number of Chinese provinces.

Development without the people

A major earthquake struck the Tibetan town of Kyegu in Yushu in Eastern Tibet on 14 April 2010, leading to the deaths of around 3,000 people and leaving more than 100,000 homeless. According to a report by the International Campaign for Tibet (ICT), Chinese authorities have announced that, in an area with more than 90% Tibetan population, they are rebuilding Kyegu as a tourist destination with a Chinese name. The news intensifies concern over the exclusion of Tibetans and NGOs from the reconstruction process and that historic buildings that survived the quake may be razed. Contacts in the area told ICT that multiple projects were being proposed and, while local Tibetans have protested each one to date, local officials have responded that the Beijing authorities are responsible for planning. According to a report by Radio Free Asia in June, hundreds of Tibetans protested after officials began evicting them from their land in order to claim the best locations for schools, government offices and parks. Many Tibetan families refused to accept the govern-

ment's offer of new, yet smaller, reconstructed homes in exchange for their land. There has also been concern that Tibetans who lost everything in the earthquake and are trying to recover will be crowded out by Chinese migrants.

The response of the Chinese government to the earthquake illustrates its relationship with the indigenous Tibetan population. Beijing has invested vast amounts of funding, personnel and resources in Tibet's development, e.g. for improved transport and, in September, began to build an extension to the controversial Qinghai-Tibet Railway, linking central Tibet's second largest town, Shigatse, to Lhasa. Beijing seems to believe that, once Tibet has developed, Tibetans will accept Chinese leadership. But Tibetans are excluded from active participation in the development of their country and, with over 80 percent of Tibetans living in rural areas, the benefits have not been accessible to the vast majority.

Restrictions on culture and religion

Tibetans feel marginalized and are constantly vexed by new restrictions on their culture and religion. In drawing his conclusion on the government's resettlement

of Tibetan nomads in huge numbers, the UN Special Rapporteur on the Right to Food told the government after his visit to China in December that nomads should not be forced to sell off their livestock and resettle.

The Fifth Tibet Work Forum was held in Beijing in January and, unlike the previous work forums, included all Tibetan areas.[1] Although not much is known about this, the authorities seem to have acknowledged that the inequality between rich and poor has widened, and indicated that they were focusing on improving rural Tibetans' livelihoods. They did not, however, consider their right to determine themselves how these improvements should take place.

When, in October, the government proposed that all lessons and textbooks should be in Chinese in primary schools by 2015, thousands of Tibetan students took to the streets to protest against the plans, and over 300 teachers wrote a letter to the authorities appealing for the proposals to be retracted. The enforcement of Mandarin as the first language across Tibet will negatively impact on the lives of Tibetans dramatically and is against China's constitution, as well as national and international laws. On November 25, the European Parliament adopted a resolution in support of the Tibetan language and condemning the plans.

Tibetan Buddhism and the monastic community also faced several attacks over the year. In September, the State Administration for Religious Affairs issued regulations that obstruct traditional Tibetan Buddhism and provide a strong legal instrument for the authorities to control the monastic institutions. It is primarily meant to curb the influence of the Dalai Lama and other heads of Tibetan Buddhism.

No right to own opinion

According to the Annual Report by the Tibetan Centre of Human Rights and Democracy (TCHRD), the human rights situation did not improve in 2010. This was confirmed by the Human Rights Watch Report 2011 on China.[2]

By the end of 2010, there were 831 known political prisoners in Tibet and 188 known Tibetans had been arrested and detained, most of them for expressing their concerns about Tibet. Although China banned torture in 1996, it is reported to be a regular feature of Tibet's prisons.

One of the most reported cases concerned the arrests of a prominent Tibetan environmentalist, Karma Samdrup, and some of his relatives. According to the

Associated Press, on August 2 a court in northwest China rejected an appeal from Karma Samdrup, who was sentenced to 15 years in prison on charges of robbery. The charges against him date back to 1998 but were not pursued until 2010. Supporters said that the trial was aimed at punishing him after he had spoken up for his brothers, who were detained after accusing local officials of poaching endangered species. The eldest brother was imprisoned for five years for the crime of "splitting the country". The youngest is serving 21 months of re-education through labour for "harming national security".

The crackdown on intellectuals intensified over the year. For example, Kalsang Tsultrim was arrested on suspicion of committing "political error" because he had composed and distributed 2,500 VCDs discussing Tibetan history and recordings of the concerns of Tibetan people. Three Tibetan writers were jailed for "incitement to split the nation", primarily because of essays they wrote about the 2008 protests in a local newsletter (see *The Indigenous World 2009*). Another Tibetan was sentenced to two years' imprisonment for what the Chinese government described as "connections with outside separatist forces".

Several long-term prisoners were reported to be in bad health, including Jigme Gyatso, a former monk serving an 18-year prison sentence for "counter revolutionary" activities. At least one prisoner, a 48-year-old monk, Lobsang Palden, is reported to have committed suicide in prison in November.

Dalai Lama and China "sharply divided"

The Dalai Lama's special envoys visited China for a ninth round of talks with the Chinese government in January 2010. The Dalai Lama hopes that these talks will lead to genuine autonomy for the Tibetan people. The envoys concluded in a press statement on their return that they "do not see any reason why we cannot find common ground" and proposed "a common effort to study the reality on the ground, to help both sides to move beyond each others' contentions".[3] Executive Vice Chairman of the United Work Front Department of the Communist Party, who met the envoys, left less room for optimism and told the press in Beijing that there was no possibility of the "slightest compromise, on the issue of sovereignty in Tibet" and that the two sides were "sharply divided .. as usual".[4]

According to the Xinhua news agency, when responding to questions on what will become of the region after the Dalai Lama's death, a Chinese official said on

2 February that Tibet would keep to its own path, with or without the Dalai Lama. At another press conference later that week, a Foreign Ministry Spokesman expressed "strong" opposition to any meeting between foreign politicians and the Dalai Lama, probably referring to the planned meeting between President Obama and the Dalai Lama which took place in February, when Obama expressed his "strong support" for Tibetan identity and the protection of the Tibetans' human rights.

The world bows to China

In December, Nepal and China agreed to step up security in their border areas to prevent the entry of Tibetans into Nepal. This is only the latest development in Nepal's increasingly close relationship with China. In violation of Nepal's "Gentlemen's Agreement" with the UNHCR,[5] three Tibetan refugees were forcibly repatriated by Nepalese police in July and October. Nepalese police disrupted Tibetan preliminary polls for the election of the Prime Minister in the Tibetan Government in Exile by confiscating ballot boxes already filled with thousands of ballots.

Most governments around the world prioritize good relations with China and do not back up their demands for China to respect human rights in Tibet and enter into negotiations with the Dalai Lama with action. The European Parliament continues to support Tibet but has no power to put pressure on China. Tibet and human rights organizations continue to report on China's violations of the rights of Tibetans and to lobby politicians to take action. ❍

Notes

1 Tibet Autonomous Region and Tibetan areas in Eastern Tibet now incorporated in Chinese provinces.
2 http://www.hrw.org/en/asia/china
3 http://www.tibet.net/en/index.php?id=1368&articletype=flash&rmenuid=morenews&tab=1#TabbedPanels1
4 International Campaign for Tibet, press release, February 2, 2010.
5 Under the 1990 "Gentlemen's Agreement", Tibetans picked up by police while transiting through Nepal are supposed to be turned over to the Nepalese Department of Immigration, which in turn contacts UNHCR.

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TAIWAN

The officially recognized indigenous population of Taiwan numbers 484,174 people (2007), or 2.1% of the total population. Thirteen indigenous peoples are officially recognized. In addition, there are at least nine Ping-Pu ("plains or lowland") indigenous peoples who are denied official recognition.[1] Most of Taiwan's indigenous peoples live in the central mountains, on the east coast and in the south.

The main challenges facing indigenous peoples in Taiwan continue to be rapidly disappearing cultures and languages, low social status and very little political or economic influence. A number of national laws protect their rights, including the Constitutional Amendments (2005) on indigenous representation in the Legislative Assembly, protection of language and culture, and political participation, the Indigenous Peoples' Basic Act (2005), the Education Act for Indigenous Peoples (2004), the Status Act for Indigenous Peoples (2001), the Regulations Regarding Recognition of Indigenous Peoples (2002) and the Name Act, which allows indigenous peoples to register their original names in Chinese characters and to annotate them in Romanized script (2003). Unfortunately, serious discrepancies and contradictions in the legislation, coupled with only partial implementation of laws guaranteeing the rights of indigenous peoples, have stymied progress towards self-governance.

Draft Bill on Indigenous Autonomy approved

Deliberations and negotiations within various government departments on "Indigenous Autonomy" was one of the most important issues this past year. Undergoing several changes and amendments, the draft Indigenous Autonomy Act was approved by the Executive Yuan (the executive branch of the Taiwan government) on 23 September 2010.[2]

1. Chiayi County
2. Alishan and Laiji - Chiayi County
3. Tsoushi Township - Hualien
4. Majia - Pingtung County
5. Jianan - Taitung County

The Indigenous Autonomy Act sets out the legal framework and process for establishing autonomous regions for indigenous peoples. The Act stipulates the content and the confines of autonomous administrative responsibility, the rights and obligations of the residents of autonomous regions, their administrative laws and regulations, and the governance structure and setting up of offices. It also determines the financing mechanisms, and defines and co-ordinates the relationships between the different levels of government and those of the indigenous autonomous regions.

Throughout the public discourse and deliberation process, there were contrary views and concerns expressed by indigenous peoples regarding the draft bill. Many felt that, due to the new set of laws, regulations and new administrative structure, indigenous peoples would lose much of their input into decision-making. Many also pointed out the difficulty in its implementation and the problems in delimiting the actual jurisdictional boundaries of the autonomous regions. There were also concerns that sources of finance and taxation would be much reduced

in the autonomous regions. Views were also voiced that this indigenous autonomy was based at too low a level in the government structure. Yet more concerns were raised regarding the lack of protection of the rights of indigenous peoples living in urban areas, should the Autonomy Act be approved.

Despite the views and concerns expressed, and having taken them into consideration, the Council of Indigenous Peoples (CIP) still regards the draft bill as the best way forward in the current political climate. CIP officials have called for indigenous peoples to support the draft bill, as it is the result of deliberative processes with input from, and public consultations with, many sectors, and given that further adjustments can be made in the future.[3]

Metropolitan city elections

Another important political development in Taiwan was the mayoral and city council elections in the five metropolitan cities in November. The five newly-created metropolitan cities[4] have expanded their jurisdictional boundaries; not, however, without controversy. Through this expansion, a number of rural townships have been incorporated into the new metropolitan entities, and this includes five indigenous townships. This incorporation led to protests by indigenous organizations because it reduces the political administrative areas that formerly belonged to indigenous communities, and thus diminishes some of the autonomous indigenous powers.

Of the five metropolitan cities, Taipei and Kaohsiung already have their own executive agency for indigenous affairs. The other three, Tainan, Taichung and New Taipei City, have lower-level administrative offices for indigenous affairs that plan and implement programs for indigenous peoples within their jurisdiction. The five indigenous townships that were incorporated into the five metropolitan cities have now become city districts. The heads of such "indigenous districts" will be appointed by the government and are no longer to be elected by indigenous constituents, as before.

There may, however, be problems in filling these posts in the future, given the lack of sufficient indigenous civil servants with the required qualifications.

Another area of concern is the imbalance in resource allocation. The indigenous districts are in a more rural setting, with a sparser population, and they may not receive the same amount of resources. They will therefore be unable to enjoy the same improvements in infrastructure as the more populated urban districts of the new metropolitan cities.

Ping Pu issue remains unresolved

A still unresolved issue in 2010 was the demand for official recognition of the Ping Pu (Lowland Plains) indigenous peoples.

Lacking official "indigenous peoples" status, their rights are not protected and they are excluded from nearly all the programs of the government and Council of Indigenous Peoples. While there is official recognition and there are government programs for overseas Chinese, Chinese Hakka, Mongolians and Tibetans, and for the 14 highland indigenous groups, the Ping Pu indigenous peoples are left out, with no recognized administrative status or government support. Carrying on from their vigorous protest actions of 2009, this past year saw the Ping Pu indigenous activists continue their "Campaign for Restoration of Indigenous Status". However, just as in the past, the Taiwan government has continued to refuse their request, and refused to recognize them as indigenous peoples. Despite many years of struggle, the Ping Pu groups face the tragic situation of losing their group identity while continuing to suffer social discrimination.

The Ping Pu groups have brought a lawsuit against the Council of Indigenous Peoples and the Taiwan government, which is currently at the district court level but is likely eventually to go to the country's Supreme Court. They contend that the government's exclusion and denial of indigenous status to Ping Pu groups is discriminatory and in violation of the Constitution.

Along with this domestic legal challenge, Ping Pu indigenous groups are pressing ahead with their case at the United Nations. Led by the TARA-Ping Pu organization, they filed a complaint of rights violations with the OHCHR in April last year, requesting that James Anaya, Special Rapporteur on the rights of indigenous peoples, conduct an investigation.

Government acts against encroachment onto indigenous peoples' land

Encroachment onto, and misappropriation of, indigenous peoples' lands has caused many disputes over the years. One case that gained notoriety was that of a farmstead in a mountainous area of Tsoushi Township of Hualien County, in eastern Taiwan. A business consortium, mostly of non-indigenous outsiders, had tenured this area (rented for use from government agencies) and converted it to

the intensive farming of agriculture crops. This led to deforestation, environmental destruction, and pollution of the water sources in the surrounding area. This farmstead land was situated on the traditional territory of the indigenous Bunun people, who had for some years been demanding its return to the community. The authorities finally decided to act, with a raid involving the police, Ministry of Interior and municipal government, in April 2010.[5]

During the raid equipment was confiscated, a number of illegal constructions were torn down, and the land was subsequently returned to the Bunun community. It was a strong statement on the part of the authorities, aimed at clamping down on illegal construction and exploitation of indigenous land. The action was lauded by indigenous rights groups for protecting their land and natural resources.

Recovery efforts for typhoon victims

In central and southern parts of Taiwan, several major projects were completed as part of the government's recovery efforts in the aftermath of the 2009 Typhoon Morakot. A number of devastated indigenous communities were rebuilt. These include Jianan Village in Taitung County, Alishan Township in Chiayi County, and Majia Village in Pingtung County. Indigenous families who were displaced by flooding or landslides were able to settle in either temporary or permanent housing. Some areas, however, suffered delays in the rebuilding efforts. Some indigenous communities, such as the Laiji community of Chiayi County, were unable to achieve an overall consensus on a rebuilding site due to safety concerns in the geotechnical assessment. There were other problems and disputes caused by project delays, the settlement of displaced families and the forced relocation of indigenous peoples away from their old community sites. A number of indigenous organizations held protests against the government and CIP with regard to issues of resettlement and forced relocation.[6]

Continuing lack of indigenous teachers

On the education front, problems related to a lack of qualified indigenous teachers only worsened over the year. The deficiency was especially acute in elementary and junior high schools in indigenous townships. Some of these schools had

no indigenous teachers at all. This was due to a shift in direction at education colleges, the new government law on education, lower birth rates, and changes in teacher training programs. All these factors have led to a gradual decrease in the number of qualified indigenous teachers. With no solution in sight, the situation has started to adversely affect the teaching of indigenous language and culture to the younger generation. ❍

Notes and references

1 The officially recognized groups are: the Amis (aka Pangcah), Tayal, Paiwan, Bunun, Pinuyumayan (aka Puyuma or Punuyumayan), Tsou, Rukai, Saisiyat, Tao (aka Yami), Thao, Kavalan, Truku and, since January 2007, the Sakizaya. The nine non-recognized Ping Pu groups are: the Ketagalan, Taokas, Pazeh, Kahabu, Papora, Babuza, Hoanya, Siraya and Makatao.

2 Official news announcement on the Executive Yuan website http://www.ey.gov.tw

3 For reference to the public announcement on autonomy from the Council of Indigenous Peoples, see http://www.apc.gov.tw/portal/docDetail.html?CID=70BECE48437643C1&DID=3E651750B4006467A9CDA023F4DD1B78

4 The five "metropolitan cities" are Taipei, New Taipei City, Taichung, Tainan and Kaohsiung. They are the result of a re-organization of the urban areas as part of the current policy of the ruling KMT Party, according to which the urban centers are newly demarcated at the expense of rural counties, and put under the direct rule of the central government. New Taipei City was formerly Taipei County. The other four "metropolitan cities" still retain their old city name.

5 18 people indicted for illegal land-clearing and deforestation on Chingshui Farmstead case, *Liberty Times*, 25 June 2010. http://www.libertytimes.com.tw/2010/new/jun/25/today-north1.htm

6 Indigenous peoples sit-in protest on Ketagalan Boulevard, against forced relocation and division in *TITV news report*, 8 June 2010

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PHILIPPINES

Of the country's current projected population of 94,01 million, indigenous peoples are estimated to comprise some 10%, or around 9,4 million. There has been no accurate comprehensive count of Philippine indigenous peoples since 1916, although the national census in 2010 included an ethnicity variable. They generally live in geographically isolated areas with a lack of access to basic social services and few opportunities for mainstream economic activities. They are the people with the least education and the least meaningful political representation. In contrast, commercially valuable natural resources such as minerals, forests and rivers can mainly be found in their areas, making them continuously vulnerable to development aggression. The indigenous groups in the northern mountains of Luzon (Cordillera) are collectively called Igorot while the groups on the southern island of Mindanao are collectively called Lumad. There are smaller groups collectively called Mangyan in the central islands as well as even smaller, more scattered, groups in the central islands and Luzon. The year 2010 commemorated the 13th year of the promulgation of the Republic Act 8371, known as the Indigenous Peoples' Rights Act (IPRA). The law calls for respect for indigenous peoples' cultural integrity, right to their lands and right to self-directed development of these lands. The Philippines voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples; the government has not yet ratified the ILO Convention 169.[1]

In 2010, several nationwide events in the Philippines – elections, census and the formulation of a new Medium-Term Philippine Development Plan (MTPDP) – served as venues for indigenous peoples given attention to and to claim the right to participate in national life.

1. Intex Mining Project

Elections

In May 2010, elections took place for local and national parliaments. Indigenous peoples' direct involvement in the elections could be achieved by participating in

the party list system. In this system, members of a marginalized sector can form a political party and, if it garners at least 2% of the total votes cast for party lists, it wins the right to place a representative in the House of Congress (up to a maximum of 3 per party list), as this latter has reserved 20% of its seats for party list members. It was surprising that around 20 party lists including indigenous peoples' concerns were accredited by the Commission on Elections, which indicated a robust interest on the part of indigenous peoples in participating in the electoral exercise. On the other hand, it was not surprising that too many groups vying for too few seats meant that not a single indigenous peoples' party list won. A perusal of the election figures shows that if the votes cast for a least three of the party lists (those with the largest number of votes) had been combined, there would have been at least one indigenous peoples' party list representative in Congress. This is an encouraging statistic as it indicates the possibility of future electoral clout for indigenous peoples.

Another positive result from the elections was that the respective Cultural Communities Committees (CCC) of the Senate and Congress are now headed by successful candidates with a more open and progressive attitude towards indigenous peoples' issues.[2]

Indigenous peoples' policy agenda

The elections likewise installed a new President, Benigno Aquino III, whose family has long been associated with the struggle for human rights in the country. It was thus perceived that he would be more concerned about indigenous peoples that his predecessors ever were. Networks of indigenous peoples' organizations and support groups prepared indigenous peoples' policy agendas for the President's consideration, and the celebration of International Day of the World's Indigenous Peoples in August saw the presentation of four such agendas. There was a realization that more impact could be achieved within the new administration if these agenda were consolidated and one consensus agenda presented.

To this end, the Consultative Group on Indigenous Peoples (CGIP) was formed, which can be described as a network of networks of national indigenous peoples federations and support groups. Members of the group saw that there was consensus on five focal themes: 1. meaningful recognition of indigenous peoples' right to self-determination; 2. a comprehensive review of the IPRA's im-

plementation and the reform of the National Commission on Indigenous Peoples (NCIP); 3. protection from development aggression; 4. culturally appropriate and timely provision of basic social services to indigenous communities; and 5. significant participation of affected indigenous peoples in the peace process between government and political armed groups.

The draft consensus policy agenda was subjected to the scrutiny of indigenous peoples' leaders from different parts of the Philippines on 28 October. This was the first time in a long while that indigenous peoples from a very broad spectrum of ideological underpinnings and geographical areas had met; outputs can thus be considered to be genuinely reflective of the main concerns of indigenous peoples in the Philippines. It was decided that an indigenous peoples' summit should be held in the first quarter of 2011 for indigenous peoples' representatives to reaffirm the consensus agenda, enrich it with an action plan, and then present it to the President, government agencies and funding partners. The hope is that these institutions will align their policies and programs with what the indigenous peoples themselves have stated are their development priorities.[3]

Indigenous peoples and the government's development plan

The Philippine government has been finalizing its Medium-Term Philippine Development Plan (MTPDP) for 2012-16. NCIP was tasked by the government to come up with the MTPDP for the country's indigenous peoples (MTPDP-IP, later referred to as the IPMAP, or Indigenous Peoples Master Plan). Civil society organizations (CSOs) strongly criticised the MTPDP-IP on two counts. First, there is a stark contrast between the focus of the Consensus IP Policy Agenda and the draft MTPDP-IP. CSOs maintained that the latter appeared to be primarily an investment plan intent on maximizing the country's economic benefits from the rich natural resources on indigenous peoples' lands rather than a road map for indigenous peoples to overcome the constraints that keep them a vulnerable sector. Second, the draft MTPDP-IP did not undergo a consultative process in its formulation, especially in comparison with how the Consensus IP Policy Agenda was firmed up.

The NCIP did try to make it as consultative as possible after this critique, but the deadlines set by the central government made it impossible for the agency to cope with the stipulations of the CSOs on how to make the process more participatory.

Census

The invisibility of indigenous peoples in the Philippines is perpetuated by the lack of basic data on them that is aggregated at the national level. Thus the inclusion for the first time of an ethnicity variable in the government's 2010 Census on Population and Housing (referred to as 2010 CPH) was welcome. The National Statistics Office (NSO) worked closely with the NCIP on operationalising this variable.

For the purpose of the 2010 CPH, ethnicity means a household member's identity by blood relations and not by choice, adoption or confirmation. Some CSOs have a problem with this definition, believing it to be disrespectful of the right to cultural integrity that the NCIP is supposed to protect, as many indigenous groups do not consider consanguinal relations as the only or even primary determinant of their ethnicity. The NCIP explained that it has adopted this definition to prevent the inclusion of "fake" members of indigenous communities, or those who purport to be indigenous for selfish gains. The NCIP did express its willingness to develop a more culturally-sensitive definition of ethnicity for the next census in 2020.[4]

One concern regarding the way in which the census was conducted in indigenous peoples' communities was in relation to the quality of the data gathering. By law, only Department of Education teachers may become enumerators. The selected enumerators underwent intensive training prior to their fieldwork. A day or two focusing on data-gathering issues in indigenous communities during this training would not, however, have been enough to make most of them sufficiently culturally sensitive to be able to adequately undertake the probing questions for the ethnicity variable. There were also doubts as to the enumerators' determination to go to remote indigenous communities.

The initial results related to the ethnicity variable in the 2010 CPH are expected to come out in mid-2011.

The continuing arena of struggle: ancestral lands and natural resources

Response to the ICERD recommendations

In July 2010, the Philippine government was expected to report to the United Nation's International Committee on the Elimination of All Forms of Discrimination (ICERD) regarding three urgent recommendations:

- Reports of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions and of the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people;
- Respect for the customary laws and practices of the Subanon people on Mount Canatuan; and
- Steps to streamline the process to obtain land rights certificates and put effective measures in place for the protection of communities from retaliation and violations when attempting to exercise their rights.

On the first recommendation, the NCIP and the Commission on Human Rights (CHR) crafted a Human Rights Development Plan toward the end of 2009 and this was formally launched in early 2010. The Plan pays particular consideration to indigenous peoples rights.

The ICERD's special attention on the Philippines was sparked in 2007 when the Subanon lodged a complaint with the Committee about the continuing encroachment of a Canadian mining company, TVI, onto their territory located on the western edge of Mindanano in southern Philippines. TVI and the NCIP were charged with disregarding the indigenous systems for seeking consent to operate in their area. It is thus not surprising that the ICERD sought an update on this issue.

Faced with the continuing poverty of their ancestral domain and worn out by the relentless campaign of TVI, the Subanon leaders have decided to work with TVI to develop their area. Mining is thus now taking place, with the leaders' consent. The leaders explained that if mining was inevitable, their task was now to ensure as much protection and benefits as possible for their people. The company, for its part, has projected an image of good corporate social responsibility. "What can one do," a Subanon leader declared, "when the TVI gave in to six of our seven demands?" (the seventh demand was to stop the mining). Meanwhile, the leaders are requesting the assistance of CSOs to produce their Ancestral Domain Sustainable Development and Protection Plan (ADSDPP), in order to ensure that it is truly protective of their rights. TVI has pledged to honour the ADSDPP formulated by the Subanon.[5]

This situation is reflective of the dilemma faced by many indigenous peoples' communities and support groups. While there was in the past generally a gut reaction on the part of CSOs to disengage from communities who decided to say

yes to mining, there is now a reflection that the rights of such communities do also still need to be upheld and protected, maybe even more so.

Conflicting land policies: delaying the titling process

The Buhid Mangyan, in the central island of Mindoro, have been applying for a Certificate of Ancestral Domain Title (CADT) since the early part of this millennium. The formal approval of the CADT has been delayed, however, because part of the territory is being claimed by the Department of Agrarian Reform (DAR) for distribution as land parcels to non-indigenous farmers. The Buhid have been protested against this because the disputed area contains sacred ground. The DAR claims that it has the mandate to distribute the land parcels because they were marked for agrarian reform through a Presidential Decree promulgated more than three decades ago. The DAR and the NCIP are still conducting a process of investigation and discussion; no decision had been made by the year's end but the DAR had already gone ahead and distributed some lands.[6]

In the end, the decisive factor will most likely be which government agency has a strong political presence within the administration, and ever since its establishment in 1998 that has definitely not been the NCIP. The Buhid Mangyan case is not an isolated one; it is replicated in many areas being claimed by indigenous peoples as their ancestral domains. Whatever the decision on this case, it will set a precedent for other similarly disputed areas, and not just with agrarian reform projects; it will probably also affect traditional claims in multiple use reservations, protected areas, concessions and the like.

Only 15 CADT applications were approved in 2010 (as compared to 34 approvals in 2009). Conflicting tenurial instruments are not the only reason. In February, the terms of six of the seven NCIP Commissioners (the Commission En Banc or CEB, which is the highest policy-making body of the NCIP) came to an end. By the end of December, only three new commissioners were in place. It requires a complete CEB to approve CADT applications. Completing the CEB is thus expected to be a priority in 2011.[7]

Introducing REDD

The global focus on climate change has likewise put the spotlight on indigenous peoples in the Philippines, especially since the country's remaining forest stands

are mainly found on their lands. Discussions on REDD (Reducing Emissions from Deforestation and Forest Degradation) are gaining momentum, even though the government has not yet formally adopted a REDD strategy and despite some views that REDD might not work in the Philippines because the coverage of forested areas is too small. A civil society network called CoDe-REDD teamed up with the Department of Environment and Natural Resources (DENR) to draft the Philippine National REDD-Plus Strategy (PNRPS), which explicitly calls for the rights of forest-based indigenous communities. CoDe-REDD has engaged in pilot projects testing the REDD preparedness of municipalities with forested areas that include indigenous communities.

Opinion on REDD engagement is divided among indigenous peoples organizations and their support groups. There is a strong critique that REDD engagement may be another source of disenfranchisement of indigenous peoples from their lands. At the same time, this is an issue that they have to prepare for because there are already reports of companies or business people approaching indigenous leaders and enticing them to sign REDD and other climate change-related projects.[8]

Old and new challenges: still pushing the right to a voice, while reflecting on new configurations

Indigenous peoples in the Philippines have long clamoured for the implementation of the IPRA provision calling for the mandatory representation of indigenous peoples in legislative and other special boards of local government units (LGUs). The NCIP had come out with the "National Guidelines for the Mandatory Representation of Indigenous Peoples in Local Legislative Councils" in 2009, but this became effective only on 4 March 2010.[9] In response, the Department of the Interior and Local Government (DILG) commemorated Indigenous Peoples' Month by issuing a Memorandum Circular on "Mandatory Representation of Indigenous Cultural Communities or Indigenous Peoples in Policy-Making Bodies and Other Local Legislative Councils" (MC no. 2010-119) on 20 October. This can be considered affirming as it shows that other government agencies (DILG) are taking official notice of the plight of indigenous peoples in the Philippines. ❍

Notes and references

1 Data in this section are taken from: http://ww.census.gov.ph/ accessed 5 January 2011; and **Sabino Padilla, Jr., 2000:** *Katutubong Mamamayan*. Manila/Copenhagen: International Work Group for Indigenous Affairs (IWGIA).

2 As they expressed on 10 August 2010 in a gathering held in Quezon City to celebrate International Day of the World's Indigenous Peoples co-organised by the International Labour Organisation and the NCIP with the theme "Reaffirming the IP Development Framework under the Indigenous Peoples Rights Act (IPRA) through Convergence". See http://www.ilo.org/manila/whatwedo/eventsandmeetings/lang--en/WCMS_143116/index.htm

3 A summary on this section can be found in http://cgipphilippines.blogspot.com/. This source also makes reference to the next section.

4 http://xa.yimg.com/kq/groups/212321565/765753169/name/2010+CPH+primer.pdf. The author would also like to acknowledge Marie Grace T. Pascua, Director of the NCIP Office on Planning and Policy Research, for her openness in sharing regarding the IPMAP and census.

5 As shared by CGIP member in one of its meetings in March 2010.

6 Based on documents collected and shared by KASAP, a national indigenous peoples federations that is closely monitoring this issue.

7 Base don the titling status report as of 31 December 2010 prepared by the NCIP's Ancestral Domains Office.

8 CoDe REDD Philippines is a network of forest-based communities and civil society organizations that are involved in livelihood, conservation and community development projects in Philippine forests advocating for a REDD approach that is pro-community and pro-conservation.

9 His is the date that this Administrative Order No. 001, s. 2009 was filed with the University of the Philippines Law Center. In the Philippines, a law's effectivity commences upon filing with the Center.

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INDONESIA

Indonesia has a population of around 237 million. The government recognizes 365 ethnic and sub-ethnic groups as *komunitas adat terpencil* (geographically-isolated customary law communities). They number approx. 1.1 million. However, many more peoples consider themselves, or are considered by others, to be indigenous. The national indigenous peoples' organization, Aliansi Masyarakat Adat Nusantara (AMAN),[1] uses the term *masyarakat adat* to refer to indigenous peoples. A conservative estimate of the number of indigenous peoples in Indonesia amounts to between 30 and 40 million people.

The third amendment to the Indonesian Constitution recognizes indigenous peoples' rights in Article 18b-2. In more recent legislation, there is an implicit, though conditional, recognition of some rights of peoples referred to as *masyarakat adat* or *masyarakat hukum adat*, such as Act No. 5/1960 on Basic Agrarian Regulation, Act No. 39/1999 on Human Rights, MPR Decree No X/2001 on Agrarian Reform.

Indonesia is a signatory to the UN Declaration on the Rights of Indigenous Peoples. Government officials argue, however, that the concept of indigenous peoples is not applicable, as almost all Indonesians (with the exception of the ethnic Chinese) are indigenous and thus entitled to the same rights. Consequently, the government has rejected calls for special treatment by groups identifying themselves as indigenous.

Policy development concerning indigenous peoples

In 2009, Regional Representatives to the Parliament drafted a law on Recognition and Protection of Indigenous Peoples and tabled it in 2010 for Parliament's consideration. The draft was, however, never considered. This demonstrates the Indonesian government's lack of will to address the challenges faced by indige-

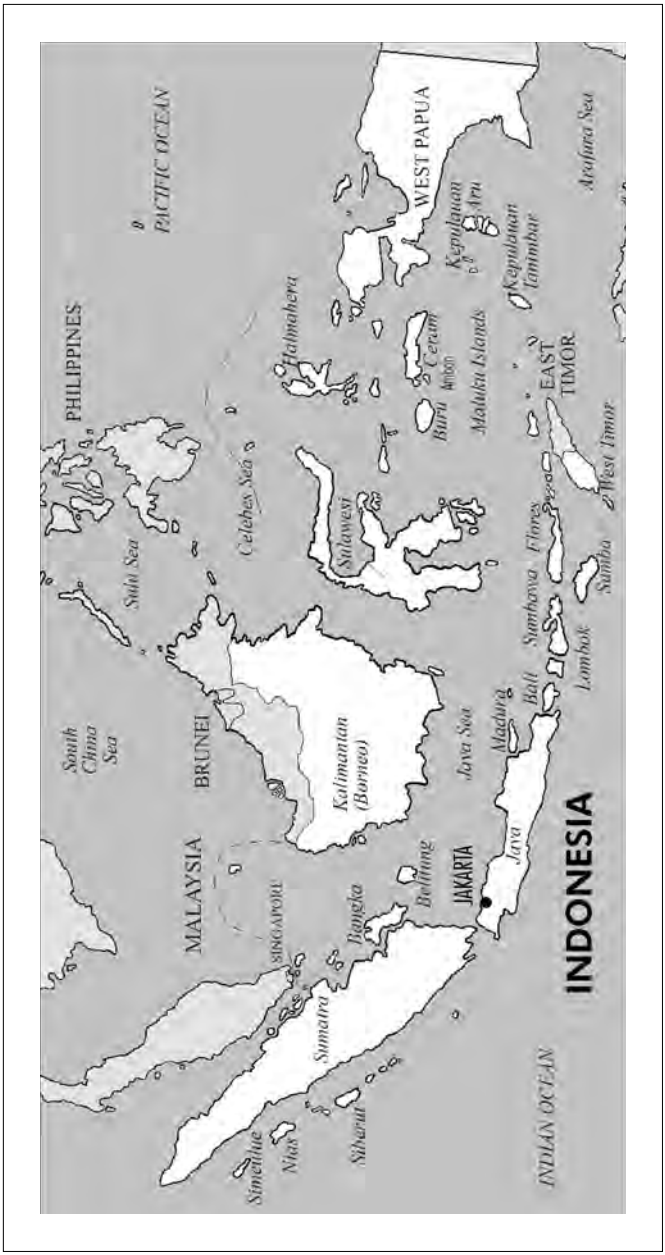
nous peoples and further improve their human rights situation. In response, indigenous peoples urged Parliament and Government to make the law a priority in the 2011 law-making process.

There are only two laws considered by indigenous peoples to be in accordance with their aspirations. These are Law 32/2009 concerning protection and management of the environment and Law 27/2007 on the management of coastal and small islands. These laws are believed to have positive impacts on indigenous communities in various regions. In addition to this, in Kasepuhan Cisitu, the Banten Regency has recognized the existence of indigenous peoples through Regent Decree No. 430/2010. In Central Sulawesi, the Sigi District Government is currently planning to issue a regulation regarding the recognition and protection of indigenous peoples' rights. These two laws have been proposed by indigenous peoples as transitional laws while working towards the adoption of the comprehensive law on the recognition and protection of indigenous peoples' rights.

In connection with the commemoration of International Day of the World's Indigenous People on 9 August 2010, AMAN held a high-level seminar and workshop on *Accelerating the adoption of a Law on recognition and protection of the rights of indigenous peoples in Indonesia.* One of the main challenges identified during the seminar was the different terms used to refer to and identify indigenous peoples, such as *Komunitas Adat Terpencil* (Remote Indigenous Communities), *Masyarakat Hukum Adat*, *Perambah Hutan* (Forest Squatters) and *Masyarakat Terasing* (Isolated Communities). Most of these terms have a derogatory undertone and are used to further discriminate, marginalize and exclude indigenous peoples from nation-state development.

Other policy-related developments in 2010 included a Memorandum of Understanding signed by AMAN and the Ministry of Environment on 27 January 2010, detailing strategic cooperation between the two: (1) identifying the existence and rights of indigenous peoples in environmental protection and management; (2) managing indigenous knowledge for environmental sustainability; (3) strengthening the capacity of leaders in environmental protection; and (4) empowering indigenous peoples and an exchange of information on indigenous peoples.

From 2-4 September 2010, AMAN and the Ministry of Maritime Affairs and Fisheries held a public consultation to prepare a Draft Regulation regarding procedures for granting, registering and revoking coastal tenure.


PACIFIC OCEAN
PHILIPPINES
Sulu Sea
Celebes Sea
Halmahera
WEST PAPUA
Kepulauan Aru
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Buru
Maluku Islands
EAST TIMOR
Arafura Sea
South China Sea
BRUNEI
Sulawesi
Timor
West Timor
MALAYSIA
Kalimantan (Borneo)
Sumbawa
Flores
Sumba
Lombok
Bali
Madura
Java Sea
Belitung
JAKARTA
Java
SINGAPORE
Bangka
Sumatra
INDONESIA
Simeulue
Nias
Siberut
INDIAN OCEAN

Ensuring indigenous peoples' rights in REDD processes

Amidst the ongoing negotiations concerning REDD (Reduced Emissions from Deforestation and Degradation) within the UN Framework Convention on Climate Change (UNFCCC), the Government of Indonesia is confident that the country will be able to implement REDD and has shown great commitment to the international community. Given the government's lack of recognition of indigenous peoples' customary forest, indigenous peoples see REDD as an opportunity to assert their rights through law and policy reforms, as a pre-condition for REDD implementation.

On 28 January 2010, AMAN's REDD Working Group conducted a dialogue with the Ministry of Forests' Working Group on Climate Change and REDD. On this occasion, AMAN put forward a number of recommendations, that included: (1) ensuring indigenous peoples' right to free, prior, and informed consent (FPIC); (2) revising the Forestry Law 41/1999, which was signed by the National Legislation Agency in 2010, to ensure that it recognizes indigenous peoples' rights; (3) calling on the Ministry of Forestry to establish a special administrative unit to deal with indigenous peoples' customary forest; (4) calling on the Ministry of Forestry to ensure the recognition, protection and promotion of indigenous peoples' natural resource management models; (5) calling on the Ministry of Forestry to establish a conflict resolution mechanism related to indigenous peoples' customary forest. None of the recommendations have, however, received a positive response from the Ministry of Forestry.

On 26 May 2010, the Indonesian and Norwegian governments signed a Letter of Intent (LOI) worth one million US dollars as part of the REDD initiative. Both countries agreed to divide implementation of the LOI into three phases. The first was the preparatory phase, to be implemented over the period July-December 2010. This phase covered, among other things, the formation of a REDD+[2] Task Force to develop a work plan; the preparation of a National Strategy on REDD+; the establishment of an independent REDD+ monitoring, reporting and verification (MRV) institution; the establishment of a funding instrument managed by a financial institution of international repute; and the selection of a pilot province. In a plenary cabinet meeting on 23 December 2010, the President of Indonesia announced that Central Kalimantan province would be the pilot province, although

no consultation had taken place with the province's indigenous peoples in this regard.

Grabbing of indigenous peoples' lands, territories and resources in the name of development

In 2010, indigenous peoples in Indonesia continued to experience various forms of coercion, discrimination and exploitation of their lands, territories and resources while the state's claim to and control over land and natural resources in indigenous territories is still ongoing. It is ironic that, on one hand, the government has committed itself to reducing carbon emissions by 60% in 2012 while, on the other, it continues to issue policies and regulations in the name of development that not only trigger the exploitation and destruction of natural resources but also threaten indigenous lands, territories and resources.

In ***Merauke, West Papua***, the Minister of Agriculture launched the Merauke Integrated Food and Energy Estate (MIFEE) project on 11 August 2010, designed for food and energy production. This project is part of the government's plan to make West Papua the "national food barn", and this food will be grown on indigenous peoples' land covering an area of 1.6 million hectares of lowland forest and swamp. To approve this project, the government later issued Government Regulation No. 11/2010 on abandoned land and Government Regulation No. 18/2010 concerning crop cultivation entrepreneurship. According to the Deputy Agriculture Minister, some 36 local and foreign companies have expressed an interest and the government will provide the necessary infrastructure. They are mostly industrial timber and palm oil companies, while the remaining are soybean, corn, sugarcane, rice, fish and woodchip companies.

The areas allocated for the MIFEE project are within an indigenous territory called *Anim-ha,* which belongs to the indigenous peoples of Malind. The indigenous peoples in the area are convinced that the MIFEE project will worsen their situation. In the absence of any genuine implementation of Act 21 of 2001 concerning Special Autonomy in West Papua, and given the long history of human rights violations – most of which have not been addressed -, it is very likely that these large-scale companies operating on indigenous territories without their

free, prior and informed consent will only add to the already appalling human rights situation in West Papua, leading to forced evictions and other human rights violations.

Indigenous peoples living in Merauke depend on hunting and collecting sago for their main food. This industry will have a major impact on their livelihoods by changing the ecosystem and threatening their food sovereignty. The project also has the potential to increase and create social conflict and could result in the loss of cultural traditions and values.

The total population of West Papua is 4.6 million people, with 70% of the population living in remote areas. It is estimated that the food industry projects will bring 6.4 million workers into West Papua and, with a population of only 174,710 in Merauke, these plans will acutely threaten the existence of the indigenous peoples in these areas, turning them into a numerical minority and possibly even leading to their future extinction.

In ***Sumatra***, a state-owned plantation company, PTPN II, has occupied the lands of the indigenous peoples of *Rakyat Penunggu* in four of North Sumatra's districts (Deli Serdang, Medan, Binjai and Langkat). Indigenous land covering more than 350,000 hectares has been converted into oil palm and sugar cane plantations. Indigenous peoples in these regions have experienced various forms of harassment from the company and police officials. In early March 2010, police arrested an indigenous leader of Kampong Secangkang, Mr. Ibrahim Isra, and his community was alleged of invading and utilizing some 386 hectares of land that was part of the PTPN II's concession. The Kampong Secangkang community resisted the arrest of Mr. Isra by holding a long march in front of the Court Building and, after discussions, the police released Mr. Isra. However, on 22 March the police again issued a warrant for the arrest of Mr. Isra, saying that the case against him had been brought to the District Court. More than 500 community members, accompanied by their lawyers, went to meet the judge and, following discussions, the judge decided to release him on bail. On 27 April, the court found Mr. Isra guilty and he was sentenced to 10 months' imprisonment. Police officers and the company, through its private security guards, continue to harass and intimidate the community.

In ***Sulawesi***, the Karonsi'e Dongi's land has been occupied by PT Inco, a nickel mining company that has been operating in the area since 1969. The company obtained approval from the Indonesian government for operations in South Sulawesi, Central Sulawesi and Southeast Sulawesi provinces. This land has been taken without the Karonsi'e Dongi's consent; many indigenous communities have even been evicted from their land without any compensation. Their resistance is met with harassment from police and government officials. In early 2010, the Karonsi'e Dongi again demanded the return of their land and the community filed a case against the company, requesting that the local government help settle the conflict. On 19–20 January, the Director and General Manager of PT. Inco was investigated by the Luwu Timur Police Section regarding the allegation of land grabbing. As of today there has been no result. PT Inco's Vice Director and Manager had already previously been investigated back in 2009 regarding an allegation against the company of illegal forest clearing – an allegation worth a penalty of 10 billion Indonesian Rupiah.

In central ***Kalimantan*****,** the Dayak Punan have suffered losses of their land and forest resources to logging companies that operate with permits from the government. A large part of the forest concession falls within a national park that is considered to be the heart of Borneo. One of the logging companies, PT. Fortuna Cipta Sejahtera, has been expanding its forest concession to include around 15,000 hectares of forest belonging to the Punan. In October 2010, the Dayak Punan protested and asked the company to stop their activities. Their demands were ignored and the company's Manager, Mr. Viking Junaidi, accompanied by police officers, later threatened the community and ordered them to stop disrupting the company's activities. Mr. Junaidi was reported to have said that the Dayak people had no rights to the land and forests because they did not have an official certificate from the government. The other companies are PT Intraca Wood and PT Alchates Plywood.

On December 27, the Dayak Punan sent a letter to the Minister of the Environment, the National Human Rights Commission (KOMNASHAM), the Minister of Forestry and the National Council on Forestry opposing the expansion of the logging companies and asking the government to revoke their licences. With AMAN's assistance, a delegation of two Punan leaders held meetings with sev-

eral government institutions, including the Ministry of the Environment, the Ministry of Forestry, the National Council on Forestry and KOMNASHAM.

Stigmatization of indigenous peoples by a private-owned TV station

At the end of 2010, a TV program entitled "Primitive Runaway", broadcast by Trans TV, infuriated indigenous peoples. The program is a reality show broadcast every week and it is believed to portray indigenous peoples as immoral, foolish, uncivilized and dirty. Primitive Runaway was also accused of being racially discriminatory, manipulating the reality and misleading the Indonesian public with invalid judgments of indigenous peoples' culture and traditions.

AMAN, along with many other organizations and individuals, sent official letters to Trans TV and made an official complaint to the Indonesian Broadcasting Commission. On 27 December 2010, the Indonesian Broadcasting Commission facilitated a meeting between AMAN and Trans TV. During the meeting, AMAN demanded that the TV station make a public apology to indigenous peoples as well as to all Indonesians in general. On 6 January 2011, AMAN received a letter from Trans TV containing an apology and they later changed the title of the program to "ETHNIC Runaway". The letter is, however, seen as a half-hearted gesture and it symbolizes the ignorant attitude of the mainstream media in Indonesia towards indigenous peoples. ❍

Notes

1 AMAN is the umbrella organization of indigenous peoples from across Indonesia. The organization has 1,163 member communities

2 REDD+ expands the scope of REDD beyond avoided deforestation and degradation activities to include forest restoration, rehabilitation, sustainable management and/or af/reforestation.

References

Annas Radin Syarif, 2010: Exploring REDD+ Implementation. Indonesia's State Policies For Indigenous Peoples. In *Indigenous Peoples, Forests & REDD Plus: State of Forest, Policy Environment & Way Forward*. Tebtebba, Baguio City, Philippines.

AMAN Statement before the 9th Session of the UN Permanent Forum on Indigenous Issues, New York, 23 April 2010

Departemen Sosial Republik Indonesia, : Direktorat Jenderal Pemberdayaan Sosial. *Atlas Nasional Persebaran Komunitas Adat Terpencil*, Jakarta, 88.
Gaung AMAN Edisi No. XXXIII/ Agustus 2010
Gaung AMAN Edisi No. XXXIV/ Oktober 2010
Gaung AMAN Edisi No. XXXII/ Maret 2010
http://www.pergerakankebangsaan.org/?p=663(Sumber: Biro Hukum dan Humas Kementrian Pertanian RI, seperti dikutip oleh *Warta Ekonomi*, Th. XXII, 8 Maret 21 Maret 2010, hlm. 32)
http://roythaniago.wordpress.com/2010/11/24/mereka-bukan-primitif/, retrieved on 12 January 2011

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MALAYSIA

In all, the indigenous peoples of Malaysia represent around 12% of the 28.6 million people in Malaysia.

The *Orang Asli* are the indigenous peoples of Peninsular Malaysia. They number 150,000, representing a mere 0.6% of the national population. Anthropologists and government officials have traditionally regarded the *Orang Asli* as consisting of three main groups, comprising several distinct sub-groups: Negrito (Semang), Senoi and Aboriginal-Malay.

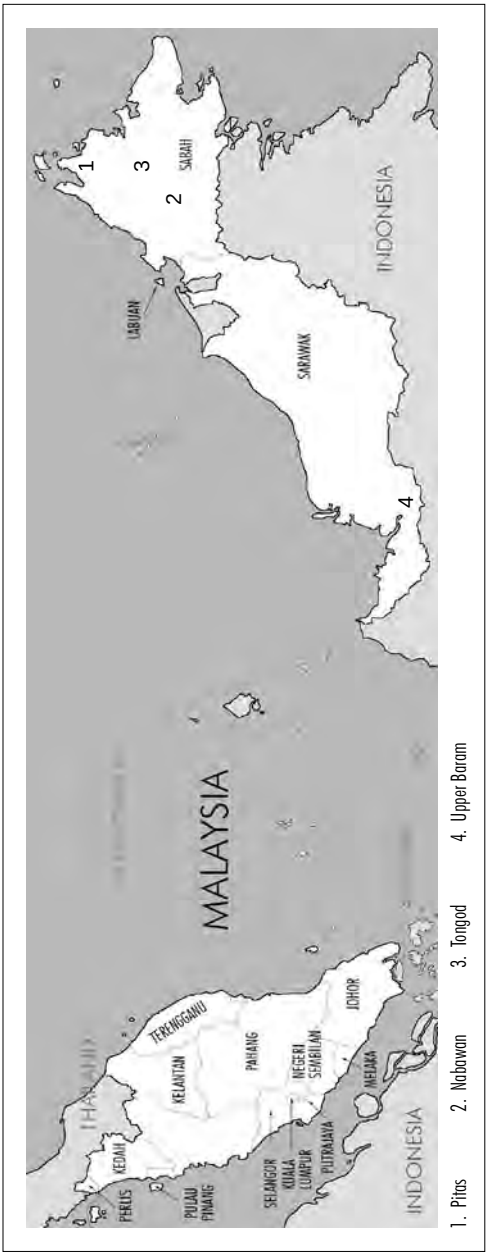
In Sarawak, the indigenous peoples are collectively called *Orang Ulu* or *Dayak* and include the Iban, Bidayuh, Kenyah, Kayan, Kedayan, Murut, Punan, Bisayah, Kelabit, Berawan and Penan. They constitute around 50% of Sarawak's population of 2.5 million people.

The 39 different indigenous ethnic groups in Sabah are called natives or *Anak Negeri.* At present, they account for about 47.4% of the total population of Sabah, a steep drop from the 60% estimated in 2000.

In Sarawak and Sabah, laws introduced by the British during their colonial rule recognizing the customary land rights and customary law of the indigenous peoples are still in place. However, they are not properly implemented, and are even outright ignored by the government, which gives priority to large-scale resource extraction and plantations of private companies over the rights and interests of the indigenous communities.

National land inquiry and court recognition of native customary rights

The Human Rights Commission of Malaysia (SUHAKAM) plans to hold a National Inquiry, for the first time, on the issue of the customary land ownership rights of natives in Sabah and Sarawak and the Orang Asli in Peninsular Malaysia. Between 2005 and 2010, SUHAKAM received almost 1,800 cases regarding land issues and only six have so far been settled. According to the Chair of SUHAKAM, it is important that customary land issues are settled before the indige-



nous peoples lose all of their customary land to development and logging.[1] The inquiry is set to begin in early 2011.

The legal status of native customary rights (NCR) in Malaysia is well established but poorly implemented. Historic land rights cases over the past years clearly mention and recognize indigenous peoples' rights to customary land (see *The Indigenous World 2010*). In January 2010, the indigenous peoples of Sarawak won two important court cases regarding native land issues. The cases had been filed by indigenous communities against the government of Sarawak and an oil palm company that planned to establish an oil palm plantation on native lands. In both cases, the judge declared that the local communities had NCR to land unlawfully claimed as state land by the Sarawak state government. In one of the cases, the court declared

that the customary practice of Malays had to be given the force of law, which is a landmark decision.[2]

In September, the Director of the Land and Survey Department and two other government agencies in Sabah withdrew their appeal against a High Court decision to allow two judicial reviews sought by an indigenous woman, Rambilin binti Ambit, pertaining to fraudulent land ownership in Pitas (see *The Indigenous World 2008*). The case is considered a landmark case as it sets a precedent for Sabah, marking a new beginning for the indigenous communities in terms of reclaiming NCR on land given to outsiders.

Despite recognition of NCR by the courts, however, indigenous defense of their rights to their native customary land continues to be criminalised, particularly in Sarawak. On October 21-22, seven villagers, including the Secretary-General of the Sarawak Dayak Iban Association (SADIA), were arrested for allegedly blockading logging activities and torching a timber camp. Ibans from six longhouses claim that the area being logged by the timber company is NCR land and, on October 14, they set up a blockade to stop workers from the company from encroaching onto the land.[3] The seven villagers were released when more than 200 owners of NCR land gathered outside the gates of the Simunjan police station demanding to be detained together with their seven colleagues who were being held.[4]

Deception and assimilation continues for the Orang Asli

In March 2010, a march was organized by the Orang Asli to protest against the amendment of the National Land Act. The Orang Asli say they have customary rights to 129,000 hectares of land but the proposed amendment provides them with only 50,000 hectares. More than 2,000 Orang Asli assembled at the Prime Minister's Department, Putrajaya, in Kuala Lumpur to present a petition, endorsed by more than 12,000 Orang Asli throughout Peninsular Malaysia. The authorities, however, ensured that the Orang Asli demonstrators were not even able to raise their banners, let alone their voices and the police intervened early, stopping the march after 15 minutes. In addition, the historic Orang Asli march and grief was played down by the condescending Rural Development Minister, Shafie Apdal, who said that the Orang Asli had ventured to Putrajaya for "school-holiday sightseeing" while saying nothing about the Orang Asli protest at the proposed amend-

ment to the National Land Act. The Orang Asli have been voicing their concerns over the government's proposed amendment to the National Land Act since 2009.

Damned customary lands

The planned construction of 16 dams in Sabah and 23 in Sarawak continues despite the protests and demands of the affected indigenous communities. These dams were planned without consulting the affected communities in advance, let alone fulfilling the duty to obtain the free, prior and informed consent (FPIC) of the indigenous peoples on whose lands these dams would be built.

In Sabah, the Task Force against Kaiduan Dam exposed the bogus Environmental Impact Assessment (EIA) that was attempted in 2010, stating that it was not conducted according to the Handbook of Environmental Impact Assessment which clearly spells out the proper procedures. At another river, Kadamaian, ground protests continue for the planned Tambatuon Dam that will submerge forests and livelihoods on customary lands in the foothills of Mount Kinabalu. The status of these two dams in Sabah is still unknown due to the lack of information provided by either the companies involved or the state.

The proposed Murum Dam is the first of 12 new proposed dams to be built throughout Sarawak. Fifteen indigenous peoples were arrested outside the office of the Chief Minister as they waited to submit a memorandum stating that, if the Murum Dam continued, their lands would drown, and there would be no means by which to live or survive.[5]

Changes in legislation on native customary land

While the amendment to the Sabah Land Ordinance 1930 passed by the State Legislative Assembly on 19 November 2009 is supposed to make land applications for communal titles easier in Sabah, the idea behind the amendment is still based on a paternalistic attitude towards preventing the sale of land by indigenous peoples. With the amended Sabah Land Ordinance, the government is now aggressively promoting communal title, officially as one of the strategies to overcome the NCR land issues, and the Lands and Surveys Department has stopped

issuing titles to individuals, including Native Titles. The major concern among the indigenous peoples in Sabah is that the communal titles are given on the condition that the communities agree to the development of the land and its planting with mono-crops (oil palm or rubber) through joint ventures with government agencies or private companies. In this way, the original purpose of the communal title is being manipulated by the government.

So far, three communal titles have been issued. In an event attended by the Chief Minister in May, around 1,400 heads of families received a communal title for land covering an area of 3,650 ha, to be developed by the Sabah Land Development Board (SLDB) with oil palm and other crops to help the poor villagers in the district of Nabawan. The Chief Minister explained that, "We are issuing communal titles as we hope the people will benefit through state involvement in developing it jointly with them." [6]

In another district (Tongod), indigenous communities are rejecting communal titles on the grounds that the government should not force indigenous peoples to accept communal titles to land on steep and hilly terrain while the good NCR lands that they have occupied and cultivated for years and generations are allocated to agropolitan[7] projects being undertaken by corporations.[8]

Upcoming elections in Sarawak

Development aggression in the form of logging, plantations, mega-dams and other land development projects continues to be the major challenge facing indigenous peoples in Sarawak, Malaysia's largest state. Sarawak has long been a stronghold of the ruling coalition but allegations against the Taib family's long rule over Sarawak is causing discontent among the indigenous tribes over what they say is economic discrimination and this may bolster the opposition. The native land issue is also becoming a heated subject in the run-up to the next state elections, to be held in April 2011.

With an election looming and with the aim of providing a platform on which to discuss the situation in Sarawak and to offer an alternative vision of justice, transparency and a fairer future for the state, the portal "Sarawak Report" was created in 2010.[9] The Stop Timber Corruption[10] campaign also launched in early 2011, and has built up international political pressure against the corrupt Taib family and pressure to put a stop to timber corruption in Sarawak. There have been demon-

strations outside properties owned by the Taib family in the UK, Canada and the US. The Canadian and British governments are being asked to freeze the assets of nine Taib-associated companies in Canada and two in the UK, estimated to be worth hundreds of millions of US dollars.[11] Transparency International has also reportedly urged Malaysia's government to investigate allegations against the corrupt Taib family.[12]

Rape of Penan women

In Malaysia, the rape of Penan women and children in Sarawak serves as a horrific reminder of the severe problem of escalating rates of violence against women. Police investigations into the rape of several Penan women have been closed without any perpetrators being charged.[13] In addition, the Sarawak state government's lack of political will in bringing the perpetrators to justice is highly suspect and unwarranted. Malaysian logging giant Samling has threatened the indigenous Penan communities of Sarawak's Upper Baram region with a suspension of all transport services provided for locals unless they retract sexual abuse and rape allegations against the timber companies active in the region. The new dispute between Samling and the Penan arose after the release of a report by an international fact-finding mission in July 2010. The report uncovered seven new cases of sexual exploitation of Penan girls and women in the Upper Baram region by timber workers and called on the Malaysian government to address the grievances of the Penan communities.[14]

REDD and Borneo's forest

After many failures to protect indigenous peoples' rights, along with increasing deforestation rates in Sarawak and Sabah, the two states have announced that they are interested in implementing REDD in Borneo's forests.

In Sabah, an international conference was held in Kota Kinabalu in November 2010 to show that the Heart of Borneo portion of Sabah is a key location for the Malaysian government to implement REDD+ initiatives. As the government moves forward with the planned Carbon Accounting process, it needs to be driven at the sub-national level and then moved up to the national level. The Sabah

Forestry Department has taken the lead in organizing the initiative jointly with WWF Malaysia, with the support of the Sabah state government.[15]

In Sarawak too, the state is interested in adopting the REDD initiative as part of its sustainable forest conservation programme. According to a speech by a Sarawak forestry representative, Malaysia remains committed to ensuring that at least 50 per cent of its land mass remains forest, as pledged in the Rio Summit.[16]

The news of the states' interest in implementing REDD raises doubts and concerns among the indigenous peoples since forest management by the state has caused many problems for the indigenous communities in the past and because previous pledges did not slow down deforestation and illegal logging. Indigenous peoples are thus worried about REDD projects that are based on a lack of transparency. They demand that safeguards for the rights of indigenous peoples are implemented, and not just as international law, because without such safeguards there will be little security, not only for the indigenous peoples as rights holders, but in terms of ensuring that there are actual and true emissions reductions.

Through information sessions on REDD+ among the network of indigenous peoples (JOAS) in Malaysia, and their participation in the national-level discussions of environmental organizations, indigenous peoples have been able to come to a common stand in opposition to the implementation of REDD in any form unless the parties involved in the deal have ensured adequate consultation and obtained the free, prior and informed consent (FPIC) of the affected indigenous communities and their own chosen representatives.[17] ❍

Notes

1 Malaysia: Inquiry on rights of indigenous peoples set to begin, Asia Pacific Forum. Read more at http://www.asiapacificforum.net/news/malaysia-national-inquiry-on-rights-of-indigenous-peoples-set-to-begin.html

2 http://www.ens-newswire.com/ens/jan2010/2010-01-21-01.html

3 http://indigenouspeoplesissues.com/index.php?option=com_content&view=article&id=7262:sarawak-simunjan-7-released-under-villagers-pressure&catid=62:southeast-asia-indigenous-peoples&Itemid=84

4 200 NCR landowners demand to be detained. Read more at http://www.borneoproject.org/article.php?id=832

5 The Indigenous World 2010

6 http://thestar.com.my/news/story.asp?file=/2010/5/31/nation/6371809&sec=nation
7 Agropolitan projects involve collaboration between large companies and small-scale farmers
8 http://www.sabahkini.net/index.php?option=com_content&view=article&id=6370:communal-titles-a-disaster-for-ncr-in-sabah&catid=69:tanah-adat&Itemid=75
9 http://www.sarawakreport.org
10 http://www.stop-timber-corruption.org
11 Canada and UK governments urged to freeze Taib's Assets now. Read more at http://www.stop-timber-corruption.org/campaign_update/?show=8
12 The Canadian Press, Watchdog urges Malaysia to probe 'extraordinary corruption' by long-serving Borneo leader. Read more at http://www.theguardian.pe.ca/Living/World/2011-03-18/article-2343236/Watchdog-urges-Malaysia-to-probe-extraordinary-corruption-by-long-serving-Borneo-leader/1
13 The Indigenous World 2009
14 http://www.asiantribune.com/news/2010/09/01/samling-threatens-penan-retaliations-over-rape-allegations
15 Forest and Climate Change: Decoding and Realizing REDD+ in the Heart of Borneo. Read more at http://wwf.panda.org/what_we_do/where_we_work/borneo_forests/news/?198691/Sabah-government-sees-REDD-in-the-Heart-of-Borneo
16 *The Borneo Post*, State keen to adopt carbon offset scheme. Read more at http://sarawaknews.wordpress.com/2010/08/25/sarawaks-carbon-offset-scheme-raise-many-unanswered-questions/
17 Jaringan Orang Asal SeMalaysia (JOAS) press release, Statement on purported Forest Carbon Deal in Sarawak involving Indigenous Peoples. Read more at http://orangasal.blogspot.com/2010/08/august-10-2010-for-immediate-release.html

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THAILAND

The indigenous peoples of Thailand live mainly in three geographical regions of the country: indigenous fisher communities (the Chao Ley) and small populations of hunter-gatherers in the south of Thailand; small groups on the Korat plateau of the north-east, and in eastern Thailand, especially along the border with Laos and Cambodia; and the many different highland peoples in the north and north-west of the country (the Chao-Khao). With the drawing of national boundaries in South-east Asia during the colonial era and in the wake of decolonization, many peoples living in remote highlands and forests were divided. There is thus not a single indigenous people that resides only in Thailand.

Nine so-called "hill tribes" are officially recognized: the Hmong, Karen, Lisu, Mien, Akha, Lahu, Lua, Thin and Khamu.[1] There is no comprehensive official census data on the population of indigenous peoples. The most often quoted figure is that of the Department of Welfare & Social Development. According to this source, there are 3,429 "hill tribe" villages with a total population of 923,257 people.[2] Obviously, the indigenous peoples of the south and north-east are not included.

A widespread misconception of indigenous peoples being drug producers and posing a threat to national security and the environment has historically shaped government policies towards indigenous peoples in the northern highlands. Despite positive developments in recent years, it continues to underlie the attitudes and actions of government officials. 296,000 indigenous persons in Thailand still lack citizenship,[3] which restricts their ability to access public services such as basic health care or school admission.

Thailand has ratified or is a signatory to the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (UNFCCC), the Convention on the Rights of the Child (CRC), the International Covenant on Civil and Political rights (ICCPR), the Convention on Elimination of all Forms of Racial Discrimination (CERD), the Universal Declaration of Human Rights and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

There were a number of important developments in 2010 with respect to indigenous peoples and their rights in Thailand. These included, among other things, the passing of a cabinet resolution to restore Chao Ley livelihoods on 2 June 2010, a cabinet resolution to restore Karen livelihoods on 3 August 2010, Thailand's national reform, the passing of the Prime Minister's Office Regulation on community land titling, and the drafting of the national master plan on climate

change. These have both generated opportunities for, and raised concern among, indigenous peoples.

The cabinet resolution to restore Chao Ley livelihoods

Chao Ley or "People of the Sea" is a generic name in the Thai language for indigenous peoples who live along the coast and islands of the Andaman sea to the south-west of Thailand, such as the Moken, Morkan or U-rak-ra-woy. They live scattered in Krabi, Phuket, Satul, Pangnga and Ranong provinces. They have a strong sea-based culture and knowledge.

Chao Ley have, in fact, faced various problems as a result of the government's conservation policy and the growth of the tourist industry. They are not allowed to catch fish in marine national parks; their lands and sacred sites have been taken to build tourist resorts without their consent, etc. To address these problems, the Ministry of Culture proposed that the cabinet pass a resolution for Chao Ley on 2 June 2010 to restore their traditional livelihoods. In so doing, a short-term (6-12 months) and a long-term work plan were agreed on. The short-term plan includes 1) securing settlement areas; 2) allowing them to catch fish using traditional tools and materials in the marine national park; 3) access to health care; 4) citizenship rights; 5) promoting alternative education, such as the development of a local curriculum to be taught alongside the official one; 6) de-mystifying ethnic prejudices; 7) promoting the Chao Ley language and culture in schools; 8) supporting Chao Ley organizations and their existing networks. The long-term work plan includes establishing a special cultural zone for the Chao Ley.

The implementation of these work plans has, however, been very slow. In addition, their right are still being violated. For example, 17 fishermen from Lam Tuk Khae village, Phuket province, were arrested by the park official in Trang province charged with catching fish in the national park,[4] which was not even true.

The cabinet resolution to restore Karen livelihoods

The passing of a cabinet resolution on 3 August 2010 to restore Karen traditional livelihoods was an attempt on the part of the Thai government to solve a long-standing problem faced by the Karen as a result of misunderstandings about their

traditional way of life, such as their farming system, use of natural resources, cultural transmission system, etc. For instance, their rotational farming system has been viewed by outsiders as mere "slash-and-burn" cultivation which causes damage to forests, despite the fact that many studies have shown that such a practice is sustainable and fosters forest biodiversity. According to the prevalent misconception among the general Thai population, Karen are villains who must be evicted from the forest, which puts them in a very difficult situation. The cabinet resolution seeks to address this problem.

By integrating the work of the government agencies involved, concrete ways and means are to be found to tackle these problems. A steering committee on the restoration of Karen livelihoods was formed with the Minister of Culture as Chair and the Director of the Sirinthon Anthropology Center assisting as Secretary. The steering committee established two sub-committees to assist its work. One is a sub-committee on education and culture, the other on natural resources and rights.

A short-term (6-12 months) and a long-term (1-3 years) work plan were agreed upon by the cabinet to address the Karen's problems. They cover five main issues: 1) revitalization of the ethnic identity and culture of the Karen people: co-existence in a pluralist society, building public awareness and understanding; 2) natural resource management: stop arrests of Karen who farm their traditional land, demarcation of community boundaries (e.g. farming area, settlement area and community forest), conservation of biodiversity, continued practice of rotational farming system and issuing of community land titles; 3) citizenship rights: expedite the issuing of Thai citizenship to eligible Karen, and provision of a universal health care service; 4) cultural transmission: establishment of cultural centres, designation of special cultural zones; and 5) education: development of an appropriate teaching curriculum, capacity building for educational institutions and personnel, provision of scholarships to Karen students on subjects required in advanced education, and increasing the number of Karen teachers and educators.

The implementation of the activities and programmes proposed in the cabinet resolution are currently being discussed and planned by the agencies involved, including the Karen network itself. Some issues may need more interpretation, such as the "special cultural zone". Although the implementation has not yet fully started, such recognition is considered a significant step on the part of the Thai government towards seriously addressing indigenous peoples' problems.

Thailand's National Reform

Conflict and division within Thai society as a result of the polarization of political views has put Thailand in a critical situation. The root cause is, in fact, very complex and related to various issues, but particularly to social, economic and political disparities.

To address the deep divisions within Thai society, the government has carried out an institutional reform, which is supposed to promote solidarity, a peaceful life and social security for all groups. The reform consisted of establishing two independent mechanisms in early July 2010: the National Reform Committee (NRC) and the National Reform Assembly (NRA), chaired by former Prime Minister Anand Panyarachun and Dr Prawes Wasi, a well-known scholar and social activist, respectively.

The National Reform Committee, which is composed of 19 members, has been mandated to devise strategies, measures and processes for the reform in order to ensure social justice and economic fairness. It will look in particular at issues of land ownership and people's rights.

The National Reform Assembly, composed of 27 members, is responsible for mobilizing the participation of people from all sectors in running the reform projects, collating views and information from the public, and making policy recommendations to the government. It aims to lessen social inequality, promote fair business practices, strengthen communities, reform the bureaucracy and restructure the economic, education, media and justice sectors.

Land reform will be a central focus of the two committees as conflicts over land ownership and natural resource use form a major part of the social problems. The recognition of community rights will allow community members to access land and natural resources and will reduce social inequality.

These two committees are expected to develop tangible plans to be presented to the public and government for immediate action within three years.

For the indigenous peoples in Thailand, this initiative could be an opportunity as it may provide platforms for the expression of their opinions and demands, which could help promote the recognition and protection of indigenous peoples' rights.

One of the key demands of the Network of Indigenous Peoples in Thailand (NIPT) is to establish a Council of Indigenous Peoples. This proposal was put to the members of the National Reform Assembly during the Indigenous Peoples' Day celebrations held on 9 August 2010. In addition, two representatives from

NIPT were selected to join the National Reform Assembly's sub-committee on networks of disadvantaged people, urban poor and ethnic groups. Its main goal is to coordinate with networks of people's organizations in order to exchange views and experiences and analyze the situations and problems that each network is facing, including ways of solving their problems.

Community land titling

The recognition of indigenous peoples' rights to land and natural resource management remained an issue in Thailand in 2010, although some initiatives were launched to address this problem, in particular on community land titling (see *The Indigenous World 2010).*

On 7 June 2010, the government passed the Prime Minister's Office Regulation on Community Land Titling, based on recommendations made by the Office of the Council of State, which drastically changed the essence of this regulation, particularly on ownership rights. The version proposed by civil society stresses that ownership rights belong to communities, whilst according to the government's version drafted by the Office of the Council of State, ownership rights remain vested in the state.

In addition, the government aimed to launch pilot projects in at least 30 communities covering all types of state lands. These have to be undertaken within 180 days of the passage of the Community Land Titling Regulation.

Of particular concern is the fact that the regulation is in conflict with existing forestry laws. The issuing of community land titles in protected areas such as national parks, wildlife sanctuaries and so-called "class A" watershed areas will be problematic because, according to the existing forestry laws, such activity is allowed only in national forest reserve area. The community land titling committee members and indigenous peoples' communities are therefore faced with a major challenge in terms of finding ways to overcome this problem.

Draft National Master Plan on Climate Change

The Office of Natural Resources and Environmental Policy and Planning (ONREP), under the Ministry of Natural Resources and Environment (MINRE), has

prepared a draft National Master Plan on Climate Change. It is a ten-year work plan (2010 to 2019). This master plan is made up of three strategies: 1) enhancing adaptation to cope with and reduce the impact of climate change; 2) supporting the reduction of greenhouse gas emissions and increasing carbon sinks based on sustainable development; and 3) integrating the administration and management plans on climate change. The forestry sector is one of the main issues addressed in this master plan, particularly in strategy 2. There is a specific project under strategy 2 that makes direct reference to the promotion of REDD+ activities (Workplan 2.2.2(5)).

This draft master plan was strongly criticized by civil society groups and the Network of Indigenous People in Thailand, for the following reasons:

The method and process of drafting the content of the master plan were undertaken in a very rough, perfunctory manner, without proper participation from the different sectors of civil society.

The master plan contradicts its own vision, which clearly identifies the energy and industrial sectors as the main source of greenhouse gas emissions but avoids making the necessary corresponding structural changes and addressing the problem, instead putting the burden on other sectors, such as small farmers and forest-dependent people.

The content of the draft master plan has no clear direction and does not cover all aspects of climate change. It cannot thus be used to address the challenge of reducing greenhouse gas emissions in Thailand.

A letter was submitted by civil society organizations, among them the Network of Indigenous People in Thailand (NIPT), to the Prime Minister Abhisit Vejchacheva, who is the Chairman of the National Climate Change Policy Committee, calling for a suspension of the plan and the initiation of a new process to draft a master plan with the full and effective participation of all sectors.

In response, the Prime Minister ordered the ONREP to revise and conduct additional public hearings to ensure that it reflected the views of all sectors involved.[5] The ONREP subsequently called a meeting with civil society organizations, among them indigenous peoples' organizations, to take place on 10 January 2011. In the proposed meeting, steps and methods to revise the master plan will be discussed. ❍

Notes and references

1 Ten groups are sometimes mentioned, i.e. in some official documents the Palaung are also included. The directory of ethnic communities of 20 northern and western provinces of the Department of Social Development and Welfare of 2002 also includes the Mlabri and Padong.
2 The figure given is sometimes 1,203,149 people, which includes immigrant Chinese in the north.
3 Office of National Security, workshop on finding solutions for illegal immigrants, 18 June 2009 at Rimkok resort.
4 From http://www.phuketpost.com/index.php?option=com_content&view=article&id=986&catid=986
5 Letter of the Office of the Prime Minister in response to the demand of CSOs and IPOs dated 10 November 2010.

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CAMBODIA

The indigenous peoples of Cambodia comprise approximately 20 different groups.[1] The size of the indigenous population is unknown but 1.34% of the total population or approximately 179,000 people reported an indigenous language as their mother tongue in the 2008 population census.[2]

The 1993 Cambodian Constitution guarantees all citizens the same rights, "regardless of race, colour, sex, language, religious belief" or other differences. In recent years, the Cambodian government has made reference to indigenous peoples (literally, indigenous minority peoples) in various laws and policies. These include the 2001 Land Law, the 2002 Forestry Law, the 2009 National Policy on Development of Indigenous Minorities, the 2009 Policy on Registration and Right to Use of Land of Indigenous Communities in Cambodia and the 2009 Sub-Decree on Procedures of Registration of Land of Indigenous Communities, among others.

Land and resource rights

The 2001 Cambodian Land Law includes provisions for the collective titling of indigenous communities' land and defines indigenous communities. Land that can be covered by communal titles of indigenous communities includes residential land, land on which the community practices traditional agriculture, and land reserved for "shifting cultivation".[3] The 2009 Sub-Decree on Procedures of Registration of Land of Indigenous Communities clarifies that reserved land is land that the community previously cultivated and that no more than a total of seven hectares of spirit forests and seven hectares of burial forests can be included in a collective title. Communities must register with the Ministry of Interior before they can be granted a communal land title. A 2009 circular defines the identification of indigenous communities, to be carried out by the Ministry of Rural Development, as an initial step in the registration of indigenous land.[4]

1. Prey Long Forest
2. Stung Treng Dam site
3. Sambor Dam Project
4. Lower Sesan II dam project site
5. Stung Atay Dam Project
6. Stung Cheay Areng Dam Project
7. Stung Tatay Dam Project

In 2010, an indigenous community was granted a collective title for the first time. The classification of the land of two other communities is being changed so that titles can be granted. Seventeen other indigenous communities have been registered as legal entities by the Ministry of Interior, and another 31 have been identified as indigenous by the Ministry of Rural Development.[5]

Protection of indigenous peoples' land rights is still, however, vastly inadequate. The high profile case of land-grabbing by the wife of a senior Cambodian politician in Kong Yu village, Ratanakiri province, remains unresolved after many

years.[6] Land grabbing involving indigenous land continues. Large-scale developments continue to have devastating impacts on indigenous peoples; these include the development of plantations and tourist sites, mining and the construction of hydroelectric dams and roads. There has been essentially no meaningful consultation of indigenous peoples during project decision-making and no free, prior, and informed consent given.[7]

Over the last decade, the Cambodian government has granted large numbers of economic land concessions for rubber, pine trees, corn and other plantations in indigenous areas. A 2007 UN report found that "the alienation of indigenous land through the grant of concessions is undermining the ability of indigenous communities to register their collective ownership of traditional lands, and enforce their rights to land under the Land Law".[8] Indigenous communities have lost forests (including sacred forests), other sacred sites, agricultural land, residential land and other land. In 2009, the Cambodian government agreed to provide 100,000 hectares of land to Vietnamese companies for rubber plantations.[9] The land has primarily been in indigenous areas. During 2010, one Vietnamese company continued to develop a rubber plantation and others began to develop others in the area of Prey Long forest, the largest area of intact lowland evergreen forest remaining in Southeast Asia, and of great importance to the Kui people.[10] Development of other concessions granted in earlier years continued and new concessions were granted in numerous other areas around the country where indigenous peoples live. The government has made it clear that it considers tree plantations to be forests,[11] so forests can be converted to plantations without changing official measures of forest cover.

In 2010, the UN Committee on the Elimination of Racial Discrimination expressed concern about "reports of the rapid granting of concessions on land traditionally occupied by indigenous peoples without full consideration, or exhaustion of procedures provided for, under the land law and relevant sub-decrees..." It recommended that

> *the State party develop appropriate protective measures, such as a delay in the issuance of a concession on lands inhabited by indigenous communities who have applied to be registered legally in order to obtain land titles until the issue of collective ownership titles and indigenous peoples' rights to possess, develop, control and use their communal lands, where at issue, has been assessed and determined, and after consultation with and the informed consent of the indigenous peoples.*[12]

Mining operations and exploration continue to threaten areas where indigenous peoples live. In Preah Vihear province, indigenous and non-indigenous communities have made efforts to resist a mining company that has expanded its gold-mining operations and stopped artisanal mining and gold panning by local communities.

For more than a decade, indigenous peoples in northeast Cambodia have suffered from the unmitigated and uncompensated downstream impacts of hydropower dams located in Vietnam, despite ongoing calls for remedy by the affected communities.[13] The construction of dams planned on the mainstream Mekong River and its tributaries in Laos would have a significant impact on fisheries in Cambodia. In September, the 1,260 MW Xayaburi dam in northern Laos became the first mainstream Mekong River dam downstream of China to reach the stage of invoking a regional decision-making mechanism.[14] There has been talk of mainstream dams on the Mekong downstream of China for many years but this is the first time any of the mainstream dams has reached this advanced stage. If it is approved, it is likely that other planned Mekong dams will also be approved.

The Cambodian government has also continued to push for the development of large hydropower dams inside Cambodia; many of these projects would disproportionally affect the country's indigenous peoples by jeopardizing the natural resources on which they depend. In Cambodia's southwest, construction has begun on the 110 MW Stung Atay dam[15] and the 246 MW Stung Tatay dam,[16] and in 2010 the government reportedly signed a memorandum of understanding (MOU) for a new feasibility study for the 108 MW Stung Cheay Areng dam.[17] Construction of all three dams will involve resettlement of indigenous peoples. There has already been an influx of Chinese workers and more non-indigenous people are expected. In the northeast, the Cambodian government has also signed MOUs for feasibility studies for two dams located on the Mekong mainstream, the 460 or 2600 MW Sambor dam in Kratie province[18] and the 980 MW Stung Treng dam.[19] These dams would together involve resettling more than 29,000 people (many of them indigenous) and would have an impact on millions of Cambodians.[20] The environmental impact assessment of the 400 MW Lower Sesan II dam was approved in December 2009, despite local communities protesting against the construction of the dam.[21]

Advocacy actions by indigenous peoples, particularly around land and resource rights, continued to increase in 2010. However, this has been met by intimidation. According to a civil society report,

When communities sought to engage with their government in compliance with legal processes, what were the results? In short, the research shows that while there were some superficial attempts to address the issues expressed in the complaints, the vast majority of communities who lodged complaints in 2009 saw no improvements nor were they offered alternative solutions to alleviate their plight. Instead, many experienced increased threats, intimidation, land grabs and more land concessions.[22]

The National Forest Program (NFP) includes REDD (Reduced Emissions from Deforestation and Forest Degradation), a mechanism to pay for forest protection through carbon markets or funds.[23] The government has developed a roadmap for drafting a REDD strategy and policy, and feasibility studies are being carried out for REDD projects in indigenous areas.

Media and access to information

In 2010, consultations with indigenous peoples in four provinces revealed that indigenous peoples have little access to independent media and information that addresses their needs. Most media is not in indigenous languages, disproportionately disadvantaging women and elders (including traditional leaders). In Ratanakiri province, a service has been established within the provincial government radio station to provide information in indigenous languages but the service is limited and information on issues of concern to communities is generally inadequate.

Education

In 2010, a UNESCO report raised special concerns about the education of indigenous children in Ratanakiri and Mondulkiri provinces,[24] although a number of bilingual educational initiatives have been undertaken. The Ratanakiri Department of Education now runs its own bilingual non-formal education program. The Ministry of Education, Youth and Sports (MoEYS) manages and implements a pilot formal bilingual education program in 30 primary schools in three northeastern provinces, following a model that was developed by international NGOs. In 2010, MoEYS approved guidelines for bilingual education in Cambodia, which it

will disseminate in 2011. The guidelines limit formal teaching in the mother tongue to grades 1-3 only but provide a legal basis for formal bilingual education.[25] Indigenous students continue to face great hardships in pursuing a university education, although the National Policy on Development of Indigenous Minorities calls for support for the university-level education of indigenous students.

Officially approved orthographies of the Kreung, Tampuen, Brao, Bunong and Kavet languages are in use. This year, an orthography of the Kui language was completed (but has not yet been officially approved) and an orthography of the Jarai language is underway.

Health

The difficulties that Cambodian indigenous peoples face are reflected in their health status. They have higher risk of illness and less access to quality health-care services than others. The 2005 Cambodia Demographic and Health Survey found that, in the provinces with the highest indigenous populations (Ratankiri and Mondulkiri), the mortality rate among infants (under one year) and children under five years was twice that of Cambodia in general, and three times that of Phnom Penh.[26] A recent UNDP document highlighting progress towards Millennium Development Goal 4 (reducing child mortality) shows marked disparities between provinces, with provinces with high indigenous populations showing significantly less progress than the rest of the country.[27] The government's policy of community participation in the health care system provides a mechanism by which accountability of health service providers could be improved.

Indigenous civil society

Cambodian indigenous peoples are increasingly recognizing the relevance of the term "indigenous" and using it to refer to themselves. A growing number of Cambodian indigenous people are familiar with the international indigenous peoples' movement.[28]

The Indigenous Rights Active Members (IRAM), a nation-wide grassroots-based indigenous peoples' network, focuses on awareness raising and advocacy on indigenous peoples' land and natural resource rights and helps indigenous

communities to gain legal recognition. The Cambodian Indigenous Youth Association (CIYA) aims to mobilize and build the capacity of indigenous youth to work for indigenous communities; it has carried out activities such as critical research, facilitating community dialogues and organizing the Indigenous Peoples' Day and an indigenous peoples' forum. ❍

Notes and references

1 The National Policy on Development of Indigenous Minorities, for example, identifies 24 indigenous groups. National Policy on Development of Indigenous Minorities, 2009.
2 National Report of Final Results of Cambodian 2008 Population Census (Summary).
3 Land Law (2001).
4 Circular on the Procedures and Methods for Implementing the National Policy on Development and Identification of Indigenous Communities (2009).
5 Brief Progress Update on IC Registration as Legal Entities up to Dec. 2010. ILO.
6 NGO Forum on Cambodia, 2010. The Rights of Indigenous Peoples in Cambodia: report to United Nation's Committee on the Elimination of Racial Discrimination. 76th Session. NGO Forum in association with Asia Indigenous Peoples Pact, March 2010. See also *The Indigenous World 2008, 2009* and *2010*.
7 ibid.
8 Economic Land Concessions in Cambodia: a Human Rights Perspective. Special Representative of the Secretary General for Human Rights in Cambodia. p. 1.
9 **Kunmakara May, 2009:** Cambodia, Vietnam ink deal on rubber. *Phnom Penh Post*. 23 Sept.
10 **Lang, Chris, 2009:** Cambodia's Prey Long forest is "equivalent to life itself" for local communities. *WRM Bulletin*. Issue 142
11 Cambodia's National Forest Programme strategic framework document. December 2009.
12 CERD report. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/415/54/PDF/G1041554.pdf?OpenElement
13 See, for example, NGO Forum on Cambodia's Down River: The Consequences of Vietnam's Se San river Dams on Life in Cambodia and Their Meaning in International Law (2005).
14 "MRC Receives first Notification of Mainstream Mekong Project, MRC media release."
15 Initial Environmental and Social Impact Assessment (IESIA) Report on Atay Hydropower Project in Veal Veng District, Pursat Province by SAWAC Consultants for Development (July 2008).
16 "Work Will Start on Koh Kong Dams This Week," The Cambodia Daily, April 1, 2010.
17 "Cambodia signed the 53.2 billion memorandum of understanding Hydropower Project, Jian Hua Daily. Nov. 5, 2010.
18 "Chinese to study four dams." Phnom Penh Post, Nov. 7, 2010
19 "Gov't gives contract for $2bn dam to VN firm," Phnom Penh Post, March 18, 2010.
20 MRC SEA for Hydropower on the Mekong Mainstream. http://www.mrcmekong.org/ish/SEA/SEA-Main-Final-Report.pdf
21 **Baird, Ian G., 2009:** *Best Practices in Compensation and Resettlement for Large Dams: the case of the planned Lower Sesan 2 Hydropower Project in Northeastern Cambodia*. Rivers Coalition in Cambodia, Phnom Penh.

22 Cambodian Human Rights Action Committee and Housing Right Task Force, 2010, Still Losing Ground: Evictions and intimidation in Cambodia, CHRAC and HTFP 2010. p. 1.
23 Cambodia's National Forest Programme strategic framework document. December 2009. http://www.twgfe.org/nfp/Docs/Publication/Living%20NFP%20document/NFP%20Doc%20Printing.pdf
24 Education for All Global Monitoring Report 2010. http://unesdoc.unesco.org/images/0018/001866/186606e.pdf
25 Guidelines on Implementation of Bilingual Education Programs for Indigenous Children in Highland Provinces, 2010.
26 http://www.measuredhs.com/pubs/pdf/FR185/FR185%5BNov-11-2008%5D.pdf
27 UNDP, Phnom Penh. Current Status of Cambodian Millennium Development Goals (CMDG), Draft Power Point document, September 19, 2010
28 See **Baird, Ian G., 2011:** The construction of "indigenous peoples" in Cambodia. Pages 155-176. In *Alterities in Asia: reflections on identity and realism,* ed. Leong Yew. Routledge, London and New York

This article was prepared by a group of people working in consultation with indigenous peoples across Cambodia

VIETNAM

Vietnam is strategically located in the Indo-Chinese peninsula that connects the Asian mainland to Southeast Asia. As a multi-ethnic country, Vietnam has 54 recognized ethnic groups; the Kinh represent the majority, comprising 86%, and the remaining 53 are ethnic minority groups accounting for around 14% of the country's total population of 89 million. Each ethnic group has its own distinct culture and traditions, contributing to Vietnam's rich cultural diversity.

The ethnic minorities live scattered throughout the country, inhabiting midland, coastal and mountain areas, but are concentrated mostly in the Northern Mountains and Central Highlands. The Vietnamese government does not use the term "indigenous peoples" for any groups, but it is generally the ethnic minorities living in the mountainous areas that are referred to as Vietnam's indigenous peoples. The term ethnic minorities is thus often used interchangeably with indigenous peoples in Vietnam. The Thai, Tay, Nung, Hmong and Dao, are fairly large groups, each with between 500,000 and 1.2 million people. There are many groups with fewer than 300,000 people, however, sometimes only a few hundred. Around 650,000 people belonging to several ethnic groups live on the plateau of the Central Highlands (Tay Nguyen) in the south. All ethnic minorities have Vietnamese citizenship.

Ethnic groups intermingle closely with each other but no one group possesses its own customary territory. Two or three groups can be found in the same village and, through everyday community relations, they all know each other's language, customs and traditions.

The ethnic minority poverty situation

Vietnam has had a remarkably successful Poverty Reduction Program over the past 10 years. The United Nations and other countries in the world have

acknowledged and appreciated Vietnam's success in poverty alleviation. Unfortunately, the program has not benefited all people equally. The majority Kinh and the Hoa groups have benefited the most while ethnic minority groups are still lagging seriously behind.

On 3 December 2010, a workshop on "*Solutions to Poverty Reduction and Stabilization of Ethnic and Mountainous areas in the period 2011-2015"* was conducted and attended mostly by diplomats, dignitaries, Vietnamese government officials and international organizations; there were no representatives from grassroots ethnic minority peoples. The Workshop showed that, so far, more than 50 policies and 200 political documents have been produced in relation to poverty reduction. On average, each district is implementing 20 to 30 poverty reduction policies. The workshop also showed, however, that despite these policies and programs the rate of poverty among ethnic minorities increased continuously over the period 1993 to 2008. This rate is much higher than the average national in Vietnam. In 1993, the poverty rate among ethnic minorities was 18%; this increased to 29% in 1998, 39% in 2004, 47% in 2006 and 55% in 2008.

It dropped sharply to 31% in 2010 but is still 2.5 times the national average (12%). The number of poor households, particularly in the most disadvantaged areas, is forecast to reach approximately 30%. The average income of ethnic minorities and mountainous areas is only 1/3 that of the national average. It is expected that, if the poverty threshold of 400,000 Dong (ca. 20 USD) per month is applied in 2011, the rate of poverty among these extremely poor villages, communes and districts will increase to 60%, and possibly even 75%.[1]

Climate change, REDD and ethnic minorities' FPIC

Vietnam is implementing a capacity-building program for REDD readiness (US$4.4M) under the UN-REDD program. Vietnam's Readiness Plan Idea Note (R-PIN) was approved and a draft Readiness Preparation Plan (R-PP) has already been submitted to the Forest Carbon Partnership Facility of the World Bank. It has also been involved in the multilateral Interim REDD+ Partnership since May 2010. An institutional arrangement and coordination mechanism was set up for REDD implementation in the country, which created a REDD+ taskforce, a national REDD network and a working group for preparation of the National REDD Program. Key activities that were undertaken included: awareness-raising for government agencies at various levels organized in collaboration with different programs, projects and partners; the development of a communications strategy; conducting Free, Prior and Informed Consent (FPIC); and the development of website and video clips on REDD.

REDD is being piloted in two districts - Di Linh and Lam Ha – of Lam Dong province, with 34 communes comprising 280 villages and small towns. The C'ho are the main indigenous people living there. In these two districts, the program has completed its pilot initiative to seek Free, Prior and Informed Consent (FPIC) in 53 villages and is now expanding towards the remaining villages. While it is highly commendable that the government of Vietnam and UN-REDD have taken the initiative to pilot the implementation of FPIC in relation to REDD among indigenous communities, it is also important to draw lessons from this experience as a guide to further improving FPIC processes not only in Vietnam but also in other REDD countries. The FPIC process was conducted over a very short period of time, and the key questions commonly asked were very general. There were no thorough discussions or further explanations of the implications of REDD for com-

munities' livelihoods, land tenure and security, nor consideration of their views on benefit sharing, resource management, culture and identity, to name but a few. Despite the limitations of the FPIC pilot processes, the initiative does nevertheless demonstrate the goodwill of both the government and UN-REDD to engage with ethnic minority communities, at least in the REDD pilot areas.

Ethnic minority concerns in REDD+ implementation

Most ethnic minority communities in Vietnam have limited knowledge of climate change and know almost nothing about REDD. Even in the two pilot districts of Lam Ha and Di Linh, REDD still remains unclear to them and they have difficulty in understanding technical terms and concepts such as carbon trade, carbon funds, carbon credit, etc. They can, however, understand this when explained in relation to the protection and conservation of forests. No evaluation has been done of how these activities help indigenous communities or their leaders to understand REDD-related projects and there is no support for the building or strengthening of their capacities in collective decision-making on REDD. In addition, there are no ethnic minority representatives in the bodies set up for REDD+ at the national, provincial or district levels. These bodies mainly comprise representatives of government bodies, international NGOs and some local NGOs. This lack of representation is a clear manifestation of the absence of full and effective participation on the part of ethnic minorities in mechanisms relating to REDD. Another key concern is the possible impact of REDD on the continuing practice of rituals and ceremonies, and on the traditional livelihoods of ethnic minorities. There is concern that forest and natural resource-based livelihoods may be identified as drivers of deforestation. In particular, the practice of shifting cultivation is legally banned in Vietnam, causing further marginalization of indigenous communities, and contributing to the loss of biodiversity and traditional knowledge. This will therefore have serious implications on the ways of life and security of indigenous communities. The government is currently undertaking a pilot program of allocating forest for community use. This is largely based on the findings of community forest management studies that clearly demonstrate that land tenure is a critical issue in ensuring sustainable community forest management. It is thus hoped that land tenure for forest-dependent communities will be properly addressed in Vietnam's REDD Strategy as one strategic measure by which to

ensure the sustainability of REDD and ethnic minority participation in the whole REDD process. With the increased commercial value of forests, especially relating to carbon stocks, compensation from REDD projects may lead to increased land speculation in forest areas and, if their capacity to engage with REDD projects is not strengthened, ethnic minorities could end up being manipulated by opportunistic individuals such as carbon traders (the so-called "carbon cowboys").

Devastating impact of large-scale development projects

Bauxite mining

Vietnam is estimated to hold the world's third-largest bauxite ore reserves. The majority of Vietnam's reserves are located in the Central Highlands (Tay Nguyen) and have been only minimally mined. The Central Highlands are home to at least 30 indigenous peoples who formed, until a few decades, ago a majority of over 90% of the local population but who, due to massive immigration, have now become a minority. Despite its large reserves, Vietnam produces only 30,000 tons of bauxite per year. A draft mining plan for bauxite was approved by the Vietnamese government in 2007. Vinacomin, a Vietnamese mining company, has set out a plan for six bauxite mining projects covering over 1,800 square kilometres in the mountainous Central Highlands. The first two processing plants have been contracted to Chalco (Aluminum Corporation of China Limited), a Chinese mining company. The Nhan Co project in Dak Nong Province and the Tan Rai complex in Lam Dong Province are expected to produce 600,000 tons of alumina per year. Prime Minister Nguyen Tan Dung has approved several large mining projects for the Central Highlands, asserting that bauxite exploitation is a major state policy and program. The short-sighted bauxite mining projects will turn hundreds of thousands of hectares of magnificent bio-diverse forests, exotic animals and plants, natural waterfalls and other surface water bodies and agricultural lands of the Central Highlands into waste. There will also be massive displacement of ethnic minorities from the affected areas. Concerns were raised about red-mud toxic waste generated through the refinement of bauxite and the projects also met with strong criticism from scientists and environmentalists. A petition spearheaded by the Viet Ecology Foundation was submitted and disseminated to different agencies concerned about the appalling effects of the mining operation on the

people and ethnic minorities. This gained a great deal of public support from the local, national and international community. The Vietnamese government issued a temporary restraining order against the bauxite mining companies in the Central Highlands.

On 25 November 2005, UNESCO in its third Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity recognized "Space of Gong Culture" in the Central Highlands of Vietnam a one of the living treasures of mankind. UNESCO and the Vietnamese government signed a treaty establishing legal commitments and responsibilities with regard to the preservation and safeguarding of the Gong Culture in the Central Highlands. In addition, the Vietnamese government is a signatory to the UN Declaration on the Rights of Indigenous Peoples, the Convention on the Rights of the Child and other rights treaties, and so it has a moral commitment and legal responsibility to protect and preserve the Central Highlands' cultural heritage.

Hydro-Electric Power Projects

After the devastating typhoons, Ketsana and Mirinae, which killed 174 and 120 people respectively, it was claimed that hydro-power plants and reservoirs in the central region had made the flood worse. Consequently, in accordance with the Prime Minister's instructions, "Confronting Climate Change", the Prime Minister asked the Ministry of Industry and Trade (MoIT) to cooperate with other agencies to review the procedure on running hydro-power reservoirs in order to ensure safety. He asked the ministry to put in place policies encouraging the development of energy generated from the wind, tide and sun. He also instructed the Ministry of Agriculture and Rural Development (MARD) to check plans to combat natural disaster and the planning of irrigation works, particularly the system of dikes. This ministry has been told to set up a council to evaluate the safety of irrigation and hydro-power reservoirs.

Construction of new additional hydro-power plants, facilities and reservoirs is still, however, ongoing. Most of the dams have been, and are being, built in remote mountainous areas, posing considerable difficulties and dangers to the ethnic minorities. The ethnic minorities believe that hydro-power plants and reservoirs were one of the causes of massive flooding in the region. Laxity on policy implementation and questionable construction quality wrought havoc among ethnic minorities. The ministry admits that they have inspected only a third of the 35

provinces that have plans for hydroelectric facilities. Some of these projects need reconsidering due to the impacts of climate change. ❍

Note

1 These figures were discussed and deliberated during the workshop. No specific sources were identified.

Sources and references

Tre, Tuoi, **2009:** Vietnam OK's bauxite mines. *Vietnews*. 10 April.
Vietnam bauxite decision may affect Alcoa project. *Reuters*. 29 April 2009.
Hoang, Duy, 2009: Vietnam bauxite plan opens pit of concern. *Asia Times Online*. 17 March.
Vietnam scientists clash with government over bauxite project. *Viet Tan*, 10 April 2009.
Mining Journal – "Vietnam's bauxite reserves may total 11 billion tonnes". http://www.mining-journal.com/exploration--and--development/vietnams-bauxite-reserves-may-total-11-billion-tonnes. Retrieved 2010-11-28.
"A Petition Letter" by Viet Ecology Foundation; www.vietecology.org

Due to the sensitivity of some of the issues covered in this article the authors prefer to remain anonymous.

LAOS

With a population of over seven million, Laos is the most ethnically diverse country in mainland Southeast Asia. The ethnic Lao, comprising around a third of the population, dominate the country economically and culturally. Another third consists of members of other Tai language-speaking groups. The remaining third have first languages in the Mon-Khmer, Sino-Tibetan and Hmong-Iu Mien families. These groups are sometimes considered to be the "indigenous peoples" of Laos, although officially all ethnic groups have equal status, and the concept of "indigenous peoples" is not recognized. The Lao government currently recognizes over 100 ethnic sub-groups within 49 ethnic groups.

Indigenous people are unequivocally the most vulnerable groups in Laos, representing 93% of the country's poor.[1] They face territorial, economic, cultural and political pressures and are experiencing various livelihood-related challenges. Their land and resources are increasingly under pressure from government development policies and commercial natural resource exploitation. There is no specific legislation in Laos with regard to indigenous peoples.

Land issues

Communal land has been recognized in Directive 564, under the National Land Management Authority. This is a step toward legal recognition, even though many groups advocate reforming the land law, which is expected to be revised soon. Some international NGOs in Oudomxay Province are trying to make use of Decree 564 to promote the sustainable management of community land.

According to the Vientiane Times, Champassak provincial authorities have altered land concessions for rubber plantations, as the province has sufficient

areas of rubber already. Some other provinces, however, are still offering land concessions for rubber tree plantations in order to boost socio-economic development, in line with government policy. Domestic and international investors in Laos have planted more than 300,000 hectares of rubber trees across the country and the Ministry of Agriculture and Forestry plans to expand the area to 500,000 hectares by 2020.[2] The large-scale rubber plantations in Laos are clearly having a massive and rapid impact on landscapes and livelihoods, stripping local resources away, leaving indigenous people poorer and with fewer livelihood options than they had before,[3] and often translating in a loss of communal land and non-timber forest products, with inappropriate or no compensation at all.

Ban on pioneer shifting cultivation

On 5 Feb 2010, the Ministry of Agriculture and Forestry issued Instruction 22 in preparation for the complete eradication of pioneer shifting cultivation in 2010.[4] In fact, both local administrations and the media (radio, newspapers) speak broadly about the ban on shifting cultivation without distinguishing between pioneer and rotational shifting cultivation, which shows an unawareness of the distinction between the two systems.

In late December 2010, the government finally recognized that the attempts to end "shifting slash-and-burn cultivation" in 2010 had fallen short of the target set by the Resolution of the Eighth Party Congress. The target was originally set for 2005 but this failed to be achieved because communities living in mountainous terrain have no other way of surviving. The date was moved back to 2010,[5] but the lack of planning coordination between the ministry and the provinces, and of development opportunities in these rural areas, has rendered the officials' efforts futile.[6]

Relocation of indigenous people

The Lao government has been openly advertising large resettlement schemes to end shifting cultivation. The National Leading Committee for Rural Development and Poverty Eradication has sponsored a resettlement site covering 400 hectares of land and facilities in Samtai District, Houaphanh Province, planned to accommodate around 1,000 shifting cultivators.[7] A similar scenario exists in Bolikhamxay

1. Kaleum District 2. Lamam District 3. Vilabourg District 4. Bolaven Plateau

Province, where the Provincial Integrated Rural Development Office has set up three resettlement zones: Nachaeng Focal Development Zone in Xaychamphone District, Phonkham Village and Namchoy Area in Bolikhan District. The 800 hectares in the Nachaeng area are intended to accommodate more than 2,000 shifting cultivators. The province has completed surveys for a similar scheme covering 1,600 hectares in Namchoy zone: "We have submitted our findings to the central government to consider," said Mr. Phichith, head of Bolikhamxay Province Integrated Rural Development Office. "This scheme is double the size of the Nachaeng project and will accommodate more farmers, including those migrating from other provinces".[8]

Hmong Repatriation from Thailand continues

The third ongoing scheme is to develop Phonkham resettlement village, also in Bolikhan District, Bolikhamxay Province. The village has so far taken in more than 3,500 homeless Hmong people, most of whom were repatriated from Houay Nam Khao Camp in Petchabun Province, Thailand in December 2009.

In March 2010, the government allowed UN agencies and top diplomats brief access to Phonkham. The delegation had no time allocated for one-on-one discussions with the Hmong but were told by Bounthan Douangtanya, speaking on behalf of the committee that administers Phonkham, that "The returnees are stable and confident in the leadership of the government and our officials in charge." Diplomats have said there were no reports of mistreatment.[9]

A 60 km permanent road has been constructed from the district capital to the village[10] and the government has cleared 600 hectares, working with private companies to encourage the villagers to grow cash crops such as jobs' tear, maize and sesame. The authorities are currently in the preparatory stages of building six primary schools to teach the 1,120 school-aged children in the village next academic year[11] and villagers have been granted use of free power throughout the coming year.[12]

Hydropower

With a hydropower potential of 18,000 megawatt (MW), Laos plans to become the "battery of Southeast Asia". As of 2010, seven dams were in operation and eight were officially under construction. Sixteen projects are at the pre-construction or advanced planning phase and 44 projects are at the feasibility stage. The hydropower governance situation is characterized by poor-quality environmental and social assessments, a lack of transparency, poor consultation and endemic corruption.

The Nam Theun 2 (NT2) 1,070 MW Project, Lao's largest hydropower facility, was officially inaugurated on December 9, 2010 in Khammouane Province.[13] International Rivers (IR), an environmental NGO, has pointed out that the NT2 Project is in breach of the concession agreement and is operating illegally because it was unable to provide the community that had been displaced and reset-

tled with irrigated farmland before the plant began commercial operations. The Lao Energy Promotion and Development Department, Energy and Mines Ministry denies the IR allegations.

Recognizing that dams are highly contentious, and that many interest groups have concerns, the Mekong River Commission (MRC) has been conducting a strategic environmental assessment of proposed mainstream hydropower schemes on the lower mainstream river and has called for a 10-year freeze on the construction of hydropower dams along Southeast Asia's key Mekong River. In September 2010, the Lao government submitted plans to the MRC for the 1,260-MW Sayabouly hydropower dam project on the Mekong River, confirming its intention to go ahead with the project. The plans were announced even before the MRC had completed the strategic environment assessment and, although the assessment document was not made available to the public,[14] the project appears to be going ahead despite growing concerns about the impact on fisheries, which is an intrinsic part of indigenous peoples' livelihoods.

Mining

The Lao mining sector was expected to grow by at least 8% in 2010 thanks to recovering mineral prices on the world market, according to the Director General of the Energy and Mines Department. New and resumed mining investments should contribute to growth in the sector in 2010 as demand for minerals, particularly copper and gold, increases with the recovery of the global economy.[15]

The government has issued investment licenses to 154 companies and 269 projects in the mining sector nationwide. Of those, 118 companies are foreign investors who operate 186 of the projects. The rest are domestic companies, which run the remaining 83 projects. The total concession area is 2.88 million hectares, according to the Ministry of Planning and Investment.[16]

The main mining investments underway in Laos in 2010 included a US$30 million potash project in Vientiane, funded by a Chinese company, and a US$3 million tin mining project in Khammouane Province, funded by a Russian company. The largest investment is in bauxite mining on the Bolaven Plateau in the southern provinces of Champassak and Xekong, which will, if it goes ahead, take place from 2012 to 2015. Investors are now conducting a feasibility study for the project and also looking for an energy source to provide sufficient power for the

mine's processing plant, which will require an electricity supply of more than 1,200 MW. This project would be the largest investment ever in the Lao PDR.

Civil society

Indigenous peoples' representation within development organizations is still very poor. Most indigenous people working for development projects or INGOs are hired as gardeners or cleaners, with only a small number being hired as project staff. The 2009 National Decree on Associations is, however, creating a space for indigenous people to create their own associations.[17] Two have emerged in Savannakhet Province: the Mon-Khmer and Katang Associations. A third, known as the Southern Laos Indigenous Peoples' Organization in Champassak Province, is preparing to register. Despite the fact that these indigenous associations require the sanction of the Lao People's Revolutionary Party to exist, they are a step on the path to plurality and the opening up of the public space, and represent a real leap towards the development of a genuine civil society in which indigenous peoples can have their voices heard. ❍

Notes

1 Asian Development Bank. 2001. Participatory Poverty Assessment, Vientiane, Lao PDR.
2 *Vientiane Times*, 22/09/2010.
3 **Baird, Ian, 2009:** Land, Rubber and People: Rapid Agrarian Changes and Responses in Southern Laos. *The Journal of Lao Studies*, Volume 1, Issue 1, pp 1-47. Published by the Center for Lao Studies at www.laostudies.org
4 *Vientiane Times*, 04/03/2010.
5 For earlier discussions, see IWGIA. 2009. *The Indigenous World, 2009*. Copenhagen: IWGIA. pp 359-366; 2010, pp. 375-381.
6 *Vientiane Times*, 28/12/2010.
7 *Vientiane Times*, 21/05/ 2010.
8 *Vientiane Times*, 10/06/2010.
9 AFP, Phonekham village, Laos, 28/03/2010, posted at http://pasalao.activeboard.com/forum
10 *Vientiane Times*, 15/02/2010.
11 *Vientiane Times*, 03/06/2010.
12 http://laovoices.com/2010/06/05/hmong-resettlement-village-finally-sees-the-light/
13 *Vientiane Times*, 10/12/2010.

14 Decade freeze on dams. Contributions by Oratai Singhananth and Max Avary of RFA's Lao Service. Written in English by Parameswaran Ponnudurai. Copyright © 1998-2010 Radio Free Asia. All rights reserved.
15 *Vientiane Times*, 25/01/2010.
16 *Vientiane Times*, 24/06/2010.
17 **Daviau, Steeve, 2010:** Non-profit associations: timid emergence of civil society in Lao PDR (in French). Special Issue on Governance, Contention and Development in Southeast Asia. In *Canadian Journal of Development Studies*, Vol XXX, No 3-4. Canada: Ottawa University.

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BURMA

Burma's diversity encompasses over 100 different ethnic groups. The Burmans make up an estimated 68 percent of Burma's 50 million people. Other major ethnic groups include the Shan, Karen, Rakhine, Karenni, Chin, Kachin and Mon. The country is divided into seven, mainly Burman-dominated divisions and seven ethnic states. While the Burman majority consider themselves to be indigenous as well, this article focuses on the marginalized indigenous groups commonly referred to as "ethnic nationalities". Burma has been ruled by a succession of Burman-dominated military regimes since the popularly elected government was toppled in 1962. The regime has justified its rule, characterized by the oppression of ethnic nationalities, by claiming that the military is the only institution that can prevent Burma from disintegrating along ethnic lines. After decades of armed conflict, the military regime negotiated a series of ceasefire agreements in the early and mid-1990s. While these resulted in the establishment of special regions with some degree of administrative autonomy, the agreements also allowed the military regime to progressively expand its presence and benefit from the unchecked exploitation of natural resources in ethnic areas. In 1990, the military regime held the first general elections in 30 years. The National League for Democracy (NLD), a pro-democracy party led by Aung San Suu Kyi, won over 80% of the parliamentary seats and the United Nationalities Alliance (UNA), a coalition of 12 ethnic political parties, won 10% of the seats.[1] However, the regime refused to honor the election results and never convened the parliament. Burma voted in favour of the UN Declaration on the Rights of Indigenous Peoples, which was adopted by the UN General Assembly in 2007.


CHINA
INDIA
Kachin state
MYITKYINA
Sagain division
Salween River
Chin state
Mandalay division
Shan state
LAOS
Kyaukpyu
Magwe division
Arakan state
Karenni state
Pegu division
Rangoon division
Irrawaddy division
Irrawaddy delta
RANGOON
Karen state
Mon state
Myawaddy
Kawkareik
Kyaikseikyi
THAILAND
ANDAMAN SEA
Tenasserim division
BURMA

The 2010 elections

On 7 November, Burma held its first general election in 20 years. The ruling military junta, the State Peace and Development Council (SPDC), created the necessary conditions to avoid a repeat of the embarrassing defeat it suffered in the 1990 elections.

In March, the SPDC unilaterally enacted unfair election laws, designed to guarantee the greatest advantage for the junta's proxy party, the Union Solidarity and Development Party (USDP). The election laws barred individuals serving prison sentences from joining a political party and therefore participating in the elections. This provision excluded key pro-democracy and ethnic leaders, including Aung San Suu Kyi and Hkun Htun Oo, the Chairman of the Shan Nationalities League for Democracy (SNLD), the second-largest vote winner in the 1990 elections, from contesting the polls. These two parties, which won over 80% of the seats in the 1990 election, decided not to contest the polls in protest at the regime's unfair laws.

The SPDC appointed a 17-member Election Commission to oversee the electoral process. The Commission, which was entirely staffed by former regime officials, included only two members belonging to Burma's ethnic nationalities. The body issued several decrees that further limited freedom of expression, movement and association of political parties and candidates. By issuing its own rules, the Commission restricted the ability of political parties to field candidates to contest the election. The Commission set a registration fee for each candidate of 500,000 kyat (approx. US$500) - the equivalent of one year's salary for a Burmese civil servant or factory worker. In addition, it gave political parties only 17 days to submit their list of candidates for the polls. Faced with time and financial constraints, most parties could only field a limited number of candidates. Several parties were unable to field even three - the minimum required to contest the polls. By contrast, the USDP, which could rely on the huge financial resources inherited by the SPDC-backed mass organization, Union Solidarity and Development Association (USDA), fielded 1,141 candidates for the 1,154 seats at stake in all legislatures.

The Election Commission's oppressive actions and rules had a negative impact on the ability of the general population to actively participate in the electoral process. The Commission's management of the process had the most negative

impact, however, on Burma's ethnic communities and their political parties and candidates.

Of the 37 political parties that were allowed to contest the election, 24 were ethnic-based. However, the Commission arbitrarily refused to grant party registration to the Kachin State Progressive Party, the Northern Shan State Progressive Party and the United Democracy Party (Kachin State). The three ethnic political parties, based in Kachin State and bordering Northern Shan State, had applied for party registration in April but the Commission never announced a decision regarding their application. By contrast, the Unity and Democracy Party of Kachin State (UDPKS), led by a former local SPDC official, obtained permission to register just two weeks after applying for party registration. The Commission failed to provide an official reason for excluding the three ethnic parties from the polls. It was widely believed that the Commission's inaction originated in the parties' ties with ceasefire groups, namely the Kachin Independent Organization (KIO), which refused to transform its armed wing into a Border Guard Force (BGF) under the *Tatmadaw* (the regime's armed forces) control. The Commission also rejected the application of 14 Kachin State Progressive Party members and one Northern Shan State Progressive Party member who had applied to run as independent candidates after their parties were denied registration.

In September, the Commission cancelled the polls in over 3,400 villages in Kachin, Karen, Karenni, Mon, and Shan States because it claimed they were not in a position to hold free and fair elections. The Commission's move disenfranchised an estimated 1.5 million people in ethnic-dominated areas where the opposition to the military regime was the strongest and where ethnic parties were most likely to win.[2]

The USDP predictably swept the polls amid allegations of widespread fraud and irregularities – particularly the junta's abuse of advance voting in favor of its proxy party. The USDP won 883 (76%) of the 1,154 seats contested in the election. At the national level, only 13 of the 24 ethnic-based parties that participated in the polls won at least one seat. Their elected MPs accounted for only 74 (13%) of the 559 seats in the Parliament. At the local level, ethnic parties fared relatively better. In six out of the seven ethnic-dominated states (the only exception being Karenni State), ethnic parties won enough seats (at least 25%) to be able to call for a special parliamentary session and initiate impeachment proceedings against a Chief Minister or any other Minister. However, the restrictions embedded in the SPDC-drafted 2008 Constitution far outweigh the small gains acquired

through the election. The Charter grants very limited legislative powers to local Parliaments while the National Parliament retains exclusive power to legislate on critical issues such as: land administration; use of natural resources; health; education; and justice.[3] In addition, the laws that regulate parliamentary procedures, issued by the junta immediately after the polls, severely constrain the space for political debate.

Push for Border Guard Force (BGF) fuels conflicts and displacement

Major ethnic ceasefire groups in Shan and Kachin States continued to reject successive ultimatums set by the SPDC to accept its BGF scheme. The regime's BGF push was the result of the 2008 Constitution, which requires that all armed forces in Burma be under the command of the *Tatmadaw*.[4] The KIO and the United Wa State Army (UWSA) issued counter-proposals to the regime's ultimatum in order to preserve some autonomy and limit *Tatmadaw* control over their forces.The SPDC rejected these offers, however, and responded with military escalation. The regime deployed tens of thousands of troops in Kachin, Shan, Karen, and Mon States in an attempt to coerce ceasefire groups to accept its BGF scheme. In October, state-run newspapers described the Kachin Independence Army (KIA) as "insurgents". It was the first time that the SPDC had referred to the KIO's armed wing as insurgents since the two sides signed a ceasefire agreement in 1994.

As the key ethnic ceasefire groups continued to reject the BGF diktat, the junta pushed ahead to form Border Guard Forces from smaller pro-junta militia groups. In August, the Democratic Karen Buddhist Army (DKBA) transformed into a BGF. However, many DKBA troops refused to join the SPDC's ranks. Over 100 soldiers from the pro-junta DKBA battalions defected to the DKBA Brigade-5, which opposed the BGF.

As the election drew near, the regime made it clear that the BGF issue would be put on hold until after the polls. However, the simmering tensions between the military regime and the ethnic groups that refused to join the BGF exploded into violence on election day when forces of the DKBA Brigade-5 attacked a *Tatmadaw* outpost in Myawaddy Township, Karen State. In the days and weeks that followed, the conflict spread throughout Southern Karen State. *Tatmadaw* and DKBA Brigade-5 forces clashed in Karen State's Kawkareik, Kyainnseikyi, and Mya-

waddy townships. The clashes caused more than 27,000 people to seek shelter in Thailand. Thousands more sought refuge in the jungles of Southern Karen and Mon States.

Widespread and systematic abuses cause UN to call for Commission of Inquiry

Parallel to the attempts to coerce ceasefire groups into accepting the BGF scheme, the military regime stepped up its offensive against ethnic civilians in Eastern Burma. According to the Thailand Burma Border Consortium (TBBC), between August 2009 and July 2010 the *Tatmadaw* destroyed or forcibly relocated 113 villages and forced at least 73,000 people to leave their homes.[5] *Tatmadaw* troops continued to commit extrajudicial killings, raped women, destroyed property, laid landmines and used forced labor as part of their ongoing offensive. In Karen State, the *Tatmadaw*'s attacks on civilians and eviction orders displaced around 26,000 villagers. In Mon areas, more than 8,000 villagers fled conflict and forced recruitment into local militias by the *Tatmadaw*.[6] According to the TBBC's conservative estimates, at least 446,000 people remain internally displaced in Eastern Burma.[7]

In October, a group of NGOs[8] working on health issues in Burma and along the Thai-Burma border released the report "Diagnosis: Critical - Health and Human Rights in Eastern Burma". The report documents the dismal health conditions and human rights abuses in Eastern Burma and indicates that Eastern Burma's demographics are characterized by high birth rates, high death rates, and the significant absence of men under the age of 45 - patterns more comparable to recent war zones such as Sierra Leone. In addition, child mortality rates in Eastern Burma are nearly twice as high as in the rest of the country and the maternal mortality ratio is triple the official national figure.[9]

Widespread and systematic human rights violations were not confined to Eastern Burma. In a report entitled "Life under the Junta", US-based Physicians for Human Rights documented the numerous cases of crimes against humanity, such as forced conscription of children, forced labor, rape, torture and arbitrary executions committed by the military regime in Chin State. According to the report's findings, nearly 92% of the households surveyed had experienced at least one case of forced labor between October 2009 and November 2010. In one in

every seven households, at least one family member had been tortured or subjected to "inhumane treatment" by *Tatmadaw* personnel.[10]

In March, the UN Special Rapporteur on human rights in Burma, Tomás Ojea Quintana, said that the ongoing "gross and systematic violations" of human rights in the country were "the result of a state policy". Due to the military regime's lack of accountability for those abuses, Ojea Quintana made the unprecedented recommendation that the UN consider establishing a Commission of Inquiry into war crimes and crimes against humanity committed by the SPDC.[11]

SPDC hampered humanitarian aid operations

On 22 October, category-four Cyclone Giri made landfall in Arakan State with winds reaching 258 kilometers per hour. The storm, which killed at least 157 people, caused significant damage and destruction to homes, public buildings and infrastructure, affecting around 200,000 people. The coastal town of Kyaukpyu was the worst-hit, with an estimated 70% of the town destroyed. Other affected areas included Ann, Minbya, Manaung, Myebon, Pauktaw, Rambree, Ponnagyun and Akyab townships. Around 71,000 people lost their homes and were in desperate need of shelter, clean drinking water and food. Buddhist monks and local NGOs provided the majority of the initial assistance to cyclone victims, while some areas reported that they had not received any aid from the junta. The SPDC prevented international staff from the UN and international NGOs from entering the cyclone-affected areas and banned local journalists from taking photographs of the devastation. After the 7 November election, local SPDC authorities withheld aid to villages in cyclone-affected areas where the majority of people voted in favor of the Rakhine Nationalities Development Party and rejected the junta-proxy USDP. ❍

Notes and references

1 The United Nationalities Alliance comprises the Shan National League for Democracy (SNLD), the Arakan League for Democracy (ALD), and six other political parties (Chin National League for Democracy, Kachin State National Congress for Democracy, Karen National Congress for Democracy, Kayah State all Nationalities League for Democracy, Mon National Democratic Front and Zomi National Congress).

2 *Associated Press*, 2 November 2010, Myanmar cancels voting in more minority areas.
3 Constitution of the Republic of the Union of Myanmar, Articles 96, 188, 196, 216, 249.
4 Constitution of the Republic of the Union of Myanmar, Article 338.
5 *Thailand Burma Border Consortium*, 28 October 2010, Protracted Displacement and Chronic Poverty in Eastern Burma/Myanmar - 2010 Survey.
6 *Ibid.*
7 *Ibid.*
8 The Burma Medical Association, National Health and Education Committee, Back Pack Health Worker Team and ethnic health organizations serving the Karen, Karenni, Mon, Shan, and Palaung communities. Technical support was provided by the Global Health Access Program and the Center for Public Health and Human Rights, Johns Hopkins Bloomberg School of Public Health.
9 *Burma Medical Association et al.*, 19 October 2010, Diagnosis Critical: Health and Human Rights in Eastern Burma.
10 *Physicians for Human Rights*, 19 January 2011, Life Under the Junta: Evidence of Crimes Against Humanity in Burma's Chin State.
11 *Human Rights Council*, 13th session, Progress report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, 10 March 2010, UN Document A/HRC/13/48.

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SOUTH ASIA

BANGLADESH

The majority of Bangladesh's 143.3 million people are Bengalis, and approximately 2.5 million are indigenous peoples belonging to 45 different ethnic groups. These peoples are concentrated in the north, and in the Chittagong Hill Tracts (CHT) in the south-east of the country. In the CHT, the indigenous peoples are commonly known as *Jummas* for their common practice of swidden cultivation (crop rotation agriculture) locally known as *jum.* There is no constitutional recognition of the indigenous peoples of Bangladesh. They are only referred to as "backward segments of the population".

Indigenous peoples remain among the most persecuted of all minorities, facing discrimination not only on the basis of their religion and ethnicity but also because of their indigenous identity and their socio-economic status. In the CHT, the indigenous peoples took up arms in defence of their rights. In December 1997, the 25-year-long civil war ended with a Peace Accord between the Government of Bangladesh and the Parbattya Chattagram Jana Samhati Samiti (PCJSS, United People's Party), which led the resistance movement. The Accord recognizes the CHT as a "tribal inhabited" region, recognizes its traditional governance system and the role of its chiefs, and provides the building blocks for indigenous autonomy.

Constitutional recognition

On 2 February 2010, the Bangladesh Supreme Court declared the Constitution (Fifth Amendment) Act, 1979 (Act 1 of 1979) *ultra vires* and illegal, and instructed the Government of Bangladesh to take legislative measures to revert to the original Constitution of 1972. As a result, the Prime Minister announced the formation of a "Special Parliamentary Committee for Constitution Amendment". No timeframe has been set for the constitutional amendment process.

1. Rangamat District 2. Khagrachhari District 3. Bandarban District 4. Baghaihat 5. Naogaon District
6. Moulvibazar 7. Modhupur Forest

The Supreme Court judgment has re-ignited indigenous peoples' demands for inclusion of provisions on their identity and rights in the forthcoming amendments and indigenous leaders have submitted a proposal to the Special Committee for the recognition of indigenous peoples' rights. The proposals include recognizing the existence, identities, culture and rights of indigenous peoples, providing for the protection of their traditional and collective land rights, reserving parlia-

mentary seats for them, and retaining the special administrative status of the CHT.[1] The Parliamentary Caucus on Indigenous Affairs, formed in February, has also recommended that the government recognize indigenous peoples in the constitution, with their identity, culture and rights.

The demands for constitutional recognition have seemingly been well received and, in a discussion meeting held in Dhaka in October, the co-chairperson of the Constitution Amendment Committee said that "the government is positive about recognition of indigenous peoples in the constitution."

National Education Policy

On 31 May, the government approved the National Education Policy 2010, which includes a number of recommendations from indigenous peoples, including the aim to develop the cultures and languages of all small ethnic groups, including the country's indigenous peoples. Issues relating to indigenous children were included in the primary education chapter, specifying that indigenous teachers and text books will be provided for indigenous children so that they can study in their own language. Indigenous communities will be involved in implementing this work, particularly in writing the text books. The education policy also mentions providing special support to marginalized indigenous children by establishing primary schools in all indigenous peoples/adivasi-inhabited areas that currently do not have them. In addition, there is also a paragraph on higher education for indigenous students in which it mentions that special support, including residential facilities and scholarships, will be provided to indigenous children so that they can continue their studies.

Chittagong Hill Tracts (CHT)

CHT Accord implementation

The CHT Accord implementation remained stalled in 2010, which means that little substantive progress has been made since the Accord was signed in 1997, particularly on the most crucial provisions, relating to the resolution of land disputes, the rehabilitation of displaced people, demilitarization, and empowerment of the local civil administration. The lack of substantial progress is naturally leading to an increasing sense of frustration and disillusionment among the region's indig-

enous peoples, which is further exacerbated by developments and initiatives that violate or go against the spirit of the Accord.

Throughout the year, several instances of illegal appropriation of indigenous peoples' lands were reported, either by force, fraud and manipulation or through the in-migration of Bengalis from the plains, and no attempts were made to restrict these.[2] Another cause for concern was the decision announced by the Chairperson of the CHT Land Commission, and taken without the consent of the Commission's indigenous members, to carry out a cadastral survey before the land disputes were settled and to call for complaints to be submitted by the affected parties. This created apprehension that those currently occupying indigenous peoples' lands illegally would be recorded as the possessors and eventually as the titled owners, while the displaced indigenous individuals and communities would lose the right to their ancestral lands. After months of protests, the government announced that the survey would be called off and that land ownership would be determined before a survey was conducted.

In July, the media reported an unofficial proposal from the Armed Forces Division of the Prime Minister's Office to establish a Strategic Management Forum. The Strategic Management Forum would have a heavy representation of military and intelligence officials[3] and its major responsibilities would be to design integrated initiatives, make policy and produce an action plan for all CHT-related issues, e.g. implementation of the CHT Accord and coordination of law and order. With this proposal, the CHT Accord Implementation Committee would seemingly be bypassed and this would pave the way for greater military supervision in the CHT. The proposal has thus been met with strong opposition from the indigenous peoples in the CHT.

High Court verdict on CHT Accord and CHT Regional Council

On April 13, the High Court of Bangladesh declared the Chittagong Hill Tracts Regional Council Act of 1998 unconstitutional and illegal for violating "the sanctity of a unitary state". In its judgment, the High Court also declared a number of sections of the three amended Hill District Council Acts of 1998 illegal and unconstitutional, following a writ petition filed in 2000. These include: the section which states that Bengali settlers have to obtain permanent residency certificates from the traditional indigenous circle chief in the CHT, the section which states that a non-indigenous person cannot vote in the council elections without having access to validly titled land, and the provisions allowing reservation of class III and class IV positions in the

councils for indigenous people. The government later lodged a petition appealing against the decision and the judgment was stayed by the Appellate Division of the Supreme Court pending hearing of the appeal. The High Court, however, rejected another writ petition filed in 2007 aimed at declaring the CHT Accord illegal.[4]

Human rights violations

The type and level of human rights violations being committed against indigenous peoples in the CHT and reported in previous years' *The Indigenous World* remained the same in 2010. A major concern is the escalating communal tension and incidents of violence between the indigenous and settler communities in the CHT. A recent incident of inter-communal violence occurred in February in Baghaihat and Khagrachhari, resulting in nearly 500 homesteads being burned down, most of which belonged to indigenous peoples, and at least three people being murdered. Strong allegations have been made suggesting that army personnel were directly involved in the attacks on indigenous peoples' homes.[5] National, regional and international human rights organizations have called on the government to carry out a prompt, independent and impartial investigation into this incident but no steps have yet been taken in this regard.

Plain lands and northern hills

Demand for Land Commission

Indigenous peoples have demanded the formation of a separate land commission for indigenous peoples in the plain region. On 7 August, a national seminar was organized jointly by the Bangladesh Adivasi Forum and the Association of Land Reform and Development. More than 300 representatives from NGOs, civil society, media and indigenous peoples' organizations attended. The speakers called for recognition of the traditional and customary land rights of indigenous peoples.

Eviction from ancestral land

On September 23, around 46 indigenous families were attacked by an armed group claiming the support of the ruling party, Awami League, with the intention of grabbing the victims' land at Nakhoil Boarambari village in Naogaon district. The

perpetrators looted valuable properties. The police were informed but when they arrived they refused to arrest any of the perpetrators. Moreover, according to witness statements, the police helped the attackers to escape. The victims later asked the Assistant Police Superintendent for help, and he came and arrested two of the perpetrators, who are now in custody. The attackers are continuously threatening the indigenous community in order to get them to leave their land.

Khasi village under attack

On March 19, indigenous peoples formed a human chain in Sylhet city to protest at the continued felling of 4,000 trees at Khasia village, Srimangal, in Moulvibazar. Members of different indigenous communities participated in the human chain, in front of the Central Shaheed Minar monument in the city. More than 70 Khasi families are under threat of eviction from their ancestral land, and their livelihood – which depends on planting betel leaf - will be completely destroyed.

High Court on Modhupur Sal Forest

Land problems in Modhupur forest have still not been addressed by the government. Hundreds of forest cases against indigenous peoples remain unsolved. On 16 March, the High Court gave the government four weeks to explain why it would not settle the rights of the ethnic minorities, forest dwellers of the Modhupur Sal Forest, as directed and in accordance with the Forest Act 1927.

The government will also have to explain why it will not produce rules on village forestry, as required by the Forest Act 1927, and ensure the regeneration of the Modhupur Sal Forest by protecting and planting indigenous trees with the direct participation of the forest-dependent people, as envisaged in the Act.

The court passed the order after hearing a writ petition filed by the Bangladesh Environmental Lawyers Association, the Joyenshahi Adivasi Unnayan Parishad and Jatiya Adivasi Parishad. ❍

Notes

1 Kapaeeng Foundation: Human Rights Report 2009-2010 on Indigenous Peoples in Bangladesh.
2 Ibid.

3 It has been proposed that there should be representatives from the Armed Forces Division, National Security Intelligence, Directorate-General of Intelligence Forces, Army Headquarters and high-ranking representatives of the 24th Infantry Division, Bangladesh Army, stationed in the greater Chittagong area.
4 Kapaeeng Foundation: Human Rights Report 2009-2010 on Indigenous Peoples in Bangladesh.
5 See e.g. Chittagong Hill Tracts Commission: Memo to the Prime Minister on the Baghaihat/ Khagrachhari Incidents and Activities of the Land Commission - *http://www.chtcommission.org/wp-content/uploads/2008/11/CHTC-MemoToPM-28June2010.pdf*

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NEPAL

The indigenous nationalities (*Adivasi Janajati*) of Nepal officially comprise 8.4 million people, or 37.19% of the total population, although indigenous peoples' organizations claim a larger figure of more than 50%. Even though they constitute a significant proportion of the population, throughout the history of Nepal indigenous peoples have been marginalized in terms of language, culture, and political and economic opportunities. 102 castes, indigenous peoples and religious groups, and 92 mother tongues were listed in the 2001 census.

Only 59 indigenous nationalities have so far been legally recognized under the National Foundation for Development of Indigenous Nationalities (NFDIN) Act of 2002. However, controversial recommendations for a revision of the list have recently been made. The 2007 interim constitution of Nepal focuses on promoting cultural diversity and talks about enhancing the skills, knowledge and rights of indigenous peoples. The indigenous peoples of Nepal are waiting to see how these intentions will be made concrete in the new constitution, which is in the process of being promulgated. In 2007, the Government of Nepal also ratified ILO Convention 169 on Indigenous and Tribal Peoples and voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The implementation of ILO Convention 169 is still wanting, however, and it is yet to be seen how the new constitution will bring national laws into line with the provisions of the ILO Convention and UNDRIP.

Strike demanding a mechanism for Free, Prior and Informed Consent (FPIC)

The year 2010 began with a highly peaceful and spontaneous nation-wide strike on 1 January, called by the Indigenous Peoples' Mega Front, Nepal, which is an alliance of more than 105 indigenous peoples' organizations. The nationwide strike was called because the Chairperson of the Constituent Assem-

bly (CA) and the Prime Minister were paying no attention to fulfilling the twin demands of the Mega Front: (i) to establish a FPIC mechanism in the CA, as recommended in the Early Warning issued by the Chair of the Committee on the Elimination of Racial Discrimination on 13 March 2009 and in its follow-up letter of 28 September 2009; and (ii) to approve and effectively implement the Plan of Action to Implement ILO Convention 169, which was prepared by the Government's Task Force.[1]

The Special Rapporteur on the rights of indigenous peoples also criticized the process and recommended that, "In addition to existing means of representation in the Constituent Assembly, special mechanisms should be developed for consultations with the Adivasi Janajati, through their own representative institutions, in relation to proposals for new constitutional provisions that affect them."[2]

Defining moment postponed

28 May 2010 was expected to be a defining moment for the indigenous peoples of Nepal as this was the day that the elected CA was mandated to promulgate the new constitution. It was postponed for another year, however, and the mandate of the CA extended to 28 May 2011. The main reason for the postponement was a deep division among the main political parties on three basic issues: (i) each of the three political parties claims the position of Prime Minister; (ii) the CPN (Maoist) is proposing ethnic and regional provinces, ethnic states and special/protected areas while the CPN (UML) and the Nepali Congress Party oppose this; and (iii) the Nepali Congress and the CPN (UML) are opposing the full integration of the People's Liberation Army (PLA) of the Maoists into the Nepalese Army and other security forces. However, due to continuing dirty wrangling over power sharing among the three main political parties, it seems highly unlikely that a new constitution will be promulgated by 28 May 2011. If the CA should fail to deliver the constitution on time and/or ensure the autonomy and self-rule of indigenous peoples, the possibility of communal violence, armed insurgency or authoritarian rule will be inevitable. Some Madhesi[3] political parties and criminal groups have raised arms and engaged in politics of collective violence, and the *Samyukta Jatiya Morcha* ("Joint Front of the Indigenous Peoples"), an alliance of underground indigenous peoples' political groups, has been intimidating the Village Development Committee (VDC)[4] Secretaries to resign *en masse*.

Historic recommendation to the CA

In spite of some ups and downs, 2010 was historic in terms of milestones in the path towards securing indigenous peoples' rights, with the recommendation of the State Restructuring and State Power Division Committee (one of 10 thematic CA committees) to bring in identity-based federal provinces, autonomous states, special regions and protected regions. Without, however, considering the FPIC of indigenous peoples, the Committee decided by a majority vote of its members to recommend that the CA form 14 federal provinces, including 8 federal provinces for indigenous peoples with the largest populations and territories, 23 autonomous states for indigenous peoples with sizeable populations, and protected areas and special areas as needed for indigenous peoples with small populations. The basis for the formation of various units such as provinces, states and protected/special areas would be identity (ethnic/community, linguistic, cultural, geographical/regional continuity and historical continuity) as the primary basis and ability (condition and prospect of infrastructure development, economic interdependence and ability, availability of natural resources and administrative accessibility) as the secondary.[5] The indigenous peoples' movement considers these recommendations as positive, as they form a slap in the faces to those who blindly oppose indigenous peoples' rights to autonomy and self-rule. The recommendation is, however, highly inadequate as it does not meet international standards,

including in relation to FPIC and control over ancestral lands and territories, as set out in the UNDRIP and ILO Convention169.

Efforts to derail the identity-based units

All 601 CA members have become captives of the three main political parties – the Unified Communist Party of Nepal (Maoist), the Communist Party of Nepal (Unified Marxist Leninist) and the Nepali Congress Party. These three political parties are, in turn, captives of its main Bahun[6] leaders, who are in deep conflict. These and other Madhesi political parties are also highly influenced by India. As a result, conspiracies that run counter to indigenous peoples' rights are being hatched behind the curtains of the CA.

A committee to study the recommendations made by the CA committees was formed with the intention of derailing the recommendations relating to identity-based units by listing, initially 16, and later 220, controversial issues to be resolved by the main political parties through consensus. A high-level task force representing 27 political parties was formed and this has resolved 75% of the questions through consensus but many of its decisions have already generated controversy. For example, the Khas Nepali language has been agreed as the official language and other official languages are to be decided by the language commission, to be set up by federal and provincial Legislatures-Parliaments, implying that the decision as to whether mother tongues will have the status of official language or not will depend on the nature of the federal units. It was also decided that the basis of representation in the federal and provincial parliaments would be geography and population but not ethnicity, language or region. A short respite has now been obtained as the task force has been rendered inactive by the CPN Maoist; otherwise, it was about to derail federal units of IPs by taking a decision to merge the existing 14 zones[7] to form seven federal provinces, and all these 14 zones would have been formed on the basis of geography and population.

Controversial recommendation regarding the indigenous peoples' list

The Council of Ministers submitted its report to amend the existing list of indigenous nationalities on 14 April 2010.[8] The Task Force came up with a list of 81 in-

digenous nationalities. It made no major changes ton the existing list of 59 indigenous nationalities, except for merging the Bankariyas with the Chepangs and renaming some groups (e.g. the Sunuwar have been renamed the Kirat Koinch, and the Mugali the Mugumpa). The Rais have been retained as the Kirat Rai but some of the groups that were within the Rais are now listed as distinct indigenous nationalities, including the Aathpahariya, Kulung and Yamfu. The Tharu has been retained but the Rana Tharu, which was within the Tharu, is now listed as a distinct group. The newly identified indigenous nationalities that were added to the list include the Karmarhong, Nyisyang, Chumba and Nimba. The Task Force amended the Dhanuk (Rajbanshi) to the Dhanuk by including all categories of Dhnauk, including the "untouchable" caste or Dalits and other non-indigenous Hindu caste groups, including Amat, Gond and Sonaha. Despite heavy political pressure, the Task Force refused to include some other non-indigenous caste groups, including the Bahuns and the Chetris, on the list. The list of sub-groups of Kirant Rai, Gurung (Tamu), Tharu, and Newar has also created controversy. These Task Force recommendations need to be approved by the National Foundation for Development of Indigenous Nationalities (NFDIN), which is not expected to approve the recommendations, due to the controversy.

The recommendations of the Task Force potentially have both positive and negative long-term implications. Concerning its positive impacts, the report has refused to name the dominant caste groups as indigenous nationalities, and 12 indigenous groups who were missing from the existing list of 59 indigenous nationalities have now been identified and recommended for inclusion. On the other hand, 10 non-indigenous "low" caste and "untouchable" caste groups have now been recommended for listing as indigenous nationalities, which will increase the pressure to recognize them and, eventually, other remaining caste groups, as indigenous nationalities.

Out of the loop in RPIN and R-PLAN

Nepal prepared and submitted its Readiness Project Idea Note (RPIN) and Readiness Plan (R-PLAN) to the World Bank's Forest Carbon Partnership Facility in 2010 without the consultation or full, effective and meaningful participation of indigenous peoples. After strong objections from the NEFIN with regard to such practices, the government involved NEFIN in a sub-component of one of the six

components, namely "stakeholder consultation and participation". There is no provision for the participation and/or representation of indigenous peoples at the decision-making levels nor in policy and program development, monitoring and communication or outreach. ❍

Notes and References

1 http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Nepal28092009.pdf
2 A/HRC/15/37/Add. 15 September 2010, Paragraph 288 and 289: http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.37.Add.1.pdf
3 "Madhesi" refers to the Hindu caste groups of the Terai region who fall within the four-fold varna, namely, Brahmin, Kshyatriya, Vaisya and Sudra.
4 VDCs are administrative units at the village level.
5 *Samidhansabha. Rajyako punarsmrachana ra rajyashaktoko bandfand samiti. Abadharanapatra ra prarambhik masyouda sambandhi pratibedan, 2066. Singhadarbar, Kathmandu.* ("Constituent Assembly. State restructuring and state power division committee. Report of the concept paper and preliminary draft constitution, 2010"). January 21, 2010. http://www.can.gov.np
6 The Hill Brahmin are popularly known as the Bahun and this is the dominant caste group in Nepal.
7 Nepal has been divided into 14 zones and 75 districts.
8 *Adivasi Janjati suchi parimarjan sambandhi ucchastariya karyadalle Nepal sarkarlai bujhayeko prtibedan. Adivasi janjati suchi parimarjan ucchastariya karyadal,* Fagun 5, 2066 ("Indigenous peoples' list revision high level task force. February 17, 2010")

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INDIA

In India, 461 ethnic groups are recognized as *Scheduled Tribes*, and these are considered to be India's indigenous peoples. In mainland India, the Scheduled Tribes are usually referred to as *Adivasis,* which literally means indigenous peoples. With an estimated population of 84.3 million, they comprise 8.2% of the total population. There are, however, many more ethnic groups that would qualify for Scheduled Tribe status but which are not officially recognized. Estimates of the total number of tribal groups are as high as 635. The largest concentrations of indigenous peoples are found in the seven states of north-east India, and the so-called "central tribal belt" stretching from Rajasthan to West Bengal. India has several laws and constitutional provisions, such as the Fifth Schedule for mainland India and the Sixth Schedule for certain areas of north-east India, which recognize indigenous peoples' rights to land and self-governance. The laws aimed at protecting indigenous peoples have numerous shortcomings and their implementation is far from satisfactory. India has a long history of indigenous peoples' movements aimed at asserting their rights.

Legal rights and policy developments

On 25 November 2010, the Ministry of Tribal Affairs requested that the Prime Minister of India issue suitable instructions for obtaining clearance from the Ministry of Tribal Affairs for a "Rehabilitation and Resettlement Plan" for all the development projects which involve displacement of tribal communities. However, the Ministry received no response from the Prime Minister to this proposal.[1]

On 3 September 2010, an 18-member National Council for Tribal Welfare, headed by the Prime Minister of India, was constituted to provide broad policy guidelines for the implementation and monitoring of welfare schemes for tribals. It is also supposed to review the implementation of the Forest Rights Act, and

monitor the implementation of the Tribal Sub-Plan and programmes aimed at protecting vulnerable tribal groups. The National Council for Tribal Welfare comprises Union Ministers for Tribal Affairs, Finance, Home, Agriculture, Health and Family Welfare, Environment and Forests, Human Resource Development, Rural Development, Woman and Child Development, Culture, Mines and Coal, and Power, the Deputy Chairperson of the Planning Commission and Chief Ministers of concerned states, among others.[2]

Human rights violations against indigenous peoples

During 2010, serious human rights violations were perpetrated against indigenous peoples across India.

Human rights violations by the security forces

The security forces were responsible for fake "encounter killings", torture, arbitrary arrests and other human rights violations against indigenous peoples.

On 5 July 2010, joint forces of the police and Central Reserve Police Force picked up a 45-year-old man of the Munda tribe from Gunti village in Ranchi district of Jharkhand and allegedly killed him in cold blood. The police claimed that he was a hardcore Maoist cadre and was killed in an encounter but the family members of the deceased claimed he was innocent. Later, the police arrested a local human rights activist and his school-age son on the charge of possessing Maoist literature, in order to prevent him from taking up the case.[3] Similarly, on 1 August 2010, the police picked up another villager in Ranchi district of Jharkhand and killed him on the accusation that he was a Maoist.[4]

On 2 August 2010, a 55-year-old tribal died due to alleged torture at the hands of personnel from Indian Reserve Battalion at Roing in Lower Dibang Valley district of Arunachal Pradesh.[5]

On 4 August 2010, the Koya commandos[6] allegedly killed a tribal villager at Kutrem village in Dantewada district of Chhattisgarh. According to the villagers, at about 11.30 a.m. on 4 August 2010, the Koya commandos cordoned off Kutrem village and shot him dead as he was coming out of his sister's house.[7]

On 2 September 2010, a 60-year-old tribal from Dididrisingi village under Patrapur block in Ganjam district of Orissa died allegedly due to torture in a

police lock-up at Jarada police station in Ganjam district. He had surrendered to the police on the night of 1 September 2010 after allegedly killing a boy "accidentally" with his gun while he was hunting in a nearby jungle. Following his surrender, the deceased was held in the police station but found dead the next morning. There were reportedly injury marks on the body of the deceased, including on the left leg, suggesting that he was tortured in police custody.[8]

Human rights violations by armed opposition groups

Armed opposition groups continued to be involved in gross violations of international humanitarian law, including killings, abductions and torture during 2010.

The Maoists were the worst violators of the rights of indigenous peoples and continued to kill innocent tribals on charges of being "police informers", or simply for not obeying their diktats. On 20 July 2010, Maoists dragged out and killed a tribal farmer at Dholdongri village in Purada in Gadchiroli district of Maharashtra, on suspicion of being a "police informer".[9] On 2 November 2010, a tribal was hacked to death, allegedly by the Maoists, at Sariagaon village under Kankadahada police station in Dhenkanal district in Orissa.[10] Similarly, on 18 November 2010, Maoists shot dead four tribal civilians, one of them an 8-year-old girl, at Buruhatu village, around 60 km from Ranchi in Jharkhand, on the charge of being police informers.[11]

In Assam, suspected members of the National Democratic Front of Bodoland (the faction opposed to peace talks with the government) killed a 55-year-old villager at Lalboragi village in Sonitpur district on 26 July 2010,[12] and a teacher at Rangapara Gorungjuli Primary School in Sonitpur district on 20 August 2010.[13]

In Tripura, five tribal villagers were abducted, by suspected cadres of the National Liberation Front of Tripura (NLFT), from Boalkhali village in Dhalai district on the night of 29 August 2010.[14] Eleven tribal labourers were also abducted by NLFT from Kunjabari Junior Basic School in Gobindabari under Chhawmanu police station in Dhalai district on 7 December 2010 and a huge ransom demanded for their release.[15]

Violence against indigenous women and children

Indigenous women and children are highly vulnerable to violence, including killing, rape and torture at the hands of non-tribals, security forces and members of the armed opposition groups in armed conflict situations.

On the night of 12 October 2010, a tribal woman was allegedly raped by Koya commandos of Chhattisgarh Police during a raid in Bade Bidme panchayat in Dantewada district of Chhattisgarh. The victim stated that she was sleeping when four uniformed policemen forced their way into the house at 2 a.m. and raped her.[16]

Indigenous and tribal women were also targeted by non-tribals. On the night of 31 July 2010, a 26-year-old tribal woman was allegedly abducted and raped at gun point by four upper-caste persons, including a District Panchayat President, at Meni Mata area under Silavd police station in Barwani district of Mad-

hya Pradesh.[17] Similarly, on 27 September 2010, a tribal woman was raped and killed by a non-tribal at Sipahipara village under Sadar Sub-Division in West Tripura district of Tripura.[18]

On 28 October 2010, a 17-year-old was allegedly tortured in the custody of William Nagar police station in East Garo Hills district of Meghalaya. The child was picked up from Medical Colony for reportedly trying to create trouble. The victim was slapped, punched and kicked by the police in custody, resulting in multiple bruises and swelling all over his body. The victim also sustained internal injuries.[19]

Violation of the fundamental right to education

The children's fundamental right to education has been severely affected due to armed conflict, and has been grossly violated both by the state and the armed opposition groups. While the security forces have occupied schools, the Maoists have bombed several schools to deny the right to education.

On 27 October 2010, the state government of Chhattisgarh told the Supreme Court of India that the security forces were occupying 31 schools, *ashrams* (tribal hostels) and hostels but claimed that alternative arrangements had been made to ensure that the children's education was not affected.[20] On 18 November 2010, the Supreme Court asked the state government of Chhattisgarh to immediately "vacate the schools".[21]

Across the North Eastern region of India, it is not only the central security forces under the Ministry of Home Affairs but also state security forces (Police, Armed Police, Commandos, State Rifles, Indian Reserve Battalions) that have been occupying schools. On 1 September 2010, the Supreme Court of India directed the Ministry of Home Affairs "to ensure that the paramilitary forces vacate the school and hostel buildings occupied by them and submit an Action taken report to this Court as well as NCPCR [National Commission for Protection of Child Rights] within two months". The court also directed the Deputy Commissioner of North Cachar Hills district in Assam to "ensure that the schools, hostels and children home complex presently occupied by the armed/security forces are vacated within a month's time and it should be ensured that the school buildings and hostels are not allowed to be occupied by the armed or security forces in future for whatsoever purpose." According to the Asian Centre for Human Rights,

Assam has not complied with the directions of the Supreme Court to ensure that the security forces vacate the schools. As of 8 November 2010, at least two schools in Assam were still being occupied by the security forces under Udalgiri district: Routa Bagan Lower Primary School in Udalguri district occupied by the Indian Reserve Battalion (Mizo) and Khwirasal Lower Primary School, Bhakatpara under Udalgiri district occupied by the Assam Rifles.[22]

The Maoists also targeted schools on the grounds that these buildings were being used to house security personnel during anti-Maoist operations. In Orissa, the Maoists allegedly destroyed eight schools in Sundargarh, Malkangiri and Koraput districts in 2010.[23] On the night of 8 August 2010, Maoists blew up a school building at Kanda village in Palamau district of Jharkhand.[24]

Alienation of tribal land

The 5th and 6th Schedules to the Constitution of India provide stringent protection of the land belonging to the tribal peoples. In addition, at state level, there is a plethora of laws prohibiting the sale or transfer of tribal lands to non-tribals and restoration of alienated tribal lands to them. And yet, notwithstanding Acts and Regulations to control the alienation of tribal land, tribal people are seeing their land taken from them.

On 12 November 2010, the Minister of State in the Ministry of Tribal Affairs informed the Lok Sabha (Lower House of Parliament) that, as of July 2010, a total of 477,000 cases of tribal land alienation had been registered, covering 810,000 acres of lands, of which 378,000 cases covering 786,000 acres had been decided by the Court. Of these, 209,000 cases had been decided in favour of tribals, covering a total area of 406,000 acres.[25] This means that 169,000 cases had been decided against the tribals.

On 30 July 2010, Kerala's Forest Minister Benoy Viswom admitted that the illiterate tribal communities were being either dispossessed of their land or reduced to bonded labourers on their own land by corporate giants and real estate agencies through manipulation of land records and *benami* (illegal) transfers.[26] Since 1960, a total of 10,796.19 acres of tribal land have been alienated in Attappady region under Palakkad district in Kerala. As of 24 July 2010, only two acres had been restored although the Revenue Divisional Officer (RDO) of Ottapalam received 2,422 applications for restoration of land in 1996. In 13 other cases, an

area of 44.77 acres was restored but tribals did not obtain actual possession of the land.[27] In one specific case, Suzlon Energy, a multi-national company, was accused of running wind farms on illegally-bought land in tribal settlements and forest lands in the Attappady region in Palakkad district.[28] In a report submitted to the state government in July 2010, District Collector K V Mohan recommended a detailed investigation into the land deals conducted by Puna-based Sarjan Realities, which arranged the land for Suzlon Energy's wind farms.[29]

On 24 August 2010, the Ministry of Environment and Forests rejected the proposed bauxite mining project of Vedanta Resources in the Niyamgiri Hills in Kalahandi district in Orissa for violations of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act 2006, Environment Protection Act 1966, and the Forest Conservation Act 1980.[30] With regard to the proposed bauxite project in the Niyamgiri Hills, in a report tabled in both Houses of Parliament on 16 November 2010, the Parliamentary Standing Committee on Social Justice and Empowerment took a "strong objection to the displacement of the primitive tribal groups i.e. the *Dongoria Kandhas* and the *Kutia Kandhas* settled in the Niyamgiri Hills in the State of Orissa and destruction of undisturbed forest land endangering and harming their self-sufficient forest livelihood due to the proposed Bauxite Mining Project." The Parliamentary Standing Committee further criticized the Ministry of Tribal Affairs for its failure to protect the rights of the indigenous peoples.[31]

The conditions of the tribal internally displaced peoples

Development–induced displacement

On 23 April 2010, the Minister of State in the Ministry of Tribal Affairs admitted in the Lok Sabha that displacement of tribal communities from their traditional habitats had taken place on account of the acquisition of their lands by State Governments/Union Territory Administrations for various development projects. Ironically, the Ministry of Tribal Affairs did not maintain data on such displacements.[32]

Not only does the state have no proper data on the displacement of tribals, it also remains indifferent towards the plights of the tribals, who have been denied rehabilitation and compensation following acquisition of their lands for development projects. In 1982-83, the Border Roads Organisation acquired land in Madgram village in Lahaul and Spiti district in Himachal Pradesh for construc-

tion of the Sansari Nallah-Killar-Thirot road but, as of September 2010, the tribal land owners had received no compensation. The tribal victims took the matter to the National Commission for Scheduled Tribes, which directed the concerned authority to pay compensation amounting to 71,681,292 Rupees (1,572,650 US$). This direction has not, however, been complied with.[33]

Conflict-induced displacement

As of 28 July 2010, there were a total of 27,261 Bru (displaced from Mizoram in 1997 and 2009) living in six relief camps in Kanchanpur subdivision in North Tripura district.[34] The first phase of repatriation of the Bru tribals displaced due to ethnic violence in November 2009 took place from 21 May to 26 May 2010, and a total of 231 Bru families consisting of 1,115 persons returned to Mizoram on the basis of a written assurance provided by the Ministry of Home Affairs (MHA), Government of India to the Brus through the Asian Centre for Human Rights (ACHR). The MHA sanctioned grants-in-aid of Rs. 20.43 million Rupees (448,223 US$) to the state government of Mizoram to cover expenditure on the repatriation and rehabilitation of Bru families who had fled to Tripura in November 2009.[35] Another 53 Bru families were repatriated to Mizoram on 3-4 November 2010.[36]

Repression under forest laws

Although the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 came into force on 1 January 2009, lack of proper implementation has deprived tens of thousands of tribals of their rights over forest land. According to the Ministry of Tribal Affairs, more than 3.031 million claims have been filed, more than 1.106 million titles have been distributed and more than 32,000 titles were ready for distribution as of 31 December 2010. Yet the implementation record of most states remains very poor. Twelve States and Union Territories have thus far not distributed any titles at all: Arunachal Pradesh, Bihar, Goa, Himachal Pradesh, Manipur, Meghalaya, Mizoram, Sikkim, Tamil Nadu, Uttaranchal, Daman & Diu, and Dadra & Nagar Haveli. None of the states that have been implementing the Forest Rights Act has an impressive record. In terms of percentage of titles distributed over number of claims received, Tripura leads the pack with 66.89%, followed by Orissa (56.22%), Andhra Pradesh

(50.80%), Rajasthan (49.84%), Chhattisgarh (43.73%), Kerala (39.42%), Maharashtra (30.84%), Assam (26.01%), Madhya Pradesh (26.75%), Jharkhand (20.57%), West Bengal (19.75%), Tamil Nadu (14.52%), Gujarat (13.41%), Uttar Pradesh (11.04%) and Karnataka (3.85%).[37] In Maharashtra, demands for land rights under the Forest Rights Act in fact led to the arrest of at least 1,962 Adivasis in Nandurbar district on 14 December 2010.[38]

On 30 and 31 October 2010, Forest Department officials of Haltugaon Forest Division in Kokrajhar district of Assam burnt down the houses of more than 1,500 Adivasi families from 33 forest villages in Longchung Forest area in the name of an eviction drive from forest land. Locals alleged that forest officials set fire to several pre-primary and primary schools, houses, temples and churches, and that all household belongings were burnt or destroyed. These Adivasi people had been living in these forest villages for generations.[39]

Earlier, on 11 July 2010, police and Forest Department officials under Pangadi gram panchayat in Khammam district in Andhra Pradesh, allegedly beat up tribals while they were in their fields. Several tribals, including women and children, were reportedly injured in the assault.[40]

On 9 July 2010, a tribal from Devli Kuwa, a tribal village under Rajgadh police station in Panchmahal district of Gujarat, was assaulted by five forest guards as he was tilling his ancestral land in the forest.[41] In Madhya Pradesh, on 6 September 2010, a demonstration was organized by members of tribal communities at the Chief Minister's residence under the banner of the two Adivasi organizations, Samajwadi Jan Parishad and Shramik Adiwasi Sangathan, to protest at the alleged atrocities by the forest officials. The tribal protestors alleged that 100 to 150 forest personnel, 100 police personnel and 200 other villagers had destroyed nearly 50 huts of tribals at Kamtha in West Betul forest division and looted their properties.[42]

Non-implementation of reservation in employment

The Scheduled Tribes (STs) are legally entitled to 7.5% reservation in all government jobs. The lack of "suitable" candidates amongst the STs has often, however, been cited as the main reason for not filling the reserved vacancies in India.

As of 19 December 2010, as many as 3,834 posts reserved for Scheduled Tribes and 2,052 posts reserved for Scheduled Castes in various government

departments had been vacant for the past three years in Andhra Pradesh. The state government identified these "backlog posts" in 2007, and issued orders directing the respective departments to fill the posts within six months; the departments have, however, failed to comply.[43]

In a report entitled "Reservation for and Employment of Scheduled Castes and Scheduled Tribes in Bharat Heavy Electricals Limited (BHEL)", presented to Parliament on 23 November 2010, the Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes noted that "even in Group D posts where the requirement of education qualification might not be high, the number of ST in Group D posts is only 3.11% of the total Group D strength" as opposed to the prescribed limit of 7.5% reservation of STs. The Committee further found that, as per updated information furnished to the Committee in November 2009,

> *the promotions given to STs, especially in Group 'A' and 'B' posts is very dismal and for Group 'C' posts the figure was still low. The Committee are of the view that non-availability of SC/ST candidates in the feeder cadre for promotion is wholly the failure of the Management in not being able to recruit enough SCs/STs in the feeder grade due to its lack of commitment towards the welfare and development of SCs and STs.*[44]

Further, in a report entitled "Reservation for and Employment of Scheduled Castes and Scheduled Tribes in Punjab and Sind Bank and credit facilities provided by the Bank to them", presented to the Parliament on 28 July 2010, the Committee on the Welfare of Scheduled Castes and Scheduled Tribes noted that, as of 1 January 2008, there was a shortfall of 4.20% of STs in the Officers category, a shortfall of 5.89% of STs in the Clerical category and a shortfall of 4.82% of STs in the Sub-Staff category. Since the lack of "suitable" candidates had been cited as one of the reasons for not filling the reserved vacancies, the Committee wanted to know what constituted "suitability" for each of the vacancies for which Punjab and Sind Bank had not selected candidates.[45]

Non-utilization and mis-utilization of tribal funds

The funds meant for development of the tribals are grossly under-utilized or misutilized in India. In its report on the Ministry of Tribal Affairs, the Parliamentary

Standing Committee on Social Justice and Empowerment found that, during 2009-10, the Ministry of Tribal Affairs had been forced to withhold funds for crucial schemes, including the Special Central Assistance to Tribal Sub Plan, Grants under Article 275(i) of the Constitution, the Scheme of Development of Particularly Vulnerable Tribal Group etc. from various state governments due to their failure to submit utilization certificates for funds from previous years. Since the Ministry of Tribal Affairs depends on states to execute various planned schemes for the development of tribal welfare, delay, non-submission or incomplete proposals from states are a major cause of the under-utilization of funds. The Committee was informed by the Ministry of Tribal Affairs that if state governments were not performing, the Ministry had no power to press beyond a point. The budgetary allocation of 32.055 billion Rupees (US$703,269 million) for 2009-10 has been drastically reduced to 2 billion Rupees (US$43,879 million) in the revised estimates of the Ministry of Finance, taking into account the utilization of funds by the Ministry up until the third quarter of the financial year.[46] ❍

Notes and references

1 Lok Sabha Unstarred Question No. 5288
2 PM to head council on tribal welfare, *Indian Express,* 3 September 2010
3 Gladson Dungdung, "Fake Encounters in Jharkhand", *Mainstream,* Vol XLVIII, No 39, September 18, 2010
4 Gladson Dungdung, "Fake Encounters in Jharkhand", *Mainstream,* Vol XLVIII, No 39, September 18, 2010
5 Complaint of Asian Centre for Human Rights to National Human Rights Commission, 4 August 2010
6 The Koya commandos are a specialised police team largely comprising surrendered Maoists or victims of the Maoist atrocities
7 In Chhattisgarh's war zone, no value on an Adivasi's life, *The Hindu,* 10 August 2010
8 ACHR's complaint to the NHRC dated 3rd September 2010, ACHR Ref No. OR/28/2010
9 Naxalites kill middle aged tribal in Gadchiroli, *dnaindia.com,* 20 July 2010
10 Man killed in Dhenkanal, Maoist hand suspected, *The Pioneer,* 3 November 2010
11 Maoist 'ideology' leaves kid among 4 dead, *The Pioneer,* 20 November 2010
12 NDFB rebels kill villager in Assam, available at: http://www.indiablooms.com/NewsDetailsPage/newsDetails260710s.php
13 School teacher shot dead by NDFB militants, *The Times of India,* 21 August 2010
14 Five tribal villagers kidnapped in Tripura, *The Shillong Times,* 2 September 2010
15 Militants free two, hold nine, *The Telegraph,* 10 December 2010
16 Fresh allegations of sexual assault by security forces surface in Chhattisgarh's Dantewada district, *The Hindu,* 26 October 2010

17 Complaint of the ACHR to the NHRC on 6 August 2010
18 Complaint of Asian Centre for Human Rights to National Human Rights Commission, 4 October 2010
19 Complaint of Asian Centre for Human Rights to National Human Rights Commission, 10 November 2010
20 Salwa Judum does not exist: Chhattisgarh Govt., *The Hindu,* 29 October 2010
21 Centre agrees to high-level monitoring panel in Chhattisgarh case, The Hindu, 19 November 2010, http://www.hindu.com/2010/11/19/stories/2010111966721500.htm
22 Oral statement of Mr Suhas Chakma, Director of Asian Centre for Human Rights on the "North-East Situation" at "High Level Meeting on Inter-State Trafficking of Children on the Pretext of Education" *Organised by National Commission for Protection of Child Rights* **(NCPCR),** New Delhi, 08.11.2010, available at http://www.achrweb.org/reports/india/RTE_SF.html
23 Maoists attack schools, recruit youngsters, *The Pioneer,* 15 November 2010
24 Maoists blow up school building; two held, *The Hindustan Times,* 9 August 2010
25 Lok Sabha Unstarred Question No. 831
26 Check encroachment on tribal land, forest officials told, *The Hindu*, 31 July 2010
27 Only 2 acres of tribal land restored at Attappady, *The Hindu,* 24 July 2010
28 Windmills on lush, prime forest land, by forging papers and conning tribals. All in a day's work, *Tehelka Magazine, Vol 7, Issue 27, Dated July 10, 2010*
29 Suzlon windmills on tribal land, *Down To Earth Magazine*, Centre for Science and Environment, 31 August 2010
30 Govt rejects Vedanta's mining plans in Orissa, *Hindu Business Line,* 25 August 2010
31 The Parliamentary Standing Committee on Social Justice and Empowerment (2010-2011) (15th Lok Sabha) report entitled "Implementation of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006- Rules made thereunder" tabled in Parliament on 16.11.2010
32 Lok Sabha Unstarred Question No. 4663
33 Land compensation: Dhumal urges Centre to intervene, *The Tribune,* 4 September 2010
34 Bru refugees headcount completed, *The Sentinel,* 30 July 2010
35 ACHR Press Release "Repatriation of the displaced Brus to Mizoram to start on 21 May 2010 on Home Ministry's assurance", 19 May 2010
36 Second group of Bru refugees to return to Mizoram today, *The Sentinel,* 12 November 2010
37 Ministry of Tribal Affairs, Government of India, "Status report on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [for the period ending
31 December, 2010], available at http://tribal.nic.in/writereaddata/mainlinkFile/File1266.pdf
38 2,000 agitating Adivasis in jail since Dec 14, *The Hindu,* 26 December 2010
39 1500 Adivasi families evicted from forest land, *The Assam Tribune,* 4 November 2010
40 Action sought against police, forest officials for attacking tribals, *The Hindu,* 12 July 2010
41 Assault on farmer: Foresters say land claim documents yet to reach them, *The Indian Express,* 30 July 2010
42 Tribals demonstrate at CM house, *The Hindustan Times,* 7 September 2010
43 6,000 SC/ST posts lie vacant since 3 yrs, *The Deccan Chronicle,* 19 December 2010
44 Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes (2010-2011)(15th Lok Sabha), "Reservation for and Employment of Scheduled Castes and Scheduled Tribes in Bharat Heavy Electricals Limited (BHEL)" , presented to Lok Sabha on 23.11.2010 and

laid in Rajya Sabha on 23.11.2010, available at http://164.100.47.134/lsscommittee/Welfare%20of%20Scheduled%20Castes%20and%20Scheduled%20Tribes/Report%20BHEL-updated.pdf

45 Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes (2010-2011) (15th Lok Sabha), "Reservation for and Employment of Scheduled Castes and Scheduled Tribes in Punjab and Sind Bank and credit facilities provided by the Bank to them" , presented to Lok Sabha on 28.07.2010 and laid in Rajya Sabha on 28.07.2010

46 5th Report of Parliamentary Standing Committee on Social Justice and Empowerment (2009-2010) (15th Lok Sabha) on Ministry of Tribal Affairs – Demands for Grants (2010-2011), presented to Lok Sabha on 20.4.2010 and laid in Rajya Sabha on 20.4.2010

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NAGALIM

Approximately 4 million in population and comprising more than 45 different tribes, the Nagas are a transnational indigenous people inhabiting parts of north-east India (in the federal states of Assam, Arunachal Pradesh, Nagaland and Manipur) and north-west Burma (parts of Kachin state and Sagaing division). The Nagas were divided between the two countries with the colonial transfer of power from Great Britain to India in 1947. Nagalim is the name coined to refer to the Naga homeland transcending the present state boundaries, and is an expression of their assertion of their political identity and aspirations as a nation.

The Naga people's struggle for the right to self-determination dates back to the colonial transfer of power from Great Britain to India. Armed conflict between the Indian state and the Nagas' armed opposition forces began in the early 1950s and it is one of the longest armed struggles in Asia. A violent history has marred the Naga areas since the beginning of the 20th century, and undemocratic laws and regulations have governed the Nagas for more than half a century. In 1997, the Indian government and the largest of the armed groups, the National Socialist Council of Nagaland Isaac-Muivah faction (NSCN-IM), agreed on a cease-fire and have held regular peace talks.

The peace talks: A fresh round?

In the 13 years of ceasefire, over 70 rounds of talks have been conducted between the Government of India (GoI) and the National Socialist Council of Nagaland (NSCN-IM) without any positive results. The situation on the ground has deteriorated and the patience of the people has run out. Nevertheless, they continue to hope for a lasting peace. The GoI knows this and, whenever things go sore over the negotiation table and talks come to a halt, the GoI tries to seem-

1. Chandel District
2. Ukhrul District
3. Senapati District
4. Tamenlong District
5. Churachandpur District
6. Imphal Valley

ingly inject fresh blood by inviting the NSCN-IM to a fresh round of talks with the assurance of better preparedness on their part.

In 2010, the GoI invited the NSCN-IM to the negotiation table again after nearly a year-long lull. The NSCN-IM accepted and, on February 27, Thuingaleng Muivah, NSCN-IM Secretary General and the chief negotiator, was given a welcome reception by the Naga community in Delhi on his arrival. On March 2, the NSCN delegation held closed-door talks with Prime Minister, Manmohan Singh and Union Home Minister, P. Chidambaram. The Naga leaders also held series of meetings with the newly appointed interlocutor R.S Pandey during their stay in New Delhi.

Leaders of both sides described the initial rounds of talks as substantive and expressed optimism. There was also a general expectation that the GoI would submit a proposal to NSCN-IM.

Main issues of the talks

The public in general has been kept in the dark regarding the progress of the 13 years of talks. The NSCN-IM has submitted two proposals but the public does not know much of their content. Further, the GoI has not made any substantive comments on these proposals publicly.

Nonetheless, the Naga people were anxious about this round of talks because, in 2009, the GoI sent representatives to tour Naga areas in Nagaland and Manipur with the message that it was preparing a comprehensive political package to resolve the Indo-Naga political problem. According to them, the package was to include financial largesse, greater devolution of powers, and special steps for the protection of Naga culture and heritage, among other things.

The GoI eventually submitted its 29-point proposal to the NSCN-IM. Interestingly, no public comment was made on it by the NSCN-IM. However, the Joint Working Group (JWG) of the Naga underground factions, of which NSCN-IM is a part, made a statement that any form of conditional package offered by the GoI was not acceptable. The JWG further stated that the pursuit of peace should be based on the historical and political rights of the Nagas.

All this indicated that something was wrong. In the initial stages of this round, the NSCN-IM had commented that they welcomed the central government's steps to resume the dialogue. It later became clear that the GoI had submitted a proposal that insisted on a settlement within the Constitution of India. This was considered a violation of the earlier agreement, which stated that the talks would be held without any conditions.

The NSCN (IM) had commenced the negotiations with the GoI with two main demands: the self-determination of the Nagas through a special federal arrangement, and unification of all Naga-inhabited areas. Naga leaders, including civil society organisations, have been insisting that any proposal for a solution must be based on the GoI's acceptance of the "unique history and situation of the Nagas". Recognising the uniqueness of the Nagas implies that a political model specific to the Naga should be envisaged and discussed.

The proposal for a separate Constitution for the Nagas with a special binding mechanism linking it to the Indian Constitution is, however, considered a threat by the GoI, as well as by many Indian intellectuals. Naga intellectuals, in turn, point out that India already has such "mini-constitutions", which are often described as "constitutions within a constitution". Examples are Article 370 (for Jammu & Kashmir) and Article 371 A (for the Nagaland State). Further, Articles 3 and 258 of the Indian Constitution provide a great deal of flexibility. Article 3 allows the reorganization of states (even without the specific approval of the concerned State Legislature), and Article 258 empowers the center to "entrust" to a state "any matter to which the executive power of the Union extends". The challenge is to have the vision and courage to push further and strive for a workable solution.

The peace talks and the so-called "comprehensive political package" of the GoI have once again failed to deliver. The last round of talks in September and October 2010 ended in failure. The NSCN-IM negotiators were further frustrated and infuriated over the arrest of one of their top leaders, Mr. Ningkhan Shimray, in Nepal last September when he was on his way to attend the next round of talks.

Important leaders of other resistance groups in the North-eastern region were also arrested by the Indian intelligence last year, while the government was at the same time offering peace talks. This added to the mistrust regarding the GoI's intentions.

Naga reconciliation

The Forum for Naga Reconciliation (FNR) has held over 24 meetings since its formation in 2008, both inside and outside Naga areas, in an attempt to bring about genuine reconciliation, unity and peace among the Nagas, who have been deeply divided over the course of the decades-long conflict with the GoI.

In the state of Nagaland, until very recently, the Nagas' experience had been one of unabated lawlessness marked by kidnappings, hijackings, killings, lootings, the imposition of taxes by various armed groups etc. The rule of law, justice and human values were blatantly disrespected. Criminal elements are still exploiting the prevailing situation, bringing blame and discredit to the nationalist organisations.

With the signing of the "Covenant of Reconciliation" by the Naga armed groups in June, 2009, there is now a semblance of peace in Nagaland as fac-

tional fights have been considerably reduced. The relative peace in Nagaland has been largely attributed to the work of the FNR.

The demand for an alternative political arrangement in Manipur

Nagas, together with other indigenous tribes, live in four districts of Manipur (Ukhrul, Senapati, Tamenglong, Chandel, covering 70% of the state's territory), in which they have demanded an alternative political arrangement following their protest against the imposed Autonomous District Council (ADC) elections by the Government of Manipur (GoM) and the events that unfolded with the proposed visit of NSCN-IM leader Muivah.

The demand is being led by the United Naga Council (UNC), the apex body of the Nagas in Manipur. This demand came about against the backdrop of severe economic, social and cultural discrimination on the part of the dominant Meitei, the Hinduized ethnic group which founded the pre-colonial valley kingdom and gave the state its name. The Meitei occupy the valley of Manipur, constituting 10% of the present state's territory. They make up, however, around 60% of the state's population. The Meitei have vehemently opposed the unification of the Naga homeland and insist on the integrity of the territory of Manipur state.

The ADC elections were to be held after severe dilution and manipulation of the provisions of Article 371 C of the Constitution. The state legislation of this Act severely waters down the power of the District Councils and the Hill Area Committee in the Legislative Assembly, subjecting them to the control of the state. The amendment was strongly opposed by the Nagas and other tribes in the state.

The situation was aggravated when the central government consented to the proposed visit of NSCN-IM leader Muivah to his birth place and Ukhrul town in May. Nagas went all out to welcome their leader and gathered to receive him at Mao Gate, at the border between Nagaland state and Senapati District of Manipur. Meitei activists and the state government responded to this event with hard measures.

On May 1, the Manipur government took a Cabinet decision to ban Muivah from taking a tour of the Naga areas of Manipur. Meitei civil society groups also took the stand that Muivah should not be allowed to enter Manipur, in the interests of protecting the territorial integrity of Manipur.

The Manipur government deployed hundreds of Manipur Commandos, Manipur Indian Reserved Battalion and other armed forces in the Mao Gate area and other roads connecting Nagaland state to Manipur. The government also imposed prohibitory orders under Section 144 of the Indian Criminal Procedure Code, which gives district administrations sweeping powers to ban any kind of public assembly, in order to stop the welcoming of Muivah and to prevent his entry.

On May 6, two students were shot dead and hundreds of individuals were injured (most of them women) during a peaceful procession. The conflict continued for days and more than 2,000 villagers were displaced as they fled their homes. Essential supplies to the state were cut off because of the outcry. This caused hardship for the general public in the state, with essential supplies running out and prices skyrocketing. During this period, many shops in the valley refused to sell food to the Nagas and even prevented the transport of medicines to the hills by Meitei volunteers.

The conflict and the communal tension subsided in the following months and, in a meeting, the UNC decided to sever all ties with the Government of Manipur, calling it a "communal government" and appealing to the central government for an alternative political arrangement for the Nagas in Manipur until a long-term solution could be found to the Indo-Naga political problem. ❍

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MIDDLE EAST

PALESTINE

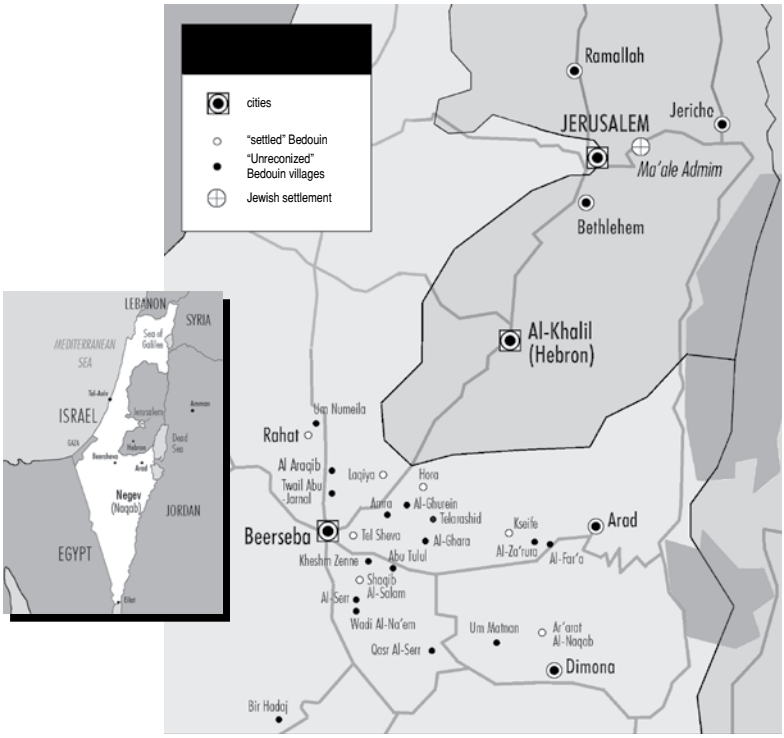
Following Israel's declaration of independence in 1948, the Jahalin Bedouin, together with four other tribes from the Negev Desert (al-Kaabneh, al-Azazmeh, al-Ramadin and al-Rshaida), took refuge in the West Bank, then under Jordanian rule. These tribes, who number approximately 13,000 people, are semi-nomadic agro-pastoralists living in the rural areas around Hebron, Bethlehem, Jerusalem, Jericho and the Jordan Valley, today part of the so-called "Area C" of the Occupied Palestinian Territory (OPT). "Area C", provisionally granted to Israel in 1995 by the Oslo Accords, represents 60% of the West Bank[1] and is home to all West Bank Israeli settlements, industrial estates, military bases, firing ranges, nature reserves and settler-only by-pass roads, all under Israeli military control.

The overall situation

The Bedouin in the West Bank are affected by the lack of basic infrastructure, their proximity to Israeli settlements, land confiscations, home demolitions and rigid building limitations and movement restrictions imposed by the Israeli government.

The inability to move freely, to find grazing land and access markets to sell animals has increased their vulnerability and is threatening their food security. To add to their struggle, the ongoing drought in the country forces many to buy fodder and water. The building of permanent infrastructure—water storage tanks and electricity networks, schools, health clinics, etc., in "Area C"—is not allowed without permits[2] and permits are seldom granted to Bedouin...

A UN survey of Bedouin and herding communities in "Area C" found that people in general lacked essential food and potable water, basic shelter and housing, appropriate clothing, and essential medical services and sanitation.



Children under 5 years old showed a high rate of stunting (28.5%) and 15.3% were under weight; 79% of the surveyed families were food insecure, with 77% relying on credit to buy food. The survey concluded "that Bedouin and herding communities in Area C are falling deeper into poverty and debt and livelihoods are under threat".[3]

The Jahalin in the Ma'ale Adumim area

The situation of the approximately 7,500 Jahalin who live near Ma'ale Adumim—the second largest Israeli settlement in OPT, 4.5km east of Jerusalem—is a case in point. The Jahalin have a long history of forced displacement,[4] and today live in fear of seeing the land on which they have lived for generations being confiscated

as a result of the continuing expansion of Israeli settlements. They also worry about having their homes demolished since only one of their many encampments is recognized by Israeli authorities. The Wall, the settlements, military areas, etc., separate them from their traditional grazing ranges.[5] Most lack electricity and running water; to access the closest hospitals located in East Jerusalem, on the other side of the "Separation Barrier" or "Apartheid Wall", they need special permits. Increasingly, all permits are denied.

The "car tyres" school and other issues

In 2010, many Jahalin camps faced a number of threatening issues. For those in Khan el Ahmar, the issue was the fate of their "car tyres" school. The idea of building a school originated in 2007, when 3,000 Jahalin received eviction orders from the entire area around Ma'ale Adumin. No alternative solution was offered. The "Jahalin Working Group", formed by a group of Israeli, Palestinian and international NGO and UN agencies,[6] immediately took action. An Urgent Appeal was made to all relevant UN Special Rapporteurs[7] and the idea was mooted that if children could be admitted to a nearby school, this would make it less likely for the Israeli military to move the community during the school year.

The Khan el-Ahmar Jahalin therefore undertook to build a school using old car tyres and mud. The community immediately received military stop-work and demolition orders, but decided to defy them: these Bedouin all know—even those who are unemployed graduates—that education is their best hope in the 21st century. Court proceedings allowed the school—staffed by seven teachers provided by the Palestinian Authority and serving 80 primary students—to remain in operation in 2010. Its future remains precarious and the situation is being further exacerbated by the danger the schoolchildren will face once the new major Jerusalem-Jericho sewage pipeline is brought into service: a vent has been placed right next to one of the school's windows.

Another issue is work permits, which have been denied to the community's 200 men after they "sinned" by asserting their human right to education, development and self-determination. This means that they are, in practice, no longer able to work, despite having helped build all nearby Israeli settlements, worked on a local Israeli industrial estate, or been employed as gardeners and municipal workers in Ma'ale Adumim for decades. In fact, they are regularly harassed by settlers

from the neighbouring settlement of Kfar Adumim and its "illegal outposts", having their animals stolen or even killed by their Israeli neighbours.

Yet the harshest blow is the current development of the "Tel Aviv-Jordan Highway", which has been deliberately planned to pass by the edge of their camp. Some homes have already been demolished and soon the Khan el Ahmar Bedouin will no longer have access to their camp by vehicle, or even be able to stop on the roadside, with the result that everything—from shopping supplies to sick people—will have to be carried by foot for some 2 km.

The human cost of Israeli settlement expansion

The future of the Bedouin on the West Bank is bleak. Victims of cancerous settlement expansion and brutal demolitions, without a minimum of infrastructure or services and no development possibilities, these people represent the human cost of Israeli occupation policies. Advocacy is ongoing, but the community's longstanding lawyer is now too expensive and the Bedouin are desperately appealing to agencies for support. Needless to say, Israel provides them with no assistance, thus grossly failing to fulfil its responsibilities under international humanitarian law. ❍

Notes

1 The Oslo II Accords (1995) established the Palestinian Authority (PA) and divided the West Bank into three administrative areas (known as "A", "B" and "C"). Areas "A" and "B" are under the control of the PA and have more autonomy, but are nevertheless burdened by regular Israeli military interference.

2 See **Human Rights Watch, 2010:** *Separate and Unequal – Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories*. (December). at http://www.hrw.org/en/reports/2010/12/19/separate-and-unequal-0

3 **UNRWA, UNICEF and WFP, 2010:** *Food Security and Nutrition Survey for Herding Communities in Area C* (February). Following a year of intensified food assistance from UNRWA and WFP, the rate of food insecurity decreased to 55%, according to a comparative study carried out in July 2010.

4 See **Human Rights Watch**, *Separate and Unequal*.

5 Ibid.

6 This group later merged with the "Displacement Working Group" chaired by the UN Office for the Coordination of Humanitarian Affairs (UN-OCHA).

7 Fully reported in http://icahd.org.dolphin.nethost.co.il/wordpress/wp-content/uploads/2010/05/Bedouin-Brochure_Complete.pdf

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ISRAEL

Approximately 190,000 Arab-Bedouins (or 2.6 percent of Israel's overall population) live in the Negev desert of Israel. During the 1948 war, some 65,000 of the Naqab (Negev) Bedouin fled to Gaza and the West Bank, leaving only 12,000 within Israeli borders. In the early 1950s, the Israeli Government concentrated this indigenous semi-nomadic population within the so-called *Siyag (Siyaj* in Arabic), a restricted geographical area in eastern Negev of approximately 1,000 km^2 (or about 10% of the Bedouins' former territory). Today, half of the Bedouin population lives in villages unrecognized by the state of Israel. These villages do not appear on Israeli maps, have no road signs indicating their existence, and are denied basic services and infrastructure, including paved roads, running water, garbage disposal, electricity, and proper schools and clinics. It is illegal to build permanent structures in these villages. Those that do so risk heavy fines and home demolitions. The other half of the Bedouin population is concentrated in seven government-planned townships, built between the late 1960s and early 1990s in the *Siyag* area as urban centers, giving little or no consideration to the traditional Arab-Bedouin way of life, and without providing possibilities for local employment.

By all accounts, the Naqab Bedouins are the most disadvantaged citizens in Israel.[1] The unrecognized villages have been struggling for their rights to land ownership, equality, recognition and pursuit of their distinctive way of life for years. The townships rank among the country's eight poorest municipalities. This situation did not improve in 2010 and, whilst waiting for the adoption of the Prawer Plan, the future looks grim.

The Prawer Commission

For over a year, the Naqab Bedouins have been waiting for the outcome of the Prawer Commission. This commission, headed by Ehud Prawer from the Prime Minister's Office (PMO), was established in early 2009 to translate the recommendations of the Goldberg Commission[2] into an operative plan of action for resolving the issue of the unrecognized villages and the Bedouin community's land claims. Submitted to the Prime Minister in mid-2010, the plan is awaiting his approval before being presented to the government and the public.

Neither the Bedouins nor the NGOs working with their community have been involved in the Commission's work and, even today, there is no clear indication of what awaits them. However, according to anonymous governmental sources, the plan involves the partial recognition of some of the 45 villages defined as "unrecognized" – and the mass eviction of the remainder to government-designated townships.[3] Villages will be recognized according to specific (and harsh) criteria, such as a minimum of 2,000 residents; land claim holders will be given the option of foregoing their claims in exchange for an allotment equal to approximately 20% of their land claims in a location to be decided by the Israeli authorities, plus some small monetary compensation. If the land claim holders refuse this offer, they could go to court but, so far, no Bedouin land claim holder has ever been successful in the Israeli court system.

PMO blocks recognition

In July, in an unprecedented step, the Prime Minister's Office blocked the National Planning and Building Council's recognition of two villages, Attir/Im al-Hiran and Tel Arad, requesting instead an expedited discussion with "new evidence".[4] The PMO thus overturned a democratic process that had taken the Bedouin community 15 years to achieve after it had found out that Bedouin villages were not mentioned in a new Metropolitan Plan for Beersheba. This process has included obtaining a ruling from the Supreme Court (1995) on the inclusion of Bedouin communities/villages in the National Planning and Building Council's plan, and submitting an official appeal in 2009 to this same Council after it turned out that a new development plan only included 11 newly recognized villages, leaving out 34

unrecognized villages. The Council responded by appointing an investigator, whose recommendations it subsequently adopted in July 2010.

These recommendations included minimal recognition of an additional 16 as yet unrecognized villages, at times not as independent villages but as extensions to an existing township, or a newly recognized village. As has been pointed out,[5] this will entail "inappropriate removal and transfer of populations among the villages in order to align them with other state development plans, such as roads. The recommendations ignore the historical bond between the local inhabitants and their specific plots of land, and rights groups have responded by saying that many of the recommendations may be doomed to failure if the local population is not fully included in the planning process. More significantly, activists speaking to government authorities have concluded that any villages *not included* in the definitive plan for the future of the Bedouin …will be evacuated, destroyed and their lands transferred to state hands for development of Jewish towns, roads and farms." [6]

Village eradication: the case of Twail Abu-Jarwal and Al Araqib

2010 saw a marked increase in raids against unrecognized villages as the Ministry of Interior, the Israel Lands Administration (ILA)[7] and the southern district of the Israel Police jointly resolved in February to triple the rate of house demolitions.[8] The violence used during these raids also escalated.

Thirty villages have now been affected by such actions, and even the township of Rahat experienced a much publicized demolition of one of its mosques in November. The cases of the unrecognized villages of Twail Abu-Jarwal and Al Araqib are, however, particularly outstanding. Twail Abu Jarwal has, over the past three years, been destroyed more than 40 times, eight of them this year. In order to wear down the villagers' ability to resist and re-build their homes, arrests are now part of the procedure. By early December, eight of the 18 people arrested in June were still in jail awaiting trial. Since the arrests, the village has all but disappeared as several other villagers have received restraining orders preventing them from entering their village lands. The arrests have also entailed a serious financial loss for the families, both in fines (bail) and in loss of the young men's salaries.

Al Araqib was razed to the ground on 27 July, when 1,300 armed police officers in riot helmets and shields entered the village at 4:30 a.m. The force included mounted cavalry, helicopters, inspectors from the ILA and demolition crews with bulldozers. The crews forcibly removed the villagers—mostly children and elderly people—from their homes before the demolition operation began, leaving 300 people without shelter or water in the height of summer in the desert. In total, 46 structures (including 30 homes) were completely destroyed along with sheep pens, chicken coops, orchards and olive groves—the source of the villagers' livelihood. More than 1,000 trees were uprooted and discarded. Residents were given no time to recover their belongings, and assets such as generators, cars and tractors were seized.[9]

It is the first time the government has used such a large force in its battle against the residents of an unrecognized village. This mass destruction did not, however, deter the villagers from rebuilding their village with tents. These 15 tents have since been destroyed more than seven times, and have been re-erected each time after having been bulldozed. During these raids, people who support Al Araqib's struggle have been brutally assaulted and temporarily arrested. A particularly vicious event was when Ms Haya Noah, a 50-year-old Jewish activist, was beaten to the ground and kicked because she asked to see the police's demolition orders.

The role of the JNF and GOD TV

The issue at hand for Al Araqib residents is that not only has their land been designated in the Beersheva Metropolitan Plan as an area for "forest and forestation", it is also an area in which, as stipulated by the Goldberg Commission, Bedouins will receive no land compensation.

Al Araqib existed before the creation of Israel (1948). The people were evicted in 1951 but continued using their lands for agricultural purposes (albeit with their crops regularly destroyed by the government) and burying their dead in the village cemetery. In 1998, the Jewish National Fund (JNF) started planting trees on their lands. Afraid their land would be turned into a forest, making any agricultural or building activities impossible, the villagers returned to defend it from the JNF afforestation activities.

The JNF claims that it is only implementing the government's policies. These policies, however, are discriminatory and intended to make sure that the Bedouin

villages cannot survive and that their residents will be displaced and relocated. In order to implement them, the JNF is utilizing funds it raises from the Jewish community world-wide. However it is also using donations coming from an international evangelical television channel - GOD TV - which claims to have received "instructions from God ... to prepare the land for the return of my Son ... Plant a million trees."[10] It is somewhat ironic that a Jewish organization that is "redeeming land for the Jewish people" is supported by an evangelical ministry that wishes to utilize Israel and the planting of trees to bring about the return of Christ (and thus inherently the conversion of all Jews). ❍

Notes

1 See Shadow Report submitted by the Negev Coexistence Forum for Civil Equality et al.: "Response to the Report of the State of Israel on Implementing the Covenant on Economic, Social and Cultural Rights (ICESCR)", October 2010, at http://www.dukium.org
2 The Goldberg Commission (2007) was tasked to formulate a new policy and regulations regarding the Naqab Bedouin settlements. For further details see *The Indigenous World 2010*.
3 *Jnews,* 28 July 2010. See http://www.jnews.org.uk/news/rumours-of-displacement-plans-for-the-bedouin-of-the-negev-desert
4 See *Haaretz*' website: http://www.haaretz.com/print-edition/news/pmo-blocks-recognition-of-bedouin-villages-1.325080
5 *JNews,* 28 July 2010.
6 Ibid.
7 The ILA is the government agency responsible for managing the 93% of Israeli land owned by the State.
8 See Negev Co-Existence Forum website: http://dukium.org/.
9 **Human Rights Watch Report, 2010:** at http://www.hrw.org/en/news/2010/08/01/israel-halt-demolitions-bedouin-homes-negev and background paper on Al Araqib at http://www.dukium.org
10 See their video on http://www.god.tv/excavation according to which half a million trees have already been planted in the Negev. A sign reading "God TV Forests" has been placed next to Al Araqib (see http://www.redress.cc/palestine/ngordon20101204).

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NORTH AND WEST AFRICA

MOROCCO

The Amazigh (Berber) peoples are the indigenous peoples of North Africa. The most recent census in Morocco (2006) estimated the number of Amazigh speakers to be 28% of the population. However, the Amazigh associations strongly challenge this and instead claim a rate of 65 to 70%. This means that the Amazigh-speaking population may well number around 20 million in Morocco, and around 30 million throughout North Africa and the Sahel as a whole.

The administrative and legal system of Morocco has been highly Arabised, and the Amazigh culture and way of life is under constant pressure to assimilate. Morocco is a unitary state with a centralised authority, a single religion, a single language and systematic marginalisation of all aspects of the Amazigh identity. Recent years have seen positive changes, with the establishment of the Royal Institute of Amazigh Culture, recognition of the Amazigh alphabet and introduction of mother-tongue education in the Amazigh language into state schools. However, as documented in this article, this situation now seems to be deteriorating.

According to its current constitution, Morocco is an Arab country and the constitution makes no reference to Amazigh identity or language. The fact that Arabic is the official language and that the Amazigh language has no constitutional recognition means that government departments (education, information, justice, administration) and their staff are legally able to prevent the Amazigh from using their own language, on the pretext that it is not official. This is also why the teaching of the Amazigh language is not obligatory in Morocco.

The Amazigh people have founded an organisation called the "Amazigh Cultural Movement" (ACM) to advocate for their rights. There are now more than 800 Amazigh associations established throughout the whole of Morocco. It is a civil society movement based on universal values of human rights.

Regionalisation and Amazigh identity

In early 2010, the King of Morocco set up a consultative committee on regionalisation (CCR).[1] The ACM therefore decided to submit a memorandum on regionalisation to this body.[2] It was in this context that the member associations of the ACM organised a conference on regionalisation/federalism on 12 and 13 June 2010 in Agadir, in the south of Morocco. This conference brought together Amazigh activists and national and international experts on territorial governance and resulted in the production of a memorandum on regionalisation/federalism which was presented to the chair of the committee on regionalisation.[3] This mem-

orandum revolves around two principles: the need for official recognition of the Amazigh identity and language, and the establishment of a federal system that will ensure that power, resources and values are shared.[4]

Amazigh civil and political rights

The Amazigh Democratic Party (PDA) is officially prohibited, despite the efforts of Amazigh lawyers to use tangible evidence to prove the party's legitimacy. Organised activities are not always tolerated in some regions and, on 26 June 2010, the Tangiers authorities banned a cultural activity organised by the Amazigh association "Massinisa" for no reason.

Moreover, Boubaker Lyadib, one of the leaders of the "Tamaynut" organisation, was arrested on 6 January 2010 and sentenced to six months in prison for his active involvement in the December 2009 demonstrations in Taghjijt, in the south of Morocco.

In January 2010, in the town of Mrirt in the Middle Atlas, six activists, four of whom were members of the federal council of the AMC, were prosecuted and sentenced for having supported the indigenous population in their rejection of a project that failed to respect their right to prior and informed consent (see *The Indigenous World 2010*).[5]

In Errachadya, in the south-east of Morocco, a large demonstration on the part of the Amazigh population, calling for the right to work and to dignity, was severely repressed on 26 December 2010 and several activists were arrested and prosecuted.

On 17 and 18 August 2010, Morocco presented a report to the UN Committee on the Elimination of Racial Discrimination (CERD) in Geneva on its efforts to eradicate racial discrimination. At the same time, several Amazigh associations, including the AMC and Tamaynut, presented their own alternative reports to this committee.

CERD's main recommendations were supportive of the Amazigh cause: "The Committee recommends that the State party step up its efforts to promote the Amazigh language and culture, particularly through the teaching of this language and take additional steps to ensure that Amazighs are not subject to racial discrimination, in particular as regards access to employment and health services." Moreover, the committee recommended that Morocco should "consider making the Amazigh language an official language under the Moroccan Constitution, and to provide literacy training for the Amazigh in their own language." [6]

The right to choose Amazigh first names is won, despite some difficulties

Despite the government's undertaking to the UN Human Rights Committee in April 2008, in which Morocco considered that the problem of Amazigh first names had been resolved once and for all, the problem still exists in some Moroccan regions and towns. Many Moroccans living in towns and villages throughout the country and abroad who choose Amazigh first names for their children have been refused the right to register these names by the local authorities holding the civil registers.

In a directive adopted last April, the Moroccan Interior Minister indicated that Amazigh names could legally be considered "Moroccan by nature" and he published a circular for civil service officials on the right to choose Amazigh first names.[7] On 14 December 2010, Human Rights Watch welcomed the "positive results" of Morocco's decision to recognise the legitimacy of Amazigh names.

However, some Amazigh are still enduring this ban on Amazigh first names. Even following the publication of the circular, Amazigh organisations are continuing to receive complaints from people prevented from choosing their preferred first names for their children. One example among others:

- On 12 November 2010, Aziza Boulwiha, from Sidi Slimane, a town to the north-east of Rabat, gave birth to a baby girl. Three days later, her husband, Marzou Salh, went to the registry office of the town's first district to ask if it was possible to register the child under the Amazigh name of Simane, which means "two souls". Salh told Human Rights Watch that the official told him this was impossible as the name did not appear on a list that he had checked. The child's father thus presented Circular D-3220 and documents showing cases where the first name Simane had already been approved. On 22 November, his wife went to register the child under this name but, again, the official refused, explaining that Simane was not a sufficiently common name. He proposed registering the child under the name of Imane – "faith" in Arabic, but the parents refused. Salh asked an Amazigh organisation to contact the administration. At the end of November, according to Salh, the registry official agreed to register the name of Simane but on condition that the

father sign a statement to the effect that he would be responsible for all the possible legal consequences of choosing that name.

Several Moroccan human rights associations and other Amazigh associations have sent letters and issued press releases with regard to this ban, which is in violation of fundamental civil rights.

Amazigh language teaching in crisis

In 2003, Morocco decided to begin teaching the Amazigh language, in response to demands from the Amazigh Cultural Movement. Efforts have been made to introduce it but there has also been strong resistance to the initiative.

In an opinion to be delivered to the King, dated 10 July 2010, the Higher Council for Teaching (CSE) questioned the principles and methods of Amazigh language teaching as established by the Ministry of National Education in 2003, namely:

1. The teaching of Tamazight is compulsory. It is assessed equally on a par with all other subjects.
2. The gradual spread of Tamazight teaching at all levels and in all regions of Morocco, and for all Moroccans.
3. The standardisation of the Amazigh language.
4. Tamazight teaching with its Tifinah alphabet.
5. The Amazigh organisations issued a press release to denunciate the CSE's opinion and emphasise the importance of teaching Tamazight in Morocco.

Right to information

After much prevarication, the government finally agreed, under pressure from the ACM, to launch "Tamazight TV" in January 2010, long awaited by millions of citizens. There are still, however, seven Arabic-speaking channels as opposed to only one Amazigh one in Morocco today, which does not balance out the problem of equality between cultures and languages in Morocco.

Positive Morocco

Although the situation of Amazigh rights leaves much to be desired, there is however a positive climate in Morocco, which leads to a feeling of optimism amongst the population. Morocco hosts Amazigh congresses and meetings with no problems or prohibitions (meetings of the Amazigh World Congress are banned in Algeria and Libya). The Amazigh World Congress organised its federal council meeting in Agadir on 27 and 28 November 2010, with the participation of Kabyl from Algeria and Tuareg from Mali and Niger. The Moroccan authorities facilitated their stay in Morocco, demonstrating Morocco's openness to Amazigh demands and their activities. Morocco also remains constructive towards the international activities of Amazigh organisations that participate in the UN bodies such as the Human Rights Council in Geneva or the Permanent Forum on Indigenous Issues in New York.

As for other civil society organisations, particularly those working on human rights, they are beginning to support Amazigh proposals, demonstrating the credibility and legitimacy of the Amazigh Cultural Movement's demands.

This latter remains a peaceful movement, demanding its rights by legitimate means. It has become a responsible partner and Morocco must listen to its appeals and engage in direct dialogue with it so that it can contribute appropriate solutions to the problems of Amazigh identity.

The 20 February 2011 Movement[8] for change includes calls for Amazigh to be officially recognised in the Constitution, showing that the demands of the Amazigh, as the indigenous people, are gaining ground, and this also explains the keenness of the Amazigh cultural movement to build a new Morocco that reflects the country's plurality. ❍

Notes

1 On Sunday 3 January 2010, King Mohamed VI put in place a consultative committee on regionalisation, attached to the Royal Palace. Its task is to produce a regionalisation plan, to be presented to the King.

2 The Amazigh associations meeting in Agadir for this conference agreed a memorandum on regionalisation that reflects the demands of the ACM. See the text of this memorandum in the July 2010 issue of Amadal Amazigh.

3 See the text of the memorandum in the July edition of Amadal Amazigh.

4 Amadal Amazigh, July 2010.
5 Press release from the Amazigh World Congress, published in Agraw Amazigh, January 2010.
6 See document at www.amazighworld.org
7 **Handaine Mohamed:** Les prénoms amazighs d'après les sources historiques. Ed Bourgrag, Rabat, 2010.
8 The 20 February 2011 Movement in Morocco is a youth protest movement that appeared in North Africa after the revolution in Tunisia.

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ALGERIA

The Amazigh are also known by the name "Berber", which derives from the Roman term for "barbarian", a name given to anyone who did not speak Latin. Amazigh (plural Imazigen) means "free man". The Amazigh are the indigenous people of Algeria, as well as of other countries of North Africa and the Sahara, and have been present in these territories since ancient times. According to the historian, Malika Hachid, their presence in the region dates back more than 10,000 years and "Berber as an identity and culture was forged in the lands of North Africa and nowhere else".[1] The Algerian government, however, does not recognise the indigenous status of the Amazigh. Because of this, there are no official statistics concerning the number of Amazigh in Algeria. On the basis of demographic data relating to the territories in which Tamazight-speaking populations live, associations defending and promoting the Amazigh culture estimate the Tamazight-speaking population at around 10 million people, or 1/3 of Algeria's total population. The Amazigh of Algeria are concentrated in five large regions of the country: Kabylia in the north, Aurès in the east, Chenoua, a mountainous region on the coast to the west of Algiers, M'zab in the south, and Tuareg territory in the Sahara. A large number of Amazigh populations also exist in the south-west of the country (Tlemcen and Béchar) and also in the south (Touggourt, Adrar, Timimoun…), accounting for several tens of thousands of individuals. It is also important to note that large cities such as Algiers, Blida, Oran, Constantine, etc, are home to several hundred thousand people who are historically and culturally Amazigh but who have been partly Arabised over the course of the years, succumbing to a gradual process of acculturation.

The indigenous population can primarily be distinguished from other inhabitants by their language (Tamazight), but also by their way of life and their culture (clothes, food, beliefs…). Urbanisation and the policy of Arabisation are, however, increasingly destroying the characteristic features of the Amazigh.

After decades of demands and popular struggles, the Amazigh language was finally recognised as a "national language" in the Constitution in 2002. Despite this achievement, the Amazigh identity continues to be marginalised and folklorised by state institutions. Officially, Algeria is still presented as an "Arab country", anti-Amazigh laws are still in force (such as the 1992 Law of Arabisation) and, when Amazigh identity is mentioned, it is always in a stereotypical manner.

Internationally, Algeria has ratified the main international standards, and it voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007. However, these texts remain unknown to the vast majority of citizens and, thus, not applied, which has led to the UN treaty monitoring bodies making numerous observations and recommendations to Algeria in this regard.

Legal status of Algeria's Amazigh

The Amazigh enjoy no legal recognition as a distinct group within Algeria. After decades of peaceful struggle, however, they did obtain two constitutional reforms, the first in 1996, whereby the Constitution now states that the Algerian identity is composed of "Islam, the Arab and Amazigh identities", and the second in 2002, which enabled an Article 3a to be included stipulating that "Tamazight is also a national language. The State shall work for its promotion and development in all its linguistic variants in use within the national territory". However, Arabic remains the only official language required of everyone.

Since then, there have been no regulatory or legislative texts extending these constitutional reforms in practice. The state's resources remain entirely focused on promoting the Arabo-Islamic identity of Algeria whilst the Amazigh identity remains marginalised, folklorised. The few initiatives taken in communications and education are suffering from a large number of obstacles in the path of their implementation. At the same time, anti-Amazigh laws are maintained and new ones are even enacted.

Article 8 of the new Code of Civil and Administrative Procedure (Law 08-09 of 25/02/2008), for example, which came into force in 2009, stipulates that "legal procedures and texts such as petitions and reports must be in Arabic, or accom-

panied by an official translation, or they will not be admissible. Debates and pleadings shall be conducted in Arabic. Decisions shall be passed in Arabic, or be automatically rendered null and void by the judge". This new text is in addition to the legal arsenal (Law on Arabisation, Law on Associations and Political Parties) that already excludes Tamazight from public spaces.

Fifteen years after the introduction of Tamazight into state schools, the number of pupils benefiting from these classes continues to fall year on year. According to government statistics,[2] Tamazight was taught to 163,000 pupils in 2009, less than 10% of the pupils in Tamazight-speaking regions. Moreover, the teaching of this language remains voluntary, thus giving it an inferior status to other languages taught. The number of Tamazight teachers is also falling: the Teacher Training Institute (*Institut de Formation des Maîtres*) anticipated training 35 teachers in 2010 and 18 in 2011.[3] This illustrates the political will to prevent the spread of Tamazight in Algeria. In contrast, the Amazigh people continue to be mass-schooled or taught to read and write in Arabic.

Pauperisation, suicides and forced exile

Algeria's Amazigh are deprived of the benefits of the natural resources found on their territories (water, forests, oil, gas, etc.) and economic investments encounter numerous administrative obstacles. In the Sahara, the Tuareg are unable to benefit from the energy resources found in their subsoil, and the water from the mountains benefits the large cities such as Algiers first and foremost, with no compensation for the local population. The Amazigh consequently experience a higher than average level of poverty if they have no migrant remittances (average national poverty level: 20%, level in Kabylia and Aurès: 30-50%). Young people in particular seek an escape through alcohol, drugs, exile or suicide. More than 60 people killed themselves in 2010 in Kabylia alone and there are currently thousands of illegal Amazigh in Europe.

Under the pretext of the war on terror, the Algerian government has deployed significant military reinforcements in the Amazigh regions of Kabylia. The strong presence of soldiers has led to increased feelings of insecurity and significantly disrupts the daily life of inhabitants, in rural areas in particular.

Violations of fundamental freedoms

Freedom of movement is limited, both inside and outside the country. The land border between Algeria and Morocco has been closed since 1994, thus preventing Amazigh living on either side of the border from being in contact, a right that is set out in the UN Declaration on the Rights of Indigenous Populations. A seminar on "The UN Human Rights System", organised on 22/23 July 2010 by the World Amazigh Council in Tizi-Wezzu, was brutally suppressed by the police; working documents were seized and the 20 people present taken to the police station where they were interrogated for a whole day… Acts of police and judicial intimidation and harassment are a constant occurrence for all human rights and democracy activists. Tahar Amichi, for example, a member of the Kabylia Autonomy Movement (MAK), was taken before the Vgayet (Béjaia) court on 31 October 2010, charged with putting up posters for his movement in April 2010. The Algerian administration has, since 2005, refused to issue administrative authorisation for the Amazigh League of Human Rights to operate and, since 2008, also for the

Kabylia Women's Association. The perpetrators of crimes committed in Kabylia in 2001 (126 people killed by the police) and in the Aurès region in 2004 have still not been tried or sentenced.[4] Human rights activists who denounce impunity are threatened with reprisals by agents of the state security forces.

There were numerous cases of violations of freedom of conscience in 2010, particularly in Kabylia, where Christians are discriminated against and ill-treated in different places (Akbou, Ighzer-Amokran, Larba-Nat-Iraten, Asqif): practising of the Christian faith is banned, citizens who do not keep Ramadan are taken to court and sentenced to fines or even prison, a school head teacher was sacked for rejecting Islamic proselytism, etc. At Oum-El-Bouaghi (Aurès region, in the east of Algeria), the court harshly sentenced the young Farès Bouchouata to two years in prison and a fine of 100,000 Dinars (US$ 1,372) for being caught eating a sandwich during the month of Ramadan. Despite the fact that Article 36 of the Constitution stipulates that "freedom of conscience and freedom of opinion are absolute", the Algerian authorities cannot conceive of an Algerian that is not a Muslim.

With regard to Amazigh women's rights, they remain subjugated to the "Family Code", which maintains them in a position of inferiority and submission to men. Based on Sharia law, this text and the resulting practices are an offence to Amazigh conscience and civilisation. The Amazigh consequently reject this law, which authorises polygamy, relegates women to the position of minors for life and bans them from marrying non-Muslims. In the absence of progress in recognising and respecting the collective rights of the Amazigh people, women's rights remain governed by provisions that are alien to their culture.

During its 44th session in May 2010, the UN Committee on Economic, Social and Cultural Rights made the following recommendations to the Algerian government:[5]

- to undertake a revision of the Family Code in order to outlaw polygamy, remove the legal obligation of a marriage guardian (*wali*) and ensure that the marriage of a Muslim woman with a non-Muslim man was fully recognised in law, without exception;
- to recognise Tamazight as an official language and to intensify efforts to provide education in the Amazigh language and cultures in all regions and at all levels of education, particularly by increasing the number of teachers trained in Tamazight. It called the State Party's attention to its

General Comment 21 (2009) on the right of everyone to take part in cultural life. ❍

Notes

1 **Malika Hachid, 2000:** *Les premiers Berbères, entre Méditerranée, Tassili et Nil*. Editions Edisud-Ina Yas, Alger-Aix en Provence.

2 International Covenant on Economic, Social and Cultural Rights, 44th session, Geneva, 3-21 May 2010, Replies by the Government of Algeria to the list of issues (E/C.12/DZA/Q/4) to be taken up in connection with the consideration of the third and fourth periodic reports of Algeria (E/C.12/DZA/4).

3 Ibid.

4 After the death of a young man in the police station at Ait-Dwala in Kabylia on 18 April 2001, the population protested by peacefully demonstrating in the roads around this area. The police responded by violently suppressing the demonstrators, which provoked rage amongst the people of all Kabylia's regions. The riots lasted more than 2 months, during the course of which the state security forces used live ammunition, leading to the deaths of 126 people and injuring 5,000 more. The same scenario occurred in May 2004 in the Aurès region in eastern Algeria. A commission of inquiry was appointed, chaired by Prof. Issad, but its conclusions were never implemented.

5 E/C.12/DZA/CO/4, GE.10-42870

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BURKINA FASO

Burkina Faso has a population of 14,017,262 (4th General Census of Population and Housing, December 2006) comprising some 60 different ethnic groups. The indigenous peoples include the pastoralist Peul (also called the *fulbe duroobe egga hodaabe,* or, more commonly, *duroobe* or *egga hodaabe)* and the Tuareg. There are no reliable statistics on the exact number of pastoralists in Burkina Faso. They can be found throughout the whole country but are particularly concentrated in the northern regions of Séno, Soum, Baraboulé, Djibo, Liptaako, Yagha and Oudalan. The Peul and the Tuareg most often live in areas which are geographically isolated, dry and economically marginalized and they are often the victims of human rights abuses. Burkinabe nomadic pastoralists, even if innocent of any crime, have thus been subjected to numerous acts of violence: their houses burnt, their possessions stolen, their animals killed or disappeared, children and the elderly killed, bodies left to decay and their families forbidden from retrieving them.

Peul pastoralists are gradually becoming sedentarised in some parts of Burkina Faso. There are, however, still many who remain nomadic, following seasonal migrations and travelling hundreds of kilometres into neighbouring countries, particularly Togo, Benin and Ghana. Unlike other populations in Burkina Faso, the nomadic Peul are pastoralists whose whole lives are governed by the activities necessary for the survival of their animals and many of them still reject any activity not related to extensive livestock rearing.

The existence of indigenous peoples is not recognized by the Constitution of Burkina Faso. The Constitution guarantees education and health for all; however, due to lack of resources and proper infrastructure, the nomadic populations can, in practice, only enjoy these rights to a very limited extent.

Indigenous peoples and land ownership

Through their movements, the nomadic *egga hodaabe* pastoralists of Burkina Faso have opened up regular paths where they pasture their animals. However, their organisational weakness, the strong demographic upsurge in agricultural producers and increasing challenges to pastoralist entitlements[1] all prevent them from establishing stable transhumant routes or pasturelands. Law No. 034-2009/AN of 16 June 2009 on the rural land regime would seem to grant significant importance to livestock farmers, as can be seen in Article 75, which stipulates that:

> *The State and the local authorities may organise special programmes to allocate, individually or collectively, developed rural lands in their respective rural domain to the benefit of groups of marginalised rural producers such as small agricultural producers, women, youths and livestock farmers.*

And yet the nomadic pastoralists do not feel that the possibilities offered by this article relate to them. It is, in fact, difficult for nomadic pastoralists individually to obtain any substantial area without encountering any opposition as caring for their animals requires water, and nomadic pastoralists are not rich enough to own their own permanent water source. Collectively, they are also insufficiently well-organised to be able to benefit from the opportunity offered by Article 75.

In addition, nomadic pastoralists can only gain access to land ownership in the context of Article 36, which stipulates that:

> *Subject to local areas of commonly used natural resources being identified, and these being within the domain of the commune in question, the following may, in particular, form proof of land ownership: (1) unanimous recognition of a person's or family's status of de facto owner of rural land on the part of the local population, particularly neighbouring landowners and local customary authorities; (2) continual, public, peaceful and unequivocal development, as de facto owner for at least 30 years, of rural lands for the purposes of rural production.*

Article 36 thus ignores the spirit of transhumance, the bedrock of which remains mobility, and which international academics now recognise as being key to pasto-

ral production.[2] It seems instead to signal an end to transhumant pastoralism. In the best case scenario, there will be nothing left for the *duroobe egga hodaabe* to do but to restrict their movements to areas known as *pastoral zones*. They will still need support to ensure their viability, in a country where water becomes a rare commodity at certain times of the year, and access to it is virtually impossible for pastoralists with a few dozen head of cattle.

Indigenous peoples and the right to life

2010 was a year marked by reprisals against nomadic Peul pastoralists. For example, in northern Benin, one of ADCPM's[3] leaders was involved in burying five nomadic pastoralists from Burkina Faso who had been the object of an attack. In northern Ghana, too, the last quarter of 2010 was marked by reprisals which resulted in numerous cattle lost in the countryside. Such was the case of Moussa Sewngo, who is still searching for his 52 head of cattle. Even less fortunate was another pastoralist from Burkina Faso, who was shot dead. When questioned by the police, his assassin stated that he had confused him with someone else. As

for Burkina Faso itself, an article by Yelkabo Rodrigue Somé is illuminating in this regard:

> *On Saturday 23 October 2010, in a vigilante operation, agriculturalists attacked livestock farmers/herdsmen in the village of Indini, Koti commune, Tuy province (Hauts-Bassins region). It was around 11 o'clock. The reason was apparently damage that had been caused to fields by herds of animals belonging to the livestock farmers. The first victim, aged 15 years old and employed by the livestock farmers, was shot by his own agriculturalist parents. The two other victims, 18 and 42 years old respectively, were livestock farmers/herdsmen. They were killed by blows from machetes and axes.* [4]

In other words, nomadic pastoralists continue to see their right to life violated. No matter how innocent they may be, nomadic pastoralists are at risk because of the actions of other individuals that they do not necessarily even know. And rising tension, a sign of the reprisals to come, continues to be ignored by the administrative and customary authorities. Somé's article also states that cattle had previously been killed by the agriculturalists before the start of the mob justice. This sign of the impending attack should have alerted the authorities so that simple damage to a field or the deaths of a few animals did not culminate in the deaths of human beings.

Other reprisals have also taken place but they fall under the heading of land disputes rather than pastoralism. One example is that of Lefouba, "a small place in Sapcé prefecture, Bam province, in Burkina Faso, where a group of agricultural producers organised to raze a livestock farmers' locality to the ground. Thirteen huts were burnt and two people were injured, one of them elderly."[5] And this without any reaction from the forces of law and order.

Building an indigenous peoples' movement

Since it was founded in 2005, ADCPM has taken an interest in the nomadic Peul pastoralists who live scattered along Burkina Faso's borders with Benin, Togo and Ghana. It has been constructing an information and awareness raising network with regard to the reprisals against nomadic pastoralists since 2007.

In 2010, ADCPM increased its awareness raising meetings, in the form of fora, particularly in the southern provinces of Burkina Faso but also in the centre north and north of Ghana. These meetings focused on human rights and were aimed at enabling nomadic pastoralists to gain a better understanding of the consequences of their marginalisation, which is partly imposed on them by others and partly self-imposed.

After two days of gathering information from survivors of the murderous reprisals, an initial forum was organised on indigenous peoples' rights on 30 December 2010, with the locally-elected representatives of 30 villages in Nahouri province, Burkina Faso, 10 customary chiefs, 10 representatives of associations and 20 leaders of nomadic pastoralists. The forum was opened[6] by the mayor of Po commune, administrative centre for the province, and entitled "How can we put a stop to the massacres of nomadic pastoralists once and for all?"

Meetings were also organised to help nomadic pastoralists gain a better understanding of the concept of indigenous peoples. These meetings were organised at Tambolo, in a nomadic pastoralist settlement located 10 kms from Burkina's border with Ghana, then in the centre (Tamalé) and far south (Buipé) of Ghana's Northern Region. At these meetings, pastoralist leaders had an opportunity to absorb the content of the Fulfulde version (language of the nomadic Peul pastoralists) of the summary report "Indigenous Peoples in Africa. The Forgotten Peoples?", by the African Commission's Working Group on Indigenous Populations/Communities in Africa.[7]

The summary report explains the concept of indigenous peoples, studies the human rights situation of indigenous peoples in Africa and considers the extent to which the African Charter offers them protection. It also provides information on the role of the African Commission in protecting indigenous rights in Africa.

These meetings, organised around the concept of indigenous peoples and attended by the nomadic pastoralists' leaders, could form a basis for the birth of a true indigenous movement, not only in Burkina Faso but also in neighbouring countries.

Some future directions for pastoralism in Burkina Faso

The future of indigenous peoples in Burkina Faso, particularly the nomadic Peul pastoralists who migrate seasonally across the borders with Benin, Ghana and

Togo, will largely be a product of what these people themselves want it to be: their major concerns at the moment should be to organise and make the most of the land laws in Burkina Faso and other ECOWAS (Economic Community of West African States) countries. It is, in fact, still possible for indigenous peoples to live as pastoralists, crossing from Burkina Faso to neighbouring countries and back. To do so, however, their leaders need to be organised and to be aware of the challenges facing pastoralism in this sub-region of Africa, where the overall population is growing rapidly and will soon form a major obstacle to the transhumant way of life of pastoralists' communities.

In conclusion, the situation of nomadic pastoralists in 2010 was not so very different from that of other years in terms of their human rights. Numerous meetings were, however, organised by civil society organisations aimed at encouraging the emergence of conditions favourable to a peaceful coexistence between pastoralists and farmers, both in Burkina Faso and its border countries. ❍

Notes

1 By *pastoralist entitlements*, we mean a demarcated space that is recognised as belonging to them, with written evidence to support this.
2 IIED & SOS Sahel UK, 2010. Modernity, mobility. The future of livestock in the arid zones of Africa, p. 84.
3 *Association pour la Défense des Droits et Diversités Culturelles des Personnes appartenant à des Minorités.*
4 http://www.lefaso.net/spip.php?article39144
5 http://www.lefaso.net/spip.php?article37190
6 The same forum will also take place in three other regions of Burkina Faso in 2011.
7 ACHPR & IWGIA, 2006. Indigenous Peoples in Africa. The Forgotten Peoples?", the African Commission's Work on Indigenous Peoples in Africa. Copenhagen, 31 p.

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MALI

The Tuareg and Peul are two of Mali's indigenous peoples. This article focuses on the Tuareg. These are a Berber people living in the central Sahara, spread across Mali, Niger, Burkina Faso, Algeria and Libya. Mali's total population numbers 13,716,829 inhabitants and, together with the Moors (Berbers living in the north of Mali and Niger), the Tuareg represent around 10% of the population. They live in the north, in the regions of Timbuktu, Gao and Kidal, which together cover 2/3 of the country's area of 1,241,021 km^2. They speak the Tamasheq language.

Traditionally, they are nomadic pastoralists, rearing camels and small ruminants. They occasionally engage in trade, bartering game and camel meat, along with rock salt, in return for dates, fabrics, tea, sugar and foodstuffs. They have a distinct culture and way of life.

The Constitution of Mali recognises the country's cultural diversity and the National Pact recognises the specific nature of the Tuareg regions. In addition, legislation on decentralisation gives local councillors, including some Tuareg, a number of powers although not the necessary resources with which to exercise them.

Over the course of the last year, the presence of "Al-Qaeda in the Islamic Maghreb" (AQMI) has had a profound effect on Mali as a whole, and on the Tuareg in particular.

Mali voted for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the UN General Assembly.

The presence of AQMI

AQMI stands for "Al-Qaeda in the Islamic Maghreb". This is an armed Islamic organisation from Algeria that is calling for the establishment of an Islamic emirate. Its original name was the Salafist Group for Preaching and Combat (GSPC). It was initially active in Algeria, with the assassination of members of the

security forces and civilians. The organisation then focused its activities on the Sahel region (Mali, Mauritania, Niger) where it became notorious for the abduction, and sometimes execution, of a number of hostages with ransom demands. On 29 September 2010, for example, some employees of Areva (French uranium extraction company in Niger) were kidnapped and are, in fact, still being held. The movement is led in the Sahel by two emirs with the names of Abou Zeid and Ben Laouar ("the one-eyed") - both Algerians.

In the north of Mali, the Islamist movement has taken refuge in the mountains of Adrar des Ifoghas, thus taking control of the mountainous region previously used by the Tuareg rebels.

AQMI and the people of the Sahara

Relations between this group and the Moor and Tuareg populations of the Sahara take place on a number of levels. It should first be noted that AQMI now includes Moor and Tuareg among its active members and that its leaders are often married to Moor or Tuareg women. There are also some Moor and Tuareg among the main preachers and propagandists of this armed organisation. It is said that one of its wings comprises some 60 Tuareg led by Abdelkrim from Kidal, although there is no concrete evidence of this.

AQMI has always tried to avoid problems in its relations with the local Tuareg population and the Malian government. In August 2010, however, it executed Mohamed ag Acherif dit Merzoug, a former Tuareg rebel. AQMI accused him of collaborating with the Americans. In contrast, the two uniformed Tuareg Malian soldiers who were accompanying the victim were released by AQMI along with their arms and baggage. After the execution, AQMI telephoned the chief of the Tuareg tribe from which the victim came and gave him the following message: "We have no grievances with the Tuareg or Malian soldiers provided they leave us in peace."

The AQMI is making attractive deals with the local people: it buys animals at a good price from local rearers in exchange for medicines, flour, water, tea, sugar and tobacco, products all highly valued by the Saharan population.

However, overall the presence of AQMI is disastrous for the Tuareg of Mali in a number of ways:

- In economic terms: Tourism no longer exists[1] and expatriates have left the region for fear of being kidnapped.[2] This considerably reduces the scope of development projects, and NGOs that were helping local populations in Kidal, such as the Kidal Sustainable Development Project (DDRK), a project supporting nomadic populations with funding from Luxembourg, have seen their support staff – comprised of expatriates – depart, leaving local people who do not necessarily have sufficient training to take over the management roles.
- In social terms: Unemployment is increasing and young people are tempted by drugs trafficking or by the taking up of arms, as AQMI auxiliaries.[3] Moreover, this organisation spreads extremist religious propaganda, ad-

vocating "Jihad",[4] as opposed to the traditional tolerant and non-violent Malekite Islam. In addition, the Tuareg are suffering an unprecedented loss of prestige. In fact, the "Blue Men" - who used to be synonymous in Europe with courage, purity and loyalty - are today associated with hostage taking, terrorism and drugs trafficking. Tourists who were previously queuing up to visit the Sahara now avoid this unsafe region.

Mali's reaction to AQMI

After the murder, by an AQMI commando, of an officer in the Malian intelligence services, Colonel Lamana ould Bou, on 10 June 2009, in the heart of Timbuktu, the Malian government tried to meet AQMI head on and engaged in clashes in which it lost many soldiers. It has since become convinced that it cannot face up to this organisation alone and has thus called, in vain, on neighbouring countries to attend a summit in Bamako to provide a coordinated response to this cross-border problem. Generally, however, Mali has prioritised the route of mediation, aimed primarily at sparing the lives of the hostages taken by this terrorist group.

Mali has, nonetheless, agreed to open up its borders to neighbouring countries, giving them the right to pursue suspects on its territory. Mali recently adopted a new approach that consists of trying to disengage the northern populations from the extremists. The President summarises his doctrine thus, stating:

> *The war on terror must also involve the commitment and involvement of elected representatives, local authorities and local people. But the backbone will be formed of local development offering alternatives to the communities in the regions in question, particularly the youth.*[5]

By adopting the "Special Programme for Peace, Security and Development in the North" (PSPSDN), the Malian President is trying to reduce the causes of insecurity and terrorism by implementing actions aimed at security, governance, local development and communications. A further component comprises an increased army presence in the north of the country.[6]

Conclusion

It seems clear that the countries affected by terrorism in the region have chosen strong-arm tactics to deal with AQMI. This will have (indeed, already has had) consequences for the Tuareg and their region. They risk becoming cannon fodder in a rapidly globalising war: France, Algeria, the European Union, Mauritania and Niger are all already involved. The north of Mali, where the terrorists have chosen to set up base, will logically become the arena for battles.

Yet Mali has recently unveiled a new strategy: linking development actions for the local population, to disengage them from AQMI, with a significant military presence in the area. Although the objective is a laudable one, there may be some cause for concern in its implementation. In fact, the "Special Programme for Peace, Security and Development in the North of Mali" (PSPSDN),[7] with a total budget of 32 billion FCFA (around 66 million USD), of which 7.88 billion (around 16 million USD) is funded by the European Union, anticipates creating military units at Tinzawatan, Abeibara and Achibogho. These units will be made up of people who are primarily not indigenous to the region, and this will subsequently change the composition of the electorate: the nomadic peoples thus risk losing the town councils in these areas in 2014 (next local elections), all the more so as the computerised electoral roll that has just been produced most likely does not include all nomadic populations.

Another aspect is that special units, comprised primarily of Tuareg and intended to provide security in the areas in which AQMI and the drugs traffickers operate, have now been established. It is therefore likely that the Tuareg will form the front line in the brewing war on terror. Although the objective is a noble one, the fear is that many Tuareg may simply be sent to the slaughter, without gaining anything in return. ❍

Notes

1 According to Mali's Minister of Tourism, the loss to the local economy stands at 65%.
2 The French government has advised French nationals not to visit this region any more.
3 See the statement of Mali's President during his speech of 20/1/2011, on the occasion of National Army Day at www.koulouba.pr.ml
4 Holy war.

5 Speech by the Malian President on the occasion of National Army Day on 20 January, see: www.koulouba.pr.ml
6 The national daily paper: *l'Essor* dated 22 October 2010, at: http://www.lessor.fr/lessor_historique.htm
7 Created by Presidential Decree No. 10- 381/ PRM of 20 July 2010; see the Presidency's website: http://www.koulouba.pr.ml/spip.php?article2259

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THE HORN OF AFRICA & EAST AFRICA

ETHIOPIA

Pastoralism in Ethiopia constitutes a unique and important way of life for close to 10 million of the country's total estimated population of 80 million.[1] Pastoralists live in around seven of the country's nine regions, inhabiting almost the entire lowlands, which constitute around 61% of the country's landmass. Pastoralists own 40% of the livestock population in the country. They live a fragile existence, mainly characterized by unpredictable and unstable climatic conditions. They are affected by recurring droughts, persistent food insecurity, conflict, flood, inadequate services and infrastructure and they are among the poorest of the poor in terms of disposable incomes, access to social services and general welfare. Access to health care and primary and secondary education is very low compared with other areas (mid- and highlands) of the country. The pastoral population is heterogeneous in its ethnic composition and social structure, having some larger ethnic groups such as the Afar and Oromo, with well over four million pastoral people between them. The rest are Omotic pastoral groups such as the Hamer, Dassenech, Nygagaton and Erbore, and the Nuer and other groups in the western lowlands.

The year 2010 marked another setback in the precarious lives of pastoral communities in Ethiopia. A combination of factors, namely a massive land grabbing of pastoral ancestral land, the unpaid compensation money for the Kereyu pastoralists and the complete hijacking of Pastoralist Day, all made the lives of Ethiopian pastoralists extremely difficult.

Pastoralists evicted from their land

In August 2010, the EPRDF (Ethiopian Peoples Revolutionary Democratic Front) government declared a "policy of transformation" intended to make Ethiopia food

secure in five years. In a country where food insecurity prevails, and sporadic famines affect a large proportion of the population, this should have been welcome news. However, the strategy for this alleged "transformation" revealed that the methods to be used to implement the policy were counter-productive, and specifically targeted the ancestral lands of pastoral communities in western and south-western Ethiopia.

The gist of the strategy is that agricultural production will be boosted through large-scale land leases to foreign investors who, in return, are going to build schools, clinics and install electricity for the communities. Pastoralists' lands will, literally, be confiscated and leased to foreign investors at the extremely low rate of 10 US$ per hectare for a 50-year period. The foreign investors are mainly Saudi Arabian, Indian and Chinese firms who will export their produce back to their countries and, in return, construct token schools, clinics and electrical facilities.

The background to this intended massive land lease is the food crisis, with shortages in 2008-2009 when food prices rose sharply, and this taught food-importing countries such as Saudi Arabia a lesson. Such countries now want to produce food for their own consumption and, when they do not themselves have

sufficient or suitable land, they opt to lease land in countries such as Ethiopia. Their objective is not to target the Ethiopian market but their own. This basically defeats the government's policy of "transformation" and "food security". The tragedy is that all this is going to lead to the destruction of the livelihood systems of millions of pastoral communities in western and south-western Ethiopia, who will lose their land for the sake of this alleged "transformation". The policy does not provide for any compensation and pastoral communities will be uprooted from their ancestral land without any alternative. Evictions have already begun in Gambella.

Critics say that neither the country nor the communities directly affected will benefit from this policy. On the contrary, they maintain that both the country and the communities stand to lose a great deal. As far as the communities are concerned, they will not only lose their land but also their pastoral livelihood system, which has sustained them for centuries. According to the government's plan, three million hectares of land, an area the size of Belgium, will be leased over the coming five years.

In the face of such a massive threat to their livelihood system, ancestral land, culture and way of life, community members have protested and, as elsewhere in Ethiopia, for this they have been gunned down, beaten and imprisoned. So far, 10 people have been killed and many more arrested. Fear reigns, as expressed by a pastoral elder: "You cannot speak freely about the land issue now. You can be arrested or even killed for this. ... This is a dark period for all indigenous people living in the south-west of the country".[2]

The government alleges that the land leased to foreign investors is lying idle and available. The affected communities argue that there is also an ethnic component to this venture, however, and that their land has been targeted not because it was available but because they are not one of the ethnic groups favoured by the regime. Under the EPRDF, the affected communities had been long neglected until their ancestral land became the target of this policy of "transformation". Affected community members hold that what the government describes as "idle land" is actually occupied, and that communities have been using it since time immemorial. This is their ancestral land and, as pastoral land, it is largely used for pasture and for a little agriculture. As the protesters from Gambella say, "They use the land for different purposes - for agriculture, for hunting, sometimes just to gather fruits during famine. There is no empty land in Gambella without a history. Village areas have been cleared and villagers have been bribed to sell their own farm. They can't sell the land, it's not theirs. That land is ancestral land".[3]

There is also an element of discrimination being practised by the government. When farmers are displaced, they are compensated with land elsewhere. When

pastoral communities are forcibly evicted from their ancestral land, there is no compensation whatsoever. The illogicality of such discrimination is probably best explained by the Minister of Agriculture, Abera Deressa, who said that, after all, "pastoralism is not sustainable".[4] This statement is a reflection of the government's attitude and prejudice towards pastoralism, which it views as backward and subject to extinction.

The main question, at the end of the day, is whether or not leasing the pastoral land in this fashion will benefit the country's economy, or the pastoralists themselves. The main argument is that it will prevent food shortages and famine in Ethiopia. This is questionable, however, when the primary objective of the foreign investors is to produce food for their own countries. Where is the benefit for Ethiopia in this respect?

Secondly, how can pastoral communities benefit from these ventures if the cost is the sacrifice of their livelihood system? They could benefit, in one way, if these farms were to provide alternative livelihood systems in the form of the mass employment of the pastoral communities, whereby pastoralists would become rural workers. This is, however, very unlikely since these farms are mechanized and only need limited and skilled labour and will therefore not generate mass employment. This lesson has already been learnt in eastern Ethiopia, where Kereyu and Afar pastoralists were evicted from their ancestral land to make way for large-scale sugar cane plantations. These commercial mechanized farms have not employed the local communities. At the end of the day, the land leases and farming schemes are unlikely to benefit either the country's economy or the pastoral communities of the area and, rather than positive effects, it is very likely that they will lead to the destruction of the livelihood systems, cultures and ancestral land of over four million people.

On top of this, environmentalists warn that the schemes will endanger the environment and wildlife, and that they will greatly affect the availability of water as the two main crops, rice and sugar, need large amounts of irrigation. Water shortages may, in turn, affect the communities such that they are forced to move out of the area altogether.[5]

Fifty years on, the Kereyu have still not been compensated

In the mid-1950s, when the first sugar plantation and sugar factory were opened in the Awash Valley by the Dutch-owned Handels Vereneging Amsterdam (HVA),

hosted by the Ethiopian government, the Kereyu pastoralists were promised full compensation by the imperial government of Haile Selassie. Now, the Kereyu are under the third regime of post-war Ethiopia and, 50 years on, there is still no compensation forthcoming. Kereyu elders renewed their request for compensation some two years ago, to no avail.

Concluding remarks

The rights of indigenous peoples are today increasingly being recognized as fundamental human rights, and international bodies such as the United Nations are giving importance to the recognition of indigenous peoples' rights. Regional organizations such as the African Union are also advancing the cause of indigenous rights.

However, unlike some other countries that blatantly violate indigenous peoples' rights and argue that they are in the right, the EPRDF government follows a two-pronged policy of recognizing the rights of pastoral communities on paper and in official rhetoric but doing the complete opposite on the ground. ❍

Notes

1 **Central Statistics Agency, 2007:** *Official Census.* Addis Ababa.
2 Ed Butler, *BBC World Service*, Dec. 15, 2010
3 Ed Butler, *BBC*, Dec. 15, 2010
4 Ed Butler, *BBC*, Dec. 15, 2010
5 Ed Butler, *BBC*, Dec. 15, 2010

Melakou Tegegn *is an Ethiopian and one of the founders and the first chairperson of the Pastoralist Forum Ethiopia, a national network of indigenous NGOs. He has for many years been engaged in advocacy work on pastoral rights in Ethiopia. He had to leave the country, however, after the violence related to the 2005 elections. He is now a development consultant and is active as a member of the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights.*

KENYA

In Kenya, the peoples who identify with the indigenous movement are mainly pastoralists and hunter-gatherers as well as a number of small farming communities.[1] Pastoralists are estimated to comprise 25% of the national population, while the largest individual community of hunter-gatherers numbers approximately 30,000. Pastoralists mostly occupy the arid and semi-arid lands in northern Kenya and towards the border between Kenya and Tanzania in the south. Hunter-gatherers include the Ogiek, Sengwer, Yaaku, Waata, El Molo, Boni (Bajuni), Malakote, Wagoshi and Sanya while pastoralists include the Turkana, Rendille, Borana, Maasai, Samburu, Ilchamus, Somali, Gabra, Pokot, Endorois and others. They all face land and resource tenure insecurity, poor service delivery, poor political representation, discrimination and exclusion. Their situation seems to get worse each year, with increasing competition for resources in their areas. There is no specific legislation governing indigenous peoples in Kenya. However, the indigenous peoples' planning framework, designed and implemented in 2006 by the Office of the President, in collaboration with the World Bank, provides a basis for free, prior and informed consultation and, with this, sustainable development could be achieved among indigenous peoples. The new constitution specifically includes minorities and marginalized communities as a result of various historical processes, with specific reference to indigenous peoples. Kenya abstained from the vote when the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the UN General Assembly in 2007.

Legal and policy environment: light at the end of the tunnel

Kenya has been implementing legal and constitutional reforms for the last few years and, in 2010, most of the anticipated reforms came to fruition. The country's political governance structures, principles of governance and resource

distribution, plus overall citizen participation in governance processes, including respect for human rights, have changed dramatically.

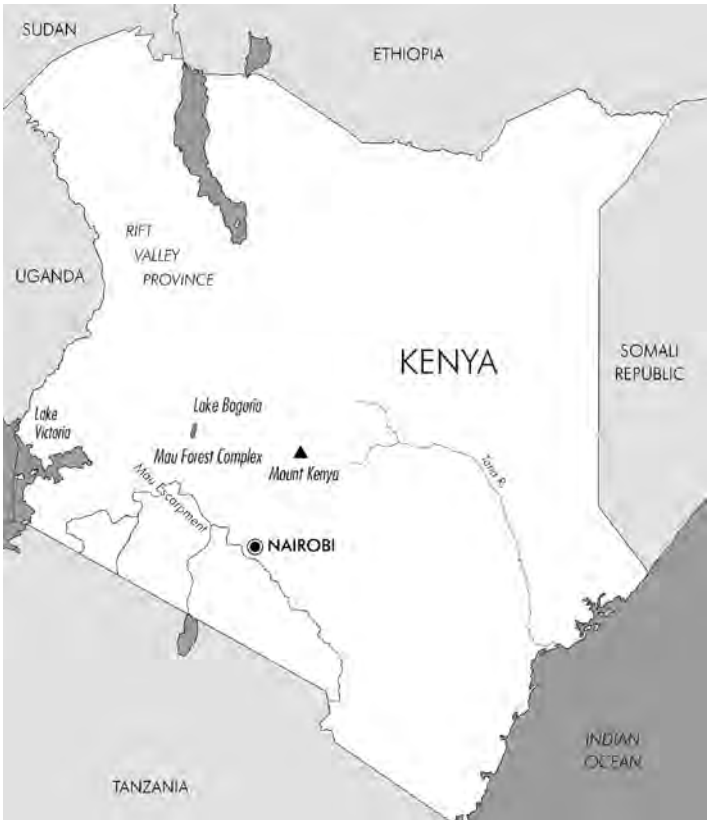
The promulgation of the new constitution on 4 August 2010 encapsulates the momentous gains in the legal and policy arena, especially with regard to indigenous peoples' concerns. The new constitution cements the gains already entrenched in the new National Land Policy of 2009 with regard to indigenous and customary rights to land under collective/communal ownership.

The National Land Policy recognizes how individualisation of title under the former land regime (Registered Lands Act) affected customary tenure by undermining traditional resource management institutions and ignoring customary land rights not deemed to amount to ownership, such as family interest and communal rights to clan land (such as rights to *inkutot* land among the Maasai). In addition, the National Land Policy recognizes pastoralism as a legitimate land-use production system and emphasizes the need to secure the land rights of vulnerable groups, including pastoralists and hunter-gatherers. The National Land Policy asserts that successive governments in Kenya have been "poor stewards" of government and Trust land, resulting in the illegal allocation of essential public land and the destruction of critical natural resources such as forests and water catchments areas, resulting in historical injustices. The policy establishes a mechanism by which claims relating to land and historical injustices can be defined and, hopefully, addressed through restitution.

While the adoption of the new land policy marks a significant step forward, it still needs to be translated into effective protection on the ground for Kenya's most marginalized groups, especially indigenous communities. Most of the recommendations contained in the land policy have found their way into the country's new constitution.

The new constitution and indigenous peoples' rights

Kenya's new constitution "is a clean break with the past and provides several avenues for the pursuit and strengthening of Indigenous peoples' personal and collective rights."[2] To begin with, the new constitution (for the first time) defines marginalization in language very close to that of the UNDRIP. It defines a "marginalized community" as one that:



out of need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social economic life of Kenya as a whole, or an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or pastoral persons and communities whether they are nomadic or a settled community that because of its relative geographic isolation has experienced only marginal participation in the integrated social and economic life of Kenya as a whole. (emphasis in italics added)[3]

The constitution obliges the state to provide for adequate representation of "marginalized groups" at all levels of government, execute affirmative action on behalf of those groups, and promote the use of indigenous languages and the free expression of traditional cultures. From the above, the new constitution not only gives credence to indigeneity on the basis of hunter-gatherer and pastoral lifestyles but also links these aspects to marginalization, in line with the 2003 report of the African Commission on Human and Peoples' Rights.[4] The new constitution also recognizes the concept of self-determination, as enshrined in the UNDRIP, by recognizing the need or desire of these communities to preserve their unique cultures and identity. The following articles from the new constitution are of key importance to indigenous peoples:

Language and Culture: Article 7 of the new constitution obliges the state to promote and protect the diversity of languages of Kenya's people and to promote the development and use of indigenous languages. Article 11 recognizes culture as the foundation of the nation and obliges the state to promote all forms of cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage. These gains are further strengthened under the Bill of Rights - Article 44 - which grants every person a right to use the language and to participate in the cultural life of his/her choice.

The state is also required to recognize the role of indigenous technologies in the development of the nation. Not only shall the state promote the intellectual property rights of the people of Kenya, but parliament is also required to enact legislation which will ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage and which will recognize and protect the ownership of indigenous seeds and plant varieties, their genetic and diverse characteristics and their use by communities.

Representation of Marginalized Groups: Article 100 is intended to complete the provisions of Article 56 by allowing parliament to pass an act which will provide clear recognition and promote and protect the interests of minority/marginalized groups. This act will create specific domains in which minorities will be given affirmative action and will specify how minority/marginalised groups' representatives shall be elected/nominated.

Citizenship: the new constitution recognizes dual citizenship and this will benefit indigenous communities such as the Maasai, who live across borders.

Bill of Rights: Chapter Four (Articles 19-59), provides for a plethora of rights and freedoms. Article 56 specifically provides for affirmative action for minorities and marginalized groups through programmes designed to ensure that they participate and are represented in governance and other spheres of life, are provided with special educational and economic opportunities, access to employment, programmes to develop their cultural values, languages and practices, and reasonable access to water, health services and infrastructure.

Land and resources: Chapter Five of the new constitution classifies land as public, community and private respectively. As provided by Article 63, community land shall be vested in and be held by communities identified on the basis of ethnicity, culture or a similar community of interest. Community lands include those lands lawfully held in the name of group representatives, lands lawfully transferred to a specific community and any other land declared to be community land by any Act of Parliament. It will also include lands lawfully held, managed or used by specific communities as community forests, grazing areas or shrines and ancestral lands and lands traditionally occupied by hunter-gatherer communities. The constitution under the new National Land Commission (Art. 67e) provides for avenues to address historical injustices.

Environment and natural resources: the new constitution obliges the state to ensure the sustainable exploitation, utilization, management and conservation of the environment and natural resources and to ensure equitable sharing of natural resources. The state shall also encourage public participation in the management, protection and conservation of the environment.

Governance: the system of governance will be devolved, with the country divided into 47 counties under governors elected by the people. Indigenous peoples will make up a significant part of the population in the counties, and this will enable them to make decisions that will shape their destiny. In the counties where indigenous peoples will be minorities, special provisions have been made to accommodate their interests.

Indigenous women and youth: under the new constitution, the current free primary education has now been made compulsory (at both primary and secondary levels) for all children, irrespective of their gender. This will go a long way to contributing to the efforts to eradicate illiteracy in Kenya, not least in indigenous peoples' areas. Further, the new constitution provides for equity in resource ownership across gender within households, giving women a right to inheritance that was hitherto denied under customary resource tenure. The greatest achievement for women under the new constitution is the right to political representation. Each county assembly will elect a female member of parliament (MP), essentially guaranteeing a minimum of 47 female MPs in the National Assembly. Additionally, the constitution demands that representation of either gender in all public offices shall not be more than two-thirds.

The policy and legal gains enshrined in the new constitution is a testimony to indigenous peoples' determined and unrelenting efforts and their growing influence to champion their own course. It also reflects a gradually changing perspective on the part of the policy makers with respect to human rights in general and a recognition and appreciation of indigenousness in particular.

Climate change discourse and indigenous peoples' participation

The global, regional and national discourse and intervention programmes in response to emerging challenges associated with climate change have opened up a new arena for indigenous peoples' engagement with states and other relevant institutions.

Climate change has indiscriminate negative impacts on all economic sectors and local communities in Kenya. Some communities, however, are more vulnerable than others. As a result of their historical marginalization, high poverty levels, and strong reliance on natural resources and fragile ecosystems, indigenous peoples are highly vulnerable to shocks such as drought, famine and floods. Climate change negotiation processes aimed at crafting a global instrument to combat the negative impacts of climate change and the current mitigation and adaptation programmes being implemented by multilateral, bilateral and unilateral organizations and institutions such as the World Bank, UN-affiliated bodies and individual nation-states have provided avenues for the indigenous peoples' move-

ment to push for recognition of the unique challenges and vulnerabilities facing indigenous peoples.

The World Bank's Forest Carbon Partnership Facility (FCPF) Charter, for example, provides for safeguard policies in recognition of the special circumstances of the world's indigenous peoples, including the adoption of new rules recognizing the need to respect the rights of indigenous peoples and forest dwellers, in accordance with applicable international obligations. Furthermore, the Bank has also made a small fund available to support indigenous and local participation in the REDD+ planning activities under the Forest Implementation Program (FIP).[5] The same provisions can also be seen in the UN-REDD mechanism.

Beyond simply making provision for indigenous peoples' participation in the intervention mechanism, the UN-REDD more importantly requires participating countries to respect the provision for indigenous peoples' full and effective participation, including Free, Prior and Informed Consent (FPIC). Indigenous peoples in Kenya have taken advantage of the window of opportunity under this mechanism and, in May 2010, they participated in the national Readiness Preparation Proposal (RPP) validation workshop. The process has been very rewarding, especially with regard to the cause of indigenous peoples in Kenya. For the first time, not only did a leading government agency willingly use the term "indigenous peoples" but it also went a step further to organize a workshop exclusively for indigenous peoples.[6] This initiative contributed to enhanced opportunities for indigenous peoples' dialogue with the state, and amongst groups of indigenous peoples themselves.

The extent and level of participation of indigenous peoples from Kenya in the global climate change negotiation processes has also significantly improved, especially from COP15 to COP16. These few representatives of Kenya's indigenous peoples are part of the International Indigenous Peoples' Forum on Climate Change (IIPFCC), which has remained instrumental in pushing for the inclusion of indigenous-friendly language in the UNFCCC negotiated text. The Kenyan indigenous peoples' delegation to Cancún (COP16) could therefore rightly associate itself with the modest gains achieved by indigenous peoples in the "Cancún Global Agreements".

Additionally, for the first time in the history of these global negotiations, the government of Kenya accredited four representatives from indigenous peoples' groups as "state party" delegates to the COP 16, granting indigenous peoples the opportunity to participate directly in the negotiations. In effect, this move not only broke down the barrier between the role of NGOs as observers and that of state(s)

parties as negotiators but also served as a vote of confidence in indigenous peoples as citizens and as a sign of recognition that their course was legitimate. For the entire Cancún negotiation period, a healthy debate continued between Kenyan indigenous peoples and government officials. This took place in the context of a new constitution that recognizes indigenous peoples in the country, and a positive dialogue also continued once back home in Kenya.

Another positive outcome of this global process around climate change is the formation of a National Indigenous Peoples' Steering committee on Climate Change (NIPSCC). The broad goal of this committee is to provide a common platform through which indigenous peoples can engage with one voice in national and global processes on issues related to climate change and REDD+. The platform is also intended to provide avenues for partnership, networking and resource mobilization in order to address common concerns in the context of climate change at the national level. The committee, as presently constituted, has representatives from six regional blocs of indigenous peoples' groups in Kenya, namely: North Rift, Central Rift, South Rift, Upper Eastern, North Eastern and Coast regions. The Mainyoito Pastoralist Integrated Development Organization (MPIDO)[7] is currently serving as secretariat to the committee.

Since its inception, and to date, the committee has made some impressive progress, including holding several consultative and information sharing sessions on climate change and developing a five-year strategic plan and corresponding programme of activities. Further, some of the committee representatives have had the opportunity to attend national and global processes related to climate change, thereby enhancing the capacity of indigenous peoples' leaders to competently engage at all levels.

The Endorois decision

The landmark ruling by the African Commission on Human and Peoples' Rights on the long-standing land rights case of the Endorois people is another key highlight in the increasing recognition of indigenous peoples' rights, not only in Kenya but within the African region. The ruling, delivered on 4 February 2010, condemned the expulsion of the Endorois people from their ancestral lands. The Kenyan government evicted the Endorois people, a traditional pastoralist community, from their homes at Lake Bogoria in central Kenya in the 1970s to make way for a national reserve and tourist facilities.

After being evicted from the fertile land around the lake, the Endorois were forced to congregate on arid land, where many of their cattle died.

The African Commission accepted the Endorois' evidence that they had lived on their ancestral lands around Lake Bogoria since "time immemorial" and that the lake was the centre of their religion and culture. The African Commission further found that the eviction, carried out with minimal compensation, had violated the Endorois peoples' right as an indigenous people to property, health, culture, religion and natural resources. It ordered the Government of Kenya to restore the rights of the Endorois to their ancestral land and to compensate them. This is the first ruling to determine who indigenous peoples in Africa are, and what their rights to land are. The Endorois decision, which is the first of its kind, is a victory for all indigenous peoples across Africa, whose existence has largely been ignored both in law and in living reality, and it can help many others across Africa who have been forcefully dispossessed of their lands. The case is therefore a historic milestone in the struggle for recognition of indigenous peoples' rights to land and sets an unprecedented reference. The ruling spells the beginning of a brighter future for the indigenous peoples' movement in the region. However, although the Commission required Kenya to take steps to return the Endorois' land and compensate them within three months of the date of the ruling, one year on, implementation of the ruling remains a mirage.

The Mau Forest and the Ogiek

The degradation of the Mau Forest remains an on-going concern, affecting rights to water particularly in pastoral areas and the right to entire livelihoods amongst the hunter-gatherer groups relying on the forest ecosystem. The government has initiated an ambitious project to save the Mau forest complex, which entails the eviction of individuals purported to have encroached on the forest reserve.

The restoration of the Mau complex is essential because it forms the largest closed-canopy forest ecosystem in Kenya and one of the five main "water towers" of the country, along with Mt. Kenya, the Aberdare Range, Mt. Elgon and the Cherengani Hills. It is a natural asset of national importance that supports key economic sectors in the Rift Valley and western Kenya, including energy, tourism and agriculture, and it is the lifeline for eight major conservation areas in the

country.[8] The livelihoods of a number of indigenous peoples are heavily dependent on this forest ecosystem.

The Ogiek indigenous people, who number around 20,000 people, have been living in the Mau Forest since time immemorial and they are widely considered to be the indigenous inhabitants of the Mau. The Ogiek argue that they have lived in the forest ecosystem as hunter-gatherers for centuries and have not contributed to forest deforestation or degradation but rather to its conservation. Throughout 2010, the Ogiek remained concerned that the evictions might also affect them. The Ogiek have, over the years, been forcefully evicted from the forest and many already live an impoverished life at the forest edge. They have received little or no compensation and, deprived of their forest-based livelihoods, they eke out an existence characterized by marginalization and extreme poverty. It is estimated that 10,000 Ogiek still live within, and fully depend on, the forest for their livelihood.

In 2010, the Ogiek sought a dialogue with the Government of Kenya to ensure that their rights as indigenous peoples to live in the Mau Forest would be respected. A body called the Ogiek Council of Elders, consisting of 60 Ogiek elders, has been established to this effect and some dialogue has been taking place. There has been no major progress, however, and a concrete policy/programme guaranteeing the land and natural rights of the Ogiek has yet to be put in place. Meanwhile, the Ogiek have also taken their case to the African Commission.

The Universal Periodic review (UPR): a window of opportunity

The UPR process, in which indigenous peoples' organizations and groups last year participated for the first time, provides an avenue by which indigenous peoples' groups and like-minded institutions can monitor and influence the extent to which human rights of indigenous peoples are being promoted and protected in Kenya. Kenya was reviewed by the Working Group of the Human Rights Council on 6 May 2010 under the United Nations Universal Periodic Review (UPR) mechanism. Kenya's report was thereafter adopted by the United Nations Human Rights Council on 22 September 2010.

A UPR stakeholder report was submitted by the Kenya Stakeholders Coalition[9] for the UPR and by the United Nations Country Team (UNCT). The Kenya National Commission on Human Rights (KNCHR) was the lead agency in the UPR process, coordinating the involvement of civil society organizations in the

process. The civil society input to the UPR process was preceded by a capacity-building exercise on the UPR process itself since it was a new concept for most stakeholders. The Kenya Stakeholders Coalition, which comprises 97 national and international organizations working on human rights issues, submitted a comprehensive stakeholder report on key human rights issues of concern, and the issue of violations of indigenous peoples' rights was included in this report. In addition, a separate stakeholder report on violations of the rights of indigenous peoples was submitted by a coalition of 10 indigenous peoples' organizations.

Representatives of indigenous peoples in Kenya participated in the UPR examination in Geneva. During this examination, several states raised questions and made recommendations to Kenya with regard to the recognition and improvement of indigenous peoples' rights in Kenya.

After the UPR examination, dialogues and consultations continued between the government and the civil society coalitions and, in its final response to the UPR recommendations, the Kenyan government was generally positive with regard to most of the recommendations, including a number of recommendations on indigenous peoples' rights.

The KNCHR and Kenya Stakeholders Coalition for the Universal Periodic Review have prepared an Outcomes Charter outlining expectations related to the recommendations made to the state, specific actions that should be undertaken by the state and how stakeholders can ensure implementation of the recommendations, along with monitoring indicators. In this regard, the Centre for Minority Rights Development (CEMIRIDE) and Pastoralist Development Network - Kenya (PDNK) - both of which are NGOs serving indigenous populations in the country - are working in collaboration with the KNCHR to develop a national framework for the next period of the UPR with respect to indigenous peoples.

Looking ahead

Overall, 2010 was a year of significant achievements in the context of indigenous peoples' claims in Kenya. The most notable gains are due to: the adoption of the new constitution; programmes and interventions related to climate change; participation in the UPR processes; and court rulings. These gains were mainly the result of mounting pressure from the indigenous peoples' movement in the country, with support from like-minded groups/institutions, both locally and globally.

The gains are encouraging and they should serve to embolden the indigenous peoples' movement to push for concrete actions to secure their livelihoods. A major challenge will be how to translate the good text of the new constitution into the right spirit of implementation in order to realize tangible outcomes for the improvement of indigenous peoples' rights and livelihoods.

Additionally, the UPR process provides an extra window of opportunity for monitoring the country's performance on human rights, including the rights of indigenous peoples. ❍

Notes

1 *Report of the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights*. Copenhagen: IWGIA, 2003.
2 Report by Samburu Women for Education & Environment Development Organization (SWEEDO), 8 December 2010.
3 Constitution of Kenya, Article 260.
4 *Report of the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights*. Copenhagen: IWGIA, 2003.
5 Forest Peoples Program Oct. 2009.
6 Kanyinke ole Sena: a member of one indigenous peoples' group in Kenya and a consultant to the World Bank's FCPF.
7 NGO for development and human rights working amongst indigenous communities in Kenya
8 Daily Nation, 2 April 2009; Standard Newspaper. 4 April 2009.
9 97 National and international organizations and institutions working on human rights and development concerns.

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UGANDA

Indigenous peoples in Uganda include the traditional hunter/gatherer Batwa communities, also known as Twa and Benet, and pastoralist groups such as the Karamojong and the Ik. They are not specifically recognized as indigenous by the government.

The *Benet*, who number around 20,000 people, live in the north-eastern part of Uganda and are former hunter/gatherers. The 6,700 or so *Batwa,* who live primarily in the south-western region of Uganda, are also former hunter/gatherers. They were dispossessed of their ancestral land when the Bwindi and Mgahinga forests were gazetted as national parks in 1991.[1]

The Constitution has no express protection for indigenous peoples but provides for affirmative action in favour of marginalized groups. The Land Act of 1998 and the National Environment Statute of 1995 protect customary interests in land and traditional uses of forests. However, these laws also authorize the government to exclude human activities in any forest area by declaring it a protected forest, thus nullifying the customary land rights of indigenous peoples.[2] Uganda is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples.

Batwa

Continued frustration

2010 was another frustrating year for the Batwa in Uganda and, despite continued pressure through their representative organisation, the United Organisation for Batwa Development in Uganda (UOBDU), their calls to government continued to go unanswered. Despite national elections planned for early 2011, minority and indigenous rights issues were largely absent from political debates in 2010. As part of their continued lobbying, the Batwa were able to participate in meetings with government departments and ministries at national level, participate in Afri-

can Commission events at regional level and submit an alternative report to the UN Convention on the Elimination of All Forms of Discrimination against Women.[3]

Positive developments

One much anticipated development in 2010 was the emergence of the Batwa's first university graduate, Alice Nyamihanda, who graduated with a diploma in Development Studies and is now working for UOBDU. Another welcome development was the opening of a joint tourism project within Mgahinga Gorilla National Park. The Batwa Trail allows tourists to be led through the national park by Batwa guides, who share their indigenous knowledge. The project is run jointly by UOBDU, the Ugandan Wildlife Authority and the Kisoro District local government and it is hoped that this venture, and the relations that it helps to develop, will be the start of Batwa involvement in the management of their former ancestral territories.

Benet

In 2004, the Benet won their case against the government, and the High Court judgement gave the Benet land and services in recognition of their rights.[4] A reconnaissance visit in 2010, however, found that land insecurity has continued, with the ever-looming possibility of eviction for the 6,000 Benet residing on the upper side of the resettlement area of Mt. Elgon. Most of the land allocated as a result of the court judgement was grabbed and human rights violations ensued, with a park ranger killing 6 Benet community members in 2009. The Benet did not therefore benefit from the court ruling. They have been left homeless on the edge of the forest.

Engagement with the execution of the consent judgment

In 2010, the Uganda Land Alliance sought an audience with the Minister for Tourism and Wildlife with regard to:

- the resettlement of the Benet who, for more than five years, have been living in caves just outside the boundaries of the forest reserve or have been housed by well-wishing neighbouring tribes;

1. Bwindi National Park
2. Mgahinga Gorilla National Park
3. Echuya Forest Reserve
4. Kapchorwa
5. Bukwo District
6. Moroto District

- the degazettement of the settled areas of the Mt. Elgon Forest Reserve; and
- the extension of services to the settled area.

Three meetings were planned together with the area's Member of Parliament, the Hon. Dr. Yeko Arapkissa, two representatives of the Benet Lobby Group and 12 Benet. The purpose of these meetings was to discuss:

- a formal commitment that the government has adopted the 1983 line as the official boundary line in the Benet area;

- the actual degazettement of the area in line with the provisions of the consent judgment and decree, in order to give it legal effect;
- the degazettement of the Amanang land.[5]

What has changed?

The Uganda Human Rights Commission has investigated the killings and other human rights violations that occurred among the Benet community, although the report has not yet been published. The District Internal Security Officer and the District Police Commander in Bukwo District (a new district carved out of Kapchorwa) have taken steps to recover land from the illegal land grabbers and hand it back to the rightful beneficiaries. The official degazettement of this area has not happened to date, and no commitment has been received from the government to this end.

Karamojong

Rights over pastoralist lands in Karamoja are under threat from government, mining companies, investors in agriculture and the Karamojong elite. There is an imminent fear that speculators will grab large chunks of land for future investment. This is exacerbated by the fact that over 80% of the land is gazetted, making security of tenure vitally important.

The intervention

In 2010, the Uganda Land Alliance implemented a pilot project in Irriri sub county, Moroto District, to enhance security of tenure among the indigenous peoples of Karamoja. This was done through the use of community mapping, which helped to buttress the community's own vision of development and economic growth, of peace and security, and of their needs as a community, especially the role of women in the management and administration of land. The cultural dimension of this is that community mapping has the potential to enhance local governance structures as a channel through which to defend or advocate for the rights of indigenous peoples to their ancestral lands.

What has changed?

The realization of women's land rights as individual land rights holders and as co-owners with their husbands dramatically improved in 2010. Furthermore, community structures have embraced women's participation in land management institutions. Community mapping provided spatial information that was used, and continues to be used, for territorial planning and natural resource management, enabling them to practise sustainable pastoralism through the use of maps for local governance planning and decision making. Community mapping has empowered the Karamojong to raise their voices and lay claim to their ancestral lands before these same areas are gazetted by the government for conservation and development purposes. Negotiations are ongoing for the degazettement of some of the land in the Pian Upe National Reserve, which rightfully belongs to the Karamojong people. ❍

Notes

1 **United Organisation of Batwa Development in Uganda (UOBDU), 2004:** *Report about Batwa data*. August 2004, Uganda, p.3.
2 Land Act (1998), Articles 2 and 44; *National Environment Statute* (1995), Article 46.
3 See www.forestpeoples.org/.../uganda-uobdu-fpp-alternative-report-cedaw-oct-2010cedawcuga7.pdf
4 The consent judgement declared that the Benet people were historical and indigenous inhabitants of the area that had been declared a wildlife protected area and the court declared that this community was entitled to stay, carry out agricultural activities and develop their habitat undisturbed. It further provided that the Uganda wildlife authority and the Attorney General would take the necessary steps to de-gazette the area, after a physical inspection of the boundary with the community. A duty was placed on the Attorney-General to take affirmative action in favour of the Benet in order to redress the imbalance which exists in terms of education, infrastructure, health and social services, as provided for in Art. 32(1) of the Constitution.
5 As a result of the Judgement, the Benet land was to be de-gazetted and allocated to the people. This land was, in 1983, included within the boundaries of the National Park when the park boundaries were redrawn. The meeting was therefore aimed at discussing a consolidated approach to systematically handling the degazettement of all the land that was stipulated in the consent judgement and ensuring the resettlement of the Benet people.

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TANZANIA

Tanzania is estimated to have a total of 125 – 130 ethnic groups, falling mainly into the four categories of Bantu, Cushite, Nilo-Hamite and San. While there may be more ethnic groups that identify themselves as indigenous peoples, four groups have been organising themselves and their struggles around the concept and movement of indigenous peoples. The four groups are the hunter-gatherer Akie and Hadzabe, and the pastoralist Barabaig and Maasai. Population estimates[1] put the Maasai in Tanzania at 430,000, the Datoga group to which the Barabaig belongs at 87,978, the Hadzabe at 1,000[2] and the Akie (Ndorobo) at 5,268.

While the livelihoods of these groups are diverse, they all share a strong attachment to the land, distinct identities, vulnerability and marginalisation. They experience similar problems in relation to tenure insecurity, poverty and inadequate political representation. There is no specific national policy or legislation on indigenous peoples *per se* in Tanzania. On the contrary, a number of policies, strategies and programmes that do not reflect the interests of the indigenous peoples in terms of access to land and natural resources, basic social services and justice are continuously being developed, resulting in a deteriorating and increasingly hostile political environment for both pastoralists and hunter-gatherers.

The situation of indigenous peoples in Tanzania in 2010

The human rights situation of indigenous peoples in Tanzania showed no improvement in 2010 as compared to previous years. Indigenous peoples' struggles therefore continued, using different platforms such as legal action and advocacy. In 2010, indigenous peoples also witnessed the enactment of yet another law which, in their opinion, only adds to the large number of laws undermining pastoralism. Each of these issues is discussed below.

Filing a constitutional petition

In 2009, 200 huts belonging to indigenous Maasai pastoralists in Loliondo, Ngorongoro District, in northern Tanzania, were burned down, allegedly to make room for a wildlife hunting company "Ortello Business Corporation" from the United Arab Emirates. Ever since then, there has been no peace in Loliondo. Three different investigative commissions have been undertaken to look into the issue. These are: the Parliamentary Investigatory Committee, the Committee of the Ministry of Tourism and Natural Resources, and the Investigation Committee of the Commission for Human Rights and Good Governance (CHRAGG), which is the national human rights institution. These commissions included neither the victims nor their legitimately elected representatives or institutions in their composition. As a result, their findings have been biased in favor of the government.

For example, the CHRAGG report, which was made public, indicates that the only interviewees were government officials. It documents details of the event as narrated by, among others, the Assistant Inspector of Police who was in charge of the eviction, without according an opportunity to a single victim to narrate their side of the story. The CHRAGG, which was created by the constitution of the United Republic of Tanzania of 1977 (as amended from time to time) and mandated to promote and protect human rights in the country, concludes in its report that apart from the burning of homesteads, no other human rights violations took place. As a basis for this conclusion, the report refers to a statement given by the Acting District Commissioner for Ngorongoro, who authorized the eviction and who claimed that the eviction instructions included the use of "reasonable force" and "praying daily before engaging in the exercise." Strangely, the report analyses the laws of Tanzania in an effort to justify human rights violations. This is in total disregard of binding international human rights conventions to which Tanzania is a party, some of which state clearly that "under no circumstance can a people be deprived of their right to subsistence."

Dissatisfied with the situation, which is seemingly not improving, pastoralists in Loliondo decided to file a constitutional petition at the High Court of Tanzania, with the technical and financial assistance of human rights NGOs. These organizations include the Legal and Human Rights Centre (LHRC), Ujamaa Community Resource Trust (UCRT), Pastoralists Indigenous Non-Governmental Organiza-

1. Ngorongoro Conservation Area
2. Loliondo Game Controlled Area
3. Kilosa District
4. Kiteto District

tion (PINGOs) and Ngorongoro Non-Governmental Organization Network (NGONET).

Respondents in this petition include the District Commissioner (DC) for Ngorongoro, the Minister for Natural Resources and Tourism (MNRT), and the Attorney-General of Tanzania (AG). The main issue in the petition is that the investment, as well as the subsequent forceful evictions of the Maasai pastoralists, is in contravention of the Constitution of the United Republic of Tanzania of 1977 (as amended from time to time), in particular Articles 12, 13, 14, 15, 16(1), 17(1), 18, 20, 21(2), 24, 27, 28, and 29.

The petition states that the indigenous pastoralists who were forcefully evicted have the right to live in the Game Controlled Area pursuant to the Wildlife Conservation Act 1974, the Land Act 1999, the Village Land Act of 1999, the Local Government (District Authorities) Act of 1983, and Articles 17(1) and 24(1) of the Constitution of the United Republic of Tanzania 1977 as amended.

While the case has yet to be determined on merits, there are ongoing meetings between the government and communities in which the Government of Tanzania is trying to persuade members of the community to withdraw the case. This can be seen in the decision of the Minister for Tourism and Natural Resources to form a committee which is expected to resolve the Loliondo conflict "once and for all". This is despite the fact that many other committees have been formed in the past, as explained above, in vain.

Land-use planning

Another issue, which is going on in parallel to the constitutional case before the law courts, is the issue of land-use planning in the disputed village lands. This entails a process by which the village land is surveyed and mapped with a view to delineating resource utilization zones such as settlement, farming, grazing or conservation. Procedures for conducting land-use planning are clearly given in the Land Use Planning Act No. 6 of 2007. Since the exercise entails great costs, and given the government's budgetary constraints, land-use planning in Tanzania has, to a large extent, been conducted by NGOs with financial assistance from foreign donors and not by the central or local government institutions. This time, however, the government decided to initiate land-use planning in Loliondo without any request or demand from the community, thus causing speculation as to what the exact motives behind this were.

According to the new Wildlife Act of 2009, no human settlement, livestock grazing or agriculture is permitted in a Game Controlled Area. Accordingly, the Minister in charge of Wildlife Conservation is required by law to ensure that no village land is included in the game controlled areas. Since the disputed land in Loliondo is both village land and, at the same time, a Game Controlled Area, the minister has two options at his disposal in order to implement the provisions of the law. These are either to relocate all pastoralists from these villages or to issue a government notice to the effect that the disputed land shall remain village land

and no longer be a Game Controlled Area. Speculation is widespread among Maasai elites that the ongoing government-driven land-use planning is intended to excise the most strategic part of the disputed land and declare it a Game Reserve while declaring the remaining part village land, hence falling under the management of the respective village governments.

Filing a civil suit on land matters

In 2010, indigenous peoples in Tanzania filed yet another land case in the High Court of Tanzania in Arusha, and this was the second land case to be filed in 2010. The plaintiff in this case is the Soitsambu Village Council and the respondents are Tanzania Breweries Limited (TBL) and the Tanzania Land Conservation Trust, respectively. Soitsambu village is in Loliondo division, Ngorongoro District, northern Tanzania. It has a population of approximately 8,000 residents.

A brief background to this case is that in 1984, in collaboration with Ngorongoro District Council, the Government of Tanzania granted 12,600 hectares of land belonging to Soitsambu village to Tanzania Breweries Ltd, a parastatal organization, for the purpose of barley cultivation. In 1986, aggrieved Soitsambu villagers filed a law suit which ended in TBL's favour in 1991.

In 2006, TBL leased the disputed land to the Tanzania Conservation Trust (TCT). Since then, conflicts over land in that area have been the rule rather than the exception. The government has formed a number of committees to investigate the alleged fraudulent land allocation but nothing has changed on the ground. Dissatisfied by the fact that the government is not committed to addressing their plight, Soitsambu villagers, represented by their executive body - the village council - decided to go back to court, hence this case.

On 27 October 2010, more than 700 pastoralists in Ngaite sub-village in Kilosa District, Morogoro region, northern Tanzania, marched to the office of the District Commissioner to return their voter registration cards prior to the 31 October 2010 elections. They declared that they had decided not to vote because they were tired of oppressive practices perpetrated by investors who had told them that they were to vacate their ancestral land prior to the general elections.

According to the *Tanzania Daima* newspaper dated 29 October, the government promised to solve the problems and managed to persuade pastoralists to vote. Thus far however, the government has yet to initiate any lasting solutions.

Kilosa District, where Ngaite sub-village is situated, is still characterized by serious land conflicts involving pastoralists and peasants.

The Grazing-Land and Animal Feed Resources Act

Despite already having many laws on the statute book that negatively affect pastoralism, in 2010 Tanzania enacted yet more legislation which, in the opinion of pastoralists and their activists, is intended to make it even harder for them to follow their livelihood. This legislation is the Grazing-Land and Animal Feed Resources Act 2010.

It was enacted to provide for the management and control of grazing lands and animal feed resources. The Act replaces the former Rangeland Development and Management Act, which was repealed by the Land Act of 1999. The Act translates and implements the National Livestock Policy of 2006.

Potential problems with this Act, as far as pastoralism is concerned, were identified and presented to Parliament, in particular the Parliamentary Permanent Committee on Water, Livestock and Agriculture, in March 2010 by the Pastoral livelihood Taskforce-PLTF (a consortium of more than 15 pastoral NGOs in Tanzania).

The problems identified by the PLTF include the interpretation of some of the terms used in the Act. For example, the Act defines "communal grazing land" as grazing land owned by a "livestock keeper" and it defines the "livestock keeper" as a person who engages in livestock keeping for "production". The term "production" is defined as rearing animals for a commercial purpose. The PLTF hence argues that the Act does not provide for the protection and promotion of pastoralism but exclusively focuses on commercial livestock keeping.

Further, the Act does not recognize the traditional pastoralist practices of utilization and management of rangeland resources. On the contrary, it provides for totally different ways of managing and using the rangelands. Traditional pastoralist practices are sustainable and adapted to the particular conditions of the geographic region in which pastoralism is practised. One of the key issues is that pastoralists use mobility as a critical way of managing and utilizing resources in the rangelands.

Section 4 (1) of the Grazing-Land and Animal Feed Resources Act provides for the establishment of a National Grazing Lands Council, as well as an Animal

Feed Resources Advisory Council. What astonishes pastoralists is that there is only one representative from pastoral and agro-pastoral non-governmental institutions in these councils, each composed of 12 members and all appointed by the Minister responsible for Livestock. This is despite the fact that pastoralists and agro-pastoralists account for 94% of the livestock sector in Tanzania.

Despite the fact that the Constitution of the United Republic of Tanzania guarantees the right to own property, a person called "the Livestock Inspector" is - under Section 20 of the Act - vested with the power to control the so-called "stock rate". Stock rate in this context means the number of livestock permitted within a given unit of land. The livestock inspector is further empowered to take measures if such rate is exceeded. The main measure mentioned is that of reducing the livestock through a "legal process", a term which is not defined by the Act.

A "stock rate" is not applicable in the pastoralist setting where availability of resources is temporary and spatial, even more so as a result of climatic fluctuations. Pastoralists cannot therefore determine the number of livestock per land unit or "stock rate".

Other draconian provisions are included in Sections 7 and 8 respectively. They establish the office of the Inspector of Animal Feed and Resources and bestow on him functions such as the power to enforce standards for maintenance criteria aimed at improving the grazing land. These standards, however, are inapplicable to pastoralism since they do not recognize or take into consideration traditional pastoralist norms and practices, in accordance with climatic fluctuations.

A critical review of the Act shows that it was designed for commercial livestock keeping. This system constitutes a minor part of the livestock sector in Tanzania. It has, however, received more government attention and investment because it is perceived by the government to contribute more to the market-oriented national economy than pastoralist production. Pastoralists and their activists are of the unanimous opinion that the Act may lead to an undermining of pastoralism as a livelihood system.

The Akiye land under acute and unprecedented pressure from land grabbers

The Akiye hunter/gatherers live in Napilukunya and Ngapapa sub-villages in Kiteto District, northern Tanzania. According to the Ujamaa Community Resource

Trust (U-CRT), this community suffered from unprecedented land grabbing in 2010. This was due to an influx of farmers who encroached upon their land without any protection being offered them by the District authorities. As a result, chunks of forest on which the hunter/gatherer community depends for medicinal as well as food resources were converted into farms.

According to the UCRT, the issue of land grabbing in Napilukunya sub-village is now alarming and requires immediate intervention in order to protect the remaining part; failing this the Akiye traditional livelihood will become impossible.

Since they are a numerical minority, the Akiye are not elected to the Kimana Village Council, (of which Napilukunya sub-village is a part), a body that is accused of taking decisions detrimental to the Akiye's rights to land and natural resources. In 2010, the UCRT initiated processes that could lead to Napilukunya being declared a fully-fledged village, in accordance with the provisions of the Local Governments (District Authorities) Act 1982. If successful, this will enable the Akiye to have a decision-making body and a legal mandate to govern their lands. Initial research conducted indicates that the Akiye meets the requirements for forming their own village. However, political will on the part of policy and decision makers is of paramount importance for this proposal to take effect. ❍

Notes

1 www.answers.com/Maasai ; www.answers.com/Datoga; www.answers.com/Hadza.

2 Other sources estimate the Hadzabe at between 1,000 – 1,500 people. See, for instance, **Madsen, Andrew, 2000:** *The Hadzabe of Tanzania. Land and Human Rights for a Hunter-Gatherer Community*. Copenhagen: IWGIA.

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CENTRAL AFRICA

RWANDA

The indigenous Batwa population of Rwanda is known by various names: indigenous Rwandans, ancient hunter-gatherers, Batwa, Pygmies, Potters, or the "historically marginalized population". The Batwa live throughout the country and number between 33,000 and 35,000 people out of a total population of around 11,000,000, i.e. 0.3% of the population.[1] They have a distinct culture, often associated with their folkloric and traditional dance and the intonation of their specific language.

Prior to 1973 when national parks were created in Rwanda, the Batwa lived mainly from hunting and gathering in the territory's natural forests. They were expelled from their ancestral lands with no warning, compensation or other means of subsistence**.** They now constitute the poorest and most marginalized ethnic group in Rwanda.

Statistics from 2004[2] clearly illustrate this. For example, in 2004, 77% of the Batwa were not able to read, write or count, less than 1% had completed secondary education and none had completed higher education.; only 30% had health insurance; more than 46% of Batwa families live in grass huts (straw houses); 47% had no farmland (this is nearly four time higher than the national average); 95% of them produce pottery, although their clay products are sold at less than the cost of production; 85% of the Batwa barely even ate once a day.

Their complete lack of representation in governance structures has been a great problem for the Batwa. However, Article 82, para 2 of the Rwandan Constitution, amended by revision no. 2 of 8 December 2005, stipulates that eight members of the Senate must be appointed by the President of the Republic, who shall also ensure representation of historically marginalized communities. However, at the moment the Batwa have only one representative in the Senate.

The Rwandese government still does not recognise the indigenous or minority identity of the Batwa and, in fact, all ethnic identification has been banned since the 1994 war and genocide, even though the government

voted in favour of the UN Declaration on the Rights of Indigenous Peoples. Because of this unwillingness to identify people by ethnic group, there is no specific law in Rwanda to promote or protect Batwa rights.

The general situation of Batwa in Rwanda in 2010

There was no particular change in the socio-economic situation of the Batwa people in 2010. Some progress was, however, noted in the area of education,

with an ongoing programme in favour of the Batwa financed by the Ministry of Local Administration (MINALOC): in 2010, there were 160 Batwa secondary school pupils and 32 Batwa students in higher education. The government also has a programme aimed at distributing health insurance and, to date, 40% of Batwa have benefited from this. Finally, there have also been housing construction projects for the historically marginalised populations (Batwa and other vulnerable groups). Moreover, thanks to COPORWA's advocacy work with the different national-level development programmes, 31 Batwa families received 31 cows (Rwandese government's "a cow per household" programme) and three more benefited from the Ubudehe programme (local development programme).

It is, however, important to note that the situation remains critical. In September 2010, members of the Social Affairs and People's Rights Commission of the Rwandese Senate held a meeting with COPORWA staff to discuss the problems facing Rwanda's Batwa. The Senate's report evaluating government actions for vulnerable groups, published in January 2011, is evidence that the Batwa are today still living in appalling conditions, suffering from discrimination and marginalisation, and participating scarcely at all in the country's development programmes.

The national programme to destroy straw huts

In November 2010, the Rwandese government commenced a programme to destroy straw huts throughout the whole country. The government's justification for this programme is that all people in Rwanda must live in modern houses. It should be noted, however, that despite the initiation of the programme in November 2010, more than 3,500 Batwa households were still living in such huts.

Since November 2010, more than 420 of the 3,500 Batwa households in the East and South Provinces have fallen victim to this programme and their huts have been destroyed by the local authorities, with no compensation or alternative housing provided. This programme affects all Rwandese people and although some people have attempted to build modern houses, the Batwa do not have the financial resources necessary to be able to do so, and the programme has therefore rendered many Batwa families homeless. COPORWA has therefore undertaken advocacy work at the highest level and made field visits to ask both the local and national authorities to put a halt to the destruction of these homes. Some

local authorities understand the problem and have organised community work (Umuganda) to help build modern houses for Batwa families.

It is, however, difficult to find enough materials to build all the new houses and there are insufficient financial resources, meaning that a number of donors have to be found. Meanwhile, the Batwa families whose houses were destroyed now live in an extremely precarious situation and they have become even more vulnerable than they were before. More than 167 Batwa households whose huts have been destroyed are now living in just 22 houses, being an average of 7 households per house. They therefore urgently require adequate housing, are suffering a multitude of problems, and many of them have fallen ill.

COPORWA's activities in 2010

COPORWA is an organisation that was set up by the Batwa for the promotion, protection and sustainable development of their people in Rwanda.

COPORWA's vision is a country without discrimination or marginalisation, in which each citizen has equal socio-economic, political, civic and cultural rights. COPORWA's mission is to promote respect for rights, and to work for the social and economic integration of the potter community into Rwandese society through education, culture, strengthening of livelihoods and defence of human rights.

In 2010, COPORWA undertook the following activities:

- COPORWA officially published its 2010-2014 five-year strategic plan, setting out its four core programmes: livelihoods, human rights, education and culture, and environment, as well as cross-cutting issues such as gender and health.
- COPORWA provided support in terms of agricultural inputs and distributed three cows and 184 goats to 210 Batwa households in Rwanda.
- 146 young potters began, and are continuing, apprenticeships in different trades.
- COPORWA trained 60 Batwa leaders to create small income-generating jobs and 440 Batwa were sensitised and trained in human rights.

- Through COPORWA's advocacy work, 302 potter households recovered lands that had been taken by their neighbours.
- The 57 Batwa households in Coko, Cyahinda sector, Nyaruguru district in South Province received household utensils.
- 10 literacy circles involving 318 Batwa (85 men and 233 women) are providing adult literacy classes (reading, writing and counting). ❍

Notes

1 According to a socio-economic survey carried out in 2004 by CAURWA (la Communauté des Autochtones Rwandais) now known as COPORWA (the Community of Rwandan Potters) in collaboration with the Statistics Department of the Ministry of Finance and Economic Planning.
2 *bid.*

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BURUNDI

The Batwa are the indigenous people of Burundi. A census conducted by UNIPROBA (*Unissons-nous pour la Promotion des Batwa*) in 2008 estimated the number of Batwa in Burundi to be 78,071,[1] or approximately 1% of the population. These people have traditionally lived by hunting and gathering alongside the Tutsi and Hutu farmers and ranchers, who represent 15% and 84% of the population respectively.

The Batwa live throughout the country's provinces and speak the national language, Kirundi, with an accent that distinguishes them from other ethnic groups. No longer able to live by hunting and gathering, they are now demanding land on which to live and farm. A census conducted by UNIPROBA in 2008 showed that, of the 20,155 Batwa households in Burundi, 2,959 were landless, or 14.7% of the total. And, of these landless households, 1,453 were working under a system of bonded labour, while the other 1,506 were living on borrowed land. It should, moreover, be noted that those households that do own land have very small areas, often no more than 200 m^2 in size.

Some positive actions are being undertaken in Burundi, aimed at encouraging the political integration of the Batwa. This integration is the result of the implementation of a number of laws and regulations in force in Burundi, including the Arusha Accord of 28 August 2000, the National Constitution of 18 March 2005 and the 2010 Electoral Code, which explicitly recognise the protection and inclusion of minority ethnic groups within the general system of government.[2] The 2005 Constitution sets aside three seats in the National Assembly and three seats in the Senate for Batwa.

Burundi abstained from the vote on the UN Declaration on the Rights of Indigenous Peoples.

The right to land

Articles 13 and 26 of Burundi's National Constitution specify that all citizens have the right to land and that no-one shall be held in slavery or servitude. This is still, however, very far from the reality.

In 2008, the Ministry of Water, Environment and Land Planning ordered the Director General of Planning to collaborate with UNIPROBA in ensuring that all Batwa had access to a plot of land. UNIPROBA and the Burundian National Commission for Land and other Assets (CNTB) thus embarked on a project, in association with IWGIA. So far, 164,693 hectares of land have been provided to 858 Batwa households, being an average of 1,919.5 m^2 per household.

In 2010, UNIPROBA and the Burundian administration conducted visits to the provinces of Ngozi, Muyinga, Kirundo, Kayanza, Bururi, Makamba, Rutana and Mwaro. These visits were aimed at evaluating the available land that could be distributed to those Batwa households, which still remain landless.

By way of example:

- In Ngozi Province, Ruhororo commune, the administration acknowledged that the Batwa owned no land. The commune has a 2 ha site at Gitamo and a 20 ha site at Bumiha and agreed to initially settle 35 of the most vulnerable Batwa households on these plots.
- In Muyinga Province, Muyinga commune, the authorities have promised to provide a plot of cultivable land at Runazi.
- In Bururi Province, the mission noted that all the land owned by the state was either forested or in the form of protected natural reserves and so there was no land available for the Batwa.

The right to participate in decision-making bodies

In the 2010 elections to the National Assembly and Senate the Batwa received six seats. The selection by the Electoral Commission of the Batwa representatives was based on recommendations from UNIPROBA as well as

other newly formed Batwa organizations. Two of the Batwa representatives in the Senate are from UNIPROBA namely Mr Vital Bambanze and the Hon. Libérate Nicayenzi.

During the process of electing the Batwa, an individual (a woman) not belonging to the Batwa community was able to enter the Senate despite UNIPROBA's warnings. The Electoral Commission chose not to listen to the organisation, and the woman in question, who passed herself off as a Mutwa when she is actually a Hutu, was in fact elected. This constitutes a serious violation of the Batwa people's right to occupy posts that are legally set aside for them.

The right to education

No-one will deny that education is the cornerstone of development. The Burundian state has gone to some lengths to meet this right, by providing free primary school education since 2005. Hardly any Batwa children attend school, however, and they are not benefiting from this free education because of the extreme poverty suffered by their families. They face problems of a lack of food, school materials and uniforms, plus an inability to pay the costs demanded by the school management. At the start of the school year, there are therefore a large number of Batwa children enrolled in school but, two months later, very few of them are still attending.

Faced with this situation, UNIPROBA approached the Ministry for National Solidarity to request support for Batwa children's school attendance, in terms of assistance to help them overcome the problems that prevent them from studying.

Violence against Batwa and access to justice

On 23 October 2010, a site of some 30 Batwa houses in Businde**,** Gahombo commune, Kayanza Province, was invaded by people from neighbouring communes. Three Batwa were tied up and beaten to death in the presence of the commune's administrator. Around 30 houses were also burned down. The three bodies were initially buried in a common grave and then disinterred and reburied in a cemetery, under pressure from UNIPROBA. The Batwa families from this site have now fled the area and there has been no action taken, either by the security forces or the administration, in relation to these crimes. The perpetrators have not been brought to justice, despite pressure from UNIPROBA.

During the months of September, October and November (just following the elections), eight Batwa were killed and two houses were set on fire in the provinces of Ngozi and Kirundo.

There were a number of murders and unjustified imprisonments in the wake of the communal elections of 24 May 2010. The results of these elections were disputed by the opposition parties, who then boycotted the subsequent elec-

tions, namely the presidential, parliamentary, senate and local elections. It seems surprising that neither the administrative/judicial authorities nor the security forces seem to be bothered by this situation.

The issue of justice is one of many priorities for the Batwa of Burundi. In some parts of the country, they are often arbitrarily arrested or imprisoned or even subjected to extrajudicial execution. In this regard, UNIPROBA conducted visits in 2010 to different prisons in Burundi to obtain data on the number of Batwa prisoners, the reasons for their incarceration, and the speed with which their cases were being dealt. It emerged that a large number of Batwa were in prison for petty crimes (stealing food, brawling, etc.) and that they often spend several months in prison before their cases are heard by the courts.

In addition, a number of civil land rights cases have not resulted in favourable outcomes for the Batwa. For example, the Mutaho case, in Gitega Province which deals with dispossession of land belonging to Batwa people. A judgment was passed in 1975 and only executed in 2005, under pressure from UNIPROBA. Further developments then arose in this case, however, and it has been under consideration by the Supreme Court for the last two years. In 2010, the Batwa involved in this case were subjected to intimidation, arrests and imprisonment in an attempt to force them to drop their claim. UNIPROBA, which is providing close monitoring of this case, intends to refer it to the African Court, and even raised it during the 48th session of the African Commission on Human and Peoples Rights held in Banjul, Gambia, in November 2010.

An analysis of the problems that continue to be suffered by the Batwa people shows that there is still a long way to go to resolving them. Many Batwa households need space to grow crops, their children need to go to school, and they are not fully integrated into the country's socio-economic or political life, unlike the other two dominant ethnic groups.

UNIPROBA intends to conduct awareness raising activities with the local authorities and international opinion in order to achieve a better and fairer integration of the Batwa into the different institutions, and also plans to undertake actions to build the Batwa's capacity to fight for their rights, and to be involved in improving their economic conditions. ❍

Notes

1 UNIPROBA, *Rapport sur la situation foncière des Batwa du Burundi*, August 2006 - January 2008, Bujumbura, p16.
2 See Law No. 1/10 of 18 March 2005 implementing the Constitution of the Republic of Burundi.

Vital Bambanze *is a Mutwa from Burundi. He is a founding member of UNIPROBA and Chair and Central Africa Representative of the Indigenous Peoples of Africa Coordinating Committee (IPACC). He is now a member of the Senate and of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). He has a degree in Social Arts from the Department of African Languages and Literature, University of Burundi.*

DEMOCRATIC REPUBLIC OF CONGO

The indigenous Pygmies of the Democratic Republic of Congo (DRC) are estimated to number around 660,000 people out of a total population of approx 65 million, i.e. 1% of the Congolese population. They are found in nine of the country's 11 provinces and, depending on the province, they are known as: *Batwa*, *Cwa*, *Baka* or *Mbuti*. 65% of the DRC is covered in forest. Most indigenous Pygmies live in the forest and depend on it for their survival. They are considered to be the first people or inhabitants of the country. As a direct result of historical and ongoing expropriation of indigenous lands for conservation and logging, many have been forced to abandon their traditional way of life and culture based on hunting and gathering and become landless squatters living on the fringes of settled society. Some have been forced into relationships of bonded labour with Bantu "masters". Indigenous peoples' overall situation is considerably worse than the national population: they experience inferior living conditions and poor access to services such as health and education.[1] Their participation in the DRC's social and political affairs is low, and they encounter discrimination in various forms, including racial stereotyping, social exclusion and systematic violations of their rights.

Problems of land access are acute in the east of the DRC, particularly in North and South Kivu where there is a high population density. In Orientale, Equateur and Bandundu provinces, they are victims of the industrial operations that are invading their living spaces. The creation of protected areas also represents a real problem for the Pygmies, particularly given the strict policing of conservation areas that have been established in all national parks.

Over the last few years, new legal texts have had an influence on advocacy work for the promotion of indigenous rights. These relate, for example, to the 2002 Forest Code, the new 2006 Constitution and the UN Declaration on the Rights of Indigenous Peoples, to which the DRC is a signatory.

The Reducing Emissions from Deforestation and Forest Degradation process (REDD)

For the DRC's indigenous peoples, 2010 was a year marked by the country's commitment to the REDD process. The REDD Readiness Preparation Plan anticipates reforms that will have an impact on indigenous Pygmies in terms of land issues, territorial development and the right to free, prior and informed consent.[2]

The REDD Readiness Preparation Plan was adopted by the DRC at the 4th Policy Board meeting of the UN-REDD Programme held in Nairobi in March 2010 and it sets aside a sum of 5.5 million US dollars for preparation of the REDD national strategy. The document also anticipates establishing thematic Coordination Groups that will be required to reflect on how to implement the strategy. Of the 30 groups formed in the DRC, two deal with indigenous issues: the group on the Indigenous Development Plan developed by the government in cooperation with the World Bank in 2009[3] (see also *The Indigenous World 2010*) and the group on indigenous peoples' endogenous and traditional knowledge. In fact, valuing and recognising indigenous peoples' endogenous and traditional knowledge in the implementation of the REDD strategy will enable the very rich culture of these populations in the DRC, who depend on the forest for their survival, to be secured.[4] These strategic coordination groups now have a roadmap which, if implemented, will enable the better promotion and protection of indigenous communities' rights within the REDD process.

Moreover, as a REDD pilot country, the DRC is required to apply the principle of free, prior and informed consent, which is a requirement of the UN directives on REDD. The indigenous populations of the Congo Basin have already been made aware of this principle and it is hoped that its application will enable their specific needs to be taken into account.

Access to justice

In terms of indigenous peoples' access to justice, a number of cases were pending in the Congolese courts in 2010.

1. Kokolopori Reserve (Équateur Province)
2. Bonobo Nature Reserve (Djolu Territory, Tshupa District)

In the case of the indigenous Pygmies of Kahuzi Biega Park vs. the Congolese Institute for Nature Conservation (ICCN) and the Congolese state, the trial continued in the Kavumu High Court, in South Kivu. The victims, who were evicted from the Park in 1975, are calling for their living space to be returned (see also *The Indigenous World 2010*). The victims (66 in all) are being represented by a lawyers' collective under the supervision of the ERND Institute. The case, which has been ongoing for two years now, is making good progress despite some threats and intimidation of the victims, and it is hoped that this will the be first example of case law that is favourable to the land and forest rights of the DRC's indigenous people.[5]

Another similar case concerns indigenous communities in Equateur Province, in the north-east of the DRC, where the Koko Lopori Reserve has been established without any consultation of these communities. This conflict relates to the Bonobo Nature Reserve, in Djolu territory, Tshuapa district, managed by the "Bonobo Conservation and Wildlife" organisation. In this case, irregularities and violations of the human rights of indigenous communities have been noted on the part of the eco-guards, who are trained by the Congolese police. The indigenous communities have been deprived of their right to access and use the area's resources, as set out in the Forest Code.[6] Some have even complained of being the victims of torture. The communities have written three letters to the Provincial Governor to seek a solution and have called for an independent investigation to be launched.[7] Others have already taken legal steps to get the case considered through the courts.[8]

In conclusion, the REDD process may create opportunities for enforcing some indigenous rights in the DRC. The recognition of their rights and the fact that there are reforms underway in this process is a step in the right direction, provided the Congolese government keeps its promises. In terms of cases relating to indigenous rights claims that are currently going through the courts, these cases need to be backed up with advocacy to encourage the DRC's courts and tribunals to demonstrate their independence and set a legal precedent in favour of indigenous peoples. ❍

References

1 A September 2006 report published by the UN highlighted the increasing prevalence of HIV/AIDS amongst indigenous communities, spread by sexual violence and left untreated due to their poverty and social isolation. **United Nations' Integrated Regional Information Networks (IRIN), 13 September 2006:** *DRC: Sexual violence, lack of healthcare spreads HIV/AIDS among pygmies*. Available at: http://www.plusnews.org/aidsreport.asp?reportid=6371

2 REDD Readiness Preparation Plan, June 2010

3 Democratic Republic of Congo: Strategic Framework for the Preparation of a Pygmy Development Program, Report No. 51108-ZR December 2009, World Bank document.

4 *Revue Africaines des peuples autochtones.* Volume 1, DGPA 2010

5 *Les autochtones pygmées en quête de la Justice en RDC : Cas du procès PA du Parc de Kahuzi Biega Contre ICCN et Etat Congolais*, ERND Institute, June 2009

6 DRC Forest Code 2002, Article 38

7 *Magasine du Réseau Ressources Naturelles* No. 10, September - November 2010

8 2010 Annual Report of the ERND Institute's Programme of Legal and Administrative Support to Indigenous Peoples, with funding from Rainforest Norway.

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REPUBLIC OF CONGO

The Republic of Congo, a vast forested country some 342,000 km in size in the Congo basin, is rich in natural resources and biodiversity. The Congo's indigenous population is estimated at approximately 10% of the total population, i.e. around 300,000 people out of a total of 3,900,000 inhabitants. The indigenous population is divided into several groups, unequally distributed throughout the country and known by different names: Babenga, Babongo, Batwa, Bambenzelé, Baka, Baluma, Bangombé, Bagyeli, Bakola, Mbendjele and Mikaya and Bali.

Although found throughout the whole national territory, the indigenous population lives primarily in the departments of Niari, Lekoumou, Likouala, Plateaux and Sangha. Some have now settled on the land but most still live a semi-nomadic life based on hunting and gathering.

Some indigenous people are employed in farm work, cattle rearing and commercial hunting, whilst others, given their in-depth knowledge of the forest and its resources, are recruited by logging companies as trackers, prospectors or labourers.

The Congolese government has also taken a number of good initiatives over the last few years, such as the framework for implementing the Poverty Reduction Strategy Paper (PRSP), approved by Decree No 2008/944 of 31 December 2008, which takes into account indigenous peoples, long ignored and forming the poorest and most vulnerable sector of the Congolese population, and a 2009-2013 national indigenous peoples' plan, which was drafted in 2008 and which has now commenced implementation. To these should be added the Constitution of 20 January 2002, Law No 003/91 of 23/04/1991 on environmental protection, Law No 16/2000 of 20/11/2000 on the Forest Code and its implementing regulations and Law No 10/2004 of 26/03/2004 codifying the State domain, which sets out general principles applicable to the land and property regimes. In 2010, the Republic of Congo became the first country in Africa to adopt a law on the promotion and protection of the rights of indigenous peoples. The Republic of Congo is also a signatory to the UN Declaration on the Rights of Indigenous Peoples.

The overall situation of indigenous peoples in the Republic of Congo

The indigenous peoples of the Congo, known by the derogatory name of "Pygmies", have suffered severe violations of their human rights for years. They are victims of discrimination and marginalisation on many levels.

They are not represented within the national or local democratic institutions and find it difficult to access basic social services (drinking water, electricity, healthcare, schools…). They are rarely - if ever - involved in, or consulted as a specific social group with regard to, any policy formulation or economic development processes. They are largely unaware of their rights and thus not capable of

claiming those rights, nor of defending themselves. A general lack of knowledge with regard to the judicial system simply exacerbates this situation.

The vast majority of indigenous people are illiterate. According to estimates, more than 75% of them are unable to read, write or count. Indigenous children rarely go to school and, of those that do, almost 90% drop out by the time they reach secondary or university levels.

Indigenous peoples own no land, as most land belongs to the State. In fact they are often evicted by logging companies, with State backing. Their relationships with the Bantu (majority and dominant ethnic group in Congo) remain highly inequitable, and these latter often treat them as slaves.

Legislative developments affecting indigenous peoples

The Congolese government took some very positive and concrete steps on behalf of indigenous peoples in 2010. Taking to heart the vulnerable situation of Congo's indigenous population and the inequalities they suffer, on 23 December 2009, the Council of Ministers of the Government of the Republic of Congo adopted a bill of law on the promotion and protection of the rights of indigenous peoples in the Republic of Congo. This was passed by Parliament in December 2010. It thereby became the first country in Africa to adopt a specific law on indigenous rights. It is a highly progressive law, which it is hoped will advance the rights of Congo's indigenous population significantly, in addition to being a source of inspiration for other African countries.

However, although indigenous peoples are theoretically protected by the national legal instruments, these instruments do not take indigenous peoples' issues into account in practice. Even though the Forestry Code provides certain rights, for example, through the "community development forests", a concept that guarantees customary rights of use over the forest to local and indigenous communities, such concepts have never actually been implemented and no community forest development plans have been established.

Regional and national networks involved with indigenous peoples

Party to numerous international environmental agreements, the Central African states have put policies in place and adopted forest legislation and regulations aimed at con-

serving and sustainably and jointly managing their biodiversity, under the technical coordination of the Central African Forestry Commission (COMIFAC). This commission implements the convergence plan or priority action plan and also acts through specialist institutions: the Conference on Central Africa's Dense Tropical Forest Ecosystems (CEFDHAC), the Agency for Environmental Information Development (ADIE), the Organisation for African Wildlife Preservation (OCFSA) and numerous voluntary networks.

The Central African Indigenous Peoples' Network (REPALEAC) should also be mentioned. REPALEAC coordinates the national networks in the region that are defending the interests and rights of indigenous peoples. In 2007, the Congolese government, via the intermediary of the Ministry for Sustainable Development, Forest Economy and the Environment and UNICEF, established the National Network of Indigenous Peoples (RENAPAC). Thanks to this network, indigenous NGOs are now more organised and their activities better coordinated.

Also at the initiative of the Congolese government, the countries of Central Africa created the International Forum for Indigenous People of Central Africa (FIPAC) in 2007, the second meeting of which will be held in Impfondo, Likouala department, in March 2011, as this is an area of dense primary forest with a strong concentration of indigenous peoples.

Visits from regional and international bodies related to indigenous peoples

From 15 to 24 March 2010, the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights made a country visit to the Republic of Congo where it met with a broad range of stakeholders including national and local government, NGOs, UN agencies and indigenous communities.

The UN Special Rapporteur on the rights of indigenous peoples also visited the Republic of Congo from 2 to 12 November 2010. The rapporteur visited Brazzaville, Impfondo and Dongou (Likouala department), and Dolisie and Sibiti (Lekoumou department) in order to discuss indigenous rights in the Congo with the government, indigenous communities and civil society.

Conclusion

The situation of indigenous peoples in the Republic of Congo remains fragile. It is therefore important that efforts are made in relation to human rights education,

citizenship and awareness raising with regard to the law on the promotion and protection of indigenous rights. It is also important that all sectors of Congolese society are involved in this, particularly the indigenous peoples themselves. With the adoption of the law on indigenous rights, the time has come to move from the theoretical to the practical, and to ensure that the Congo's indigenous communities now take up ownership and enforcement of the law. ❍

Bibliography

Abega, Séverin Cecile and Patrice Bigombo, 2005: *La Marginalisation des Pygmées d'Afrique Centrale.* ("The Marginalisation of Central Africa's Pygmies"). Afrédit.

ADHUC, 2007: Report of the Seminar on Capacity Building of Indigenous Representatives in Monitoring and Documenting Human Rights Violations in the Republic of Congo.

Ebara, Marcel, 1985: *Comment vivent les pygmées* ("How the Pygmies Live") (Survey). Republic of Congo.

Mafoukila, Constance Mathurine, 2006: *La Scolarisation des Enfants Pygmées au Congo* ("School Enrolment among Pygmy Children in the Congo").

Ministry of Health and Population, 30 September 1993: Technical documentation sheet on the Pygmies of the Republic of Congo.

Ministry of Waters and Forests, Republic of Congo, April 2007: 1st Meeting of the International Forum for Indigenous People of Central Africa (FIPAC).

L'Epineuse question des Pygmées. ("The Thorny Question of the Pygmies") Journal *Etumba* No. 730 – 1984, p5. Republic of Congo.

Rapport d'avancement de la mise en œuvre de la stratégie de Réduction de la pauvreté avril 2008 – mars 2009. ("Progress Report on Implementation of the Poverty Reduction Strategy April 2008 – March 2009"). Presidency of the Republic/General Secretary of the Government (Page 58).

Report on an awareness raising seminar on the promotion and protection of Pygmy rights in the Republic of Congo.

UNICEF, 2008: *Analyse de la situation des enfants et des femmes autochtones au Congo.* ("Analysis of the situation of indigenous women and children in the Congo").

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GABON

Indigenous hunter-gatherer communities (often referred to as Pygmies) are located throughout Gabon and include numerous ethnic groups (Baka, Babongo, Bakoya, Baghame, Barimba, Akoula, Akwoa, etc.) separated by locality, language and culture. Pygmy communities are found in a range of socio-economic situations: urban and forest-based. Their livelihoods and cultures remain inextricably tied to the forest areas of the country (85% of Gabon is forested). It has recently been estimated that the number of Pygmies in Gabon is approximately 20,000 out of a national population of 1, 520,911.[1]

The last decade has seen the rise of the indigenous movement and four officially recognised indigenous organizations.[2] Since 2002, due to increasing environmental threats posed by expanding extractive industries, the country has received a large influx of foreign funding and human resources to support Congo Basin conservation initiatives, in particular the establishment of 13 national parks. Out of these developments has grown an awareness of the rights of local and indigenous peoples in matters concerning the conservation and development of the country. In 2005, Gabon agreed to its own Indigenous Peoples' Plan as part of a World Bank policy loan agreement for the Forest and Environment Sector Program.[3] This marked the government's first official recognition of the existence of and its responsibility towards indigenous peoples. In 2007, Gabon voted for the UN Declaration on the Rights of Indigenous Peoples.

Pygmy communities in Gabon are threatened by severe environmental damage to ancestral lands and resources, the building of roads, dams and railways, large-scale commercial bush-meat hunting, insecurity of land tenure and encroachment through logging and extractive activities, conservation developments and regulations, resettlement and integration plans, insufficient representation in community land claims and lack of sufficient funding and support for indigenous organizations to function autonomously.

Political and legislative developments

2010 marked the first complete year in office for Ali Bongo, third President of the Republic of Gabon. In coming to power, he inherits 41 years of his father's development policies and the challenge of implementing promises made during his election campaign regarding the future of Gabon.

Building on the policy of his late father, who created 13 national parks across the territory of Gabon, President Ali Bongo has voiced his commitment to a "Green Gabon" as the pillar of the country's development. From the outset, he has ventured on a courageous course of action to audit and streamline government ministries. As part of this process, ministries in charge of the forest and environment sector have been totally restructured. The National Parks Agency (ANPN), a public institution responsible for the development and management of Gabon's national parks, is now headed by biologist and climate change expert, Dr Lee White, along with explorer Mike Fay, both key players in the conservation movement.[4]

Under the new ANPN leadership, there has been an obvious boost in terms of focus and motivation, and this is apparent at all levels as different ministries, environmental NGOs and park staff are encouraged to work together in harmony for the common cause. Plans have also resumed to develop and promote ecotourism in Gabon by channelling foreign investment into the construction of a network of park lodges. As part of these developments, and to encourage alternative sources of income to commercial bush meat hunting, parks such as Waka, Lopé and Minkebé intend to employ local indigenous community members as guides and trackers.

The President has promised that the Forest Code, which is currently being revised, will take into consideration the rights of indigenous peoples. However, until these things become concrete there will have been no significant changes to the status of indigenous peoples in Gabon or to the existing threats posed by logging companies conducting their activities on the traditional lands of indigenous peoples.

During 2010, Gabon continued to play a leading role in discussions on carbon credit mechanisms for combating climate change and to move forward with its REDD (Reduction of Emissions from Degradation and Deforestation) program, funded by the World Bank's Forest Carbon Partnership. The highlight of these developments came when Gabon announced the launch of Central Africa's first satellite observation station, which is expected to play a crucial role in tropical forest protection in the region.

REDD has become the key instrument for Gabonese forest peoples, both in terms of creating dialogue between government and key stakeholders through their participation in workshops and conferences, and in terms of promoting indigenous peoples' rights and consent in policy making and future legislation on the implementation of REDD.

Throughout the country, the indigenous peoples of Gabon participated in the new government's social project entitled "Trust in the Future" in 2010. The project aims to transform Gabon into an emerging, prosperous country and to strengthen social cohesion. In the project plan, the President stated that he would "prioritise funds to support Indigenous Peoples". To demonstrate their commitment to the Gabonese people, the President and First Lady undertook an inter-provincial tour of Gabon during which they made a special point of visiting the Babongo village of Mokeko in Massenguelini District, at Lopé.

Efforts are being made by the government to obtain information on the country's indigenous populations. To complement the National Census, which began in 2006, the Department of Public Health and Population implemented a UNDEP-funded program to identify indigenous populations who do not have identity documents in the provinces of Upper Ogooué, Ogooué Ivindo and Ngounié. To date, the indigenous peoples (Baka and Bakoya) have been identified in Minvoul, Mvadi, Makoukou and Mekambo.

2010 was a year of transition for Gabon since most of the management structures in the country changed. Consequently, there were no significant legislative developments at the national level affecting or concerning indigenous peoples. However, much progress was made at the grassroots level as indigenous leaders focused on capacity building and expanding their information base in preparation for strengthened advocacy.[5]

Programs and projects

Having accomplished the training of indigenous representatives and communities in participatory mapping techniques, Rainforest Foundation commenced its large-scale indigenous communities' mapping project amongst Babongo, Bakoya and Baka communities in Gabon.

In September 2010, indigenous leaders from across Central Africa gathered at Fougamou to meet with Babongo and Mitsogho villagers from Ikobey commune for a workshop on participatory mapping techniques led by expert Giocomo Rambaldi. The aim of the seminar was to support local communities to build a three-dimensional model of their natural and cultural landscape.

Bringing together indigenous representatives from Chad, Central African Republic, Democratic Republic of Congo, Cameroon, the Republic of Congo and Gabon, the project was sponsored by the EU-ACP Technical Centre for Agricultural and Rural Cooperation (CTA), with the support of the ANPN, Rainforest Foundation, Brainforest and IPACC.

Fougamou, which is located in the province of L'Ngounié, is the nearest large town to the Babongo Mitsogho communities living in the northern area of Waka National Park, who continue to be seriously affected by the large-scale destructive logging activities being conducted by Sino-Malaysian companies over the last decade. During the Fougamou workshop, the Babongo were made aware of the

fact that some of their traditional forest territories, between the Lopé and Waka national parks, had become concessions of the Sunly logging company and they were encouraged to actively dialogue with the administrative authorities and logging companies on these matters.

Since 2007, WCS and the ANPN (funded by USAID), in cooperation with the indigenous organization MINAPYGA and IPACC (Indigenous Peoples of Africa Coordinating Committee), have been working with local communities in the Waka region to support them to create village associations as a means of self-determination.

Rainforest Foundation, whose office is shared with Brainforest in Libreville, continues to work with indigenous leaders to facilitate community involvement in the development of protected area legislation in Gabon, involving representatives from the ANPN, national and international NGOs and indigenous communities.

WWF Libreville continues to collaborate with the Baka organization, Edzengui. However, ongoing field projects to promote ecotourism and agriculture amongst Baka communities around the Park of Minkébé came to a standstill in 2010. The primary focus of activities for 2010 was rebuilding Edzengui office headquarters in Minvoul.

Indigenous representation

There has been a notable change in the infrastructural development and capacity level of indigenous organizations within Gabon resulting from strengthened partnerships and funding, and all the indigenous organizations now have their own offices.

Leonard Odambo from MINAPYGA continues to be the leading spokesman for the indigenous community at the national and international levels. Having stepped down from their positions on IPACC's executive committee in 2009, Odambo and former Edzengui leader, Helen Nze Ndou, continue as key figures in IPACC and REDD-related activities in Gabon. ❍

Notes

1 In 2005, based on existing research and the current national census, the Association for the Development of Pygmy Peoples Culture in Gabon (ADCPPG) estimated the highest total to date for Gabonese Pygmy populations, at 20,005 out of a national population of approximately 1,400,000 (**Massandé, D., 2005:** *Organisation Territoriale du Gabon, Démographie Chiffrés des*

Peuples Autochtones Pygmées de Gabon. ADCPPG report, 30 June 2005). There are no official figures on the indigenous populations in Gabon since the national census of 2006 did not focus specifically on the indigenous populations.

2 *Mouvement des Autochtones et Pygmées du Gabon* (MINAPYGA) representing Bakoya and established in 1997; *Edzengui* representing Baka and established in 2002 in close collaboration with WWF; *Association pour le Développement de la Culture des Peuples Pygmées du Gabon* (ADCPPG) representing Babongo and established in 2003. *Kutimuvara* was established in 2002 to represent Varama groups and other southern indigenous minority groups e.g. the Bagama. Due to the fact that the organization is based outside the capital, without any strong partnerships or external support, this organization remains less developed than the other indigenous organizations.
An emerging organization formed by the Babongo of the Massif du Chaillu is currently awaiting official approval and status from the government.

3 **Schmidt-Soltau, K., 2005**: Programme Sectoriel Forêts et Environnement (PSFE), Plan de Développement des Peuples Autochtones. Rapport Final. July 2005. World Bank, Washington.

4 In 2010, Lee White was awarded the Commander of the Order of the British Empire (CBE) in recognition of his services to conservation and sustainable development in West and Central Africa.

5 Over the last decade, there has been a significant increase in academic studies on forest peoples in Gabon carried out by Gabonese and international researchers, which has also contributed substantially to the information base available to indigenous leaders.

References

Massandé, D. 2005: Organisation Territoriale du Gabon Demographie Chiffres des Peuples Autochtones Pygmées de Gabon. *ADCPPG report*, 30 June 2005.

Schmidt-Soltau, K., 2005: *Programme Sectoriel Forêts et Environnement (PSFE) Plan de Développement des Peuples Autochtones. Rapport Final*. July 2005. World Bank, Washington.

Monaghan, S. (Editor), 2010: Gabon: 50 Years of Independence. *Gabon Magazine*. Autumn 2010 Impact Media Global Ltd, London.

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CENTRAL AFRICAN REPUBLIC

There are two groups of indigenous peoples in the Central African Republic (CAR) namely the Mbororo and the Aka. The indigenous Mbororo, are essentially nomadic pastoralists in constant search of pastureland. They can be found in the prefectures of Ouaka in region 4 in the centre-east; M'bomou in region 6 in the south; Nana-Mambéré in region 3 in the north-west and Ombella-Mpoko in region 1 in the south-west. The 2003 census gave an Mbororo population of 39,299, or 1% of the population. There is a higher proportion of Mbororo in rural areas, where they account for 1.4% of the population, than in urban areas where they represent only 0.2%. The indigenous Aka population is pejoratively known as Pygmies. The exact size of the Aka population is not known but they are estimated to number several tens of thousands. These indigenous people live primarily (90%) in the forests, which they consider their home and where they are able to carry out their traditional activities of hunting, gathering and fishing. The indigenous Aka live in the following prefectures: Lobaye in the south-west; Ombella M'poko in the south-west; Sangha Mbaéré in the south-west and Mambéré Kadîe in the west.

The Central African Republic has voted in favour of the UN Declaration on the Rights of Indigenous Peoples in September 2007.

General situation of indigenous rights in the Central African Republic

Indigenous Mbororo

The indigenous Mbororo continue to suffer significant human rights violations. The absence of a land law makes it very difficult for the Mbororo to continue their pastoral activities. They are prosecuted when their cattle cross another person's land and are constantly driven away from places when seeking pasture. They find their cattle confiscated and payment of ad hoc fines demanded, and many of

their cattle have perished as a consequence of the armed conflicts and ensuing insecurity.

Poverty is an increasing reality among the indigenous Mbororo communities. In fact, many Mbororo now find themselves without cattle following the many conflicts the country has suffered. Unable to pursue any other activity, they are left with no income. In such a situation, they end up having to bear administrative and police harassment.

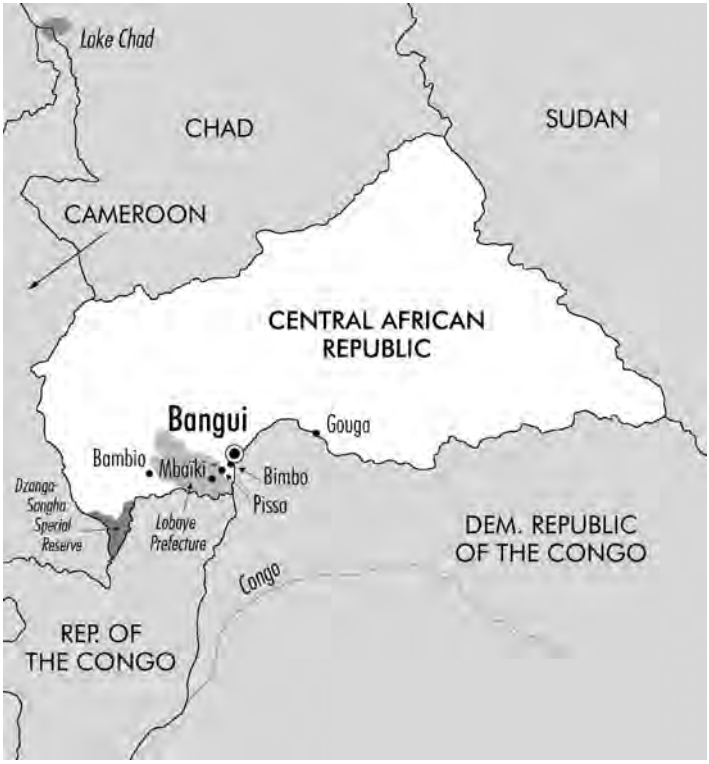
Because of the political/military crises of the past two decades, the indigenous Mbororo living in the rural environment, primarily pastoralists, have been subjected to multiple violations with regard to their assets, their cattle and their survival. Mbororo children are often taken hostage by armed bandits and ransoms demanded for their release. This phenomenon has led to displacement for some, who have left their land and region, and bankruptcy for others, with the consequent ensuing poverty.

The indigenous Aka

The ancestral lands of the indigenous Aka remain unrecognised in legal terms. They live on the edges of Bantu villages or in forests granted to logging companies or transformed into protected areas. Wherever they are, the Aka have no legal security with regard to the land on which they live. They find themselves constantly displaced because of third party private or public interests.

Abusive exploitation of the Aka workforce remains commonplace, whether by the Bantu, industrial logging companies, safari companies or conservation organisations. Their work is never fairly remunerated. In some places, the Aka are subjected to what is virtually forced labour, or are not paid by their masters. This practice, akin to slavery, and according to which the Aka may actually belong to an individual or family, remains entrenched despite national legislation introduced to ban it.

Administrative and police harassment also remains one of the fundamental violations of Aka rights. Many indigenous people are unable to go to Bangui, the capital, alone. To be able to travel inside their own country, the Aka have to be accompanied by someone who is not an Aka such as a member of a civil society society organization, an international NGO or a religious institution. In order to travel they need the authorisation of the village chief and are requested all sorts



of papers by police officers, as if they were an object. Failing this, there are yet more fines.

Recent legislative efforts

Over the course of 2010, the Central African Republic made progress on a number of important legal issues related to indigenous rights.

After various information and awareness raising activities conducted by both the government, through the High Commissioner for Human Rights and Good Governance, and national and international NGOs, the CAR ratified ILO Conven-

tion 169 on indigenous and tribal peoples, thus becoming the first African state to do so. The ratification was submitted to the International Labour Organisation on 30 August 2010.

Since 2008, the CAR has also been discussing a bill of law on the promotion and protection of indigenous rights, prepared by the High Commissioner for Human Rights and Good Governance, in the context of implementing existing instruments but also to give particular visibility to the situation of indigenous rights. This law is still under discussion and it awaits the action plan for the implementation of the ILO Convention 169. The national committee working on the law on the promotion and protection of indigenous rights consists of people from the Ministries of Justice, Culture and Social Affairs, the commission on human rights, human rights organizations and representatives of indigenous peoples.

A revision of several codes took place in 2009-2010, such as the Criminal Code, the Code of Criminal Procedure and the Employment Code. These laws are not specific to indigenous peoples but the revisions were influenced to a certain extent by the violations, abuses and violence these peoples suffer. These revisions mean that exploitation, submission to masters, forced labour and the use of minors in different jobs, prostitution, etc., are now considered forms of slavery.

The revised Mining Code and implementing regulations for the Environment Code (not yet published) take environmental impact issues into consideration, particularly the necessary public hearing aimed at obtaining the communities' consent. These amendments could also put a stop to the problems indigenous peoples are encountering in mineral exploitation, logging and conservation areas.

The Central African Republic also submitted its Periodic Report on the rights of the child to the UN Committee on the Rights of the Child. This report gave significant space to all aspects of the situation of indigenous children in the CAR.

The 2008 Forest Code is the first piece of national legislation to define and recognise the rights of indigenous forest peoples. For the first time, the provisions of this text set out customary rights of use and benefits arising from forest exploitation, access rights and, above all, principles of consultation with a view to obtaining the free, prior and informed consent of indigenous peoples, as guaranteed by international legal instruments.

A Voluntary Partnership Agreement (VPA) between the European Union and the Central African Republic, signed on 21 December 2010, provides a framework that includes respect for indigenous rights and for environmental legislation within its principles. Improved forest governance and reforms of the legal framework are at the heart of this agreement.

In addition, in the context of the poverty reduction strategy paper (PRSP), the thematic group "Governance and the Rule of Law" (made up of the government together with the private sector and civil society) is developing action plans that will take indigenous participation into account, including awareness raising on the rules and principles of indigenous rights. ❍

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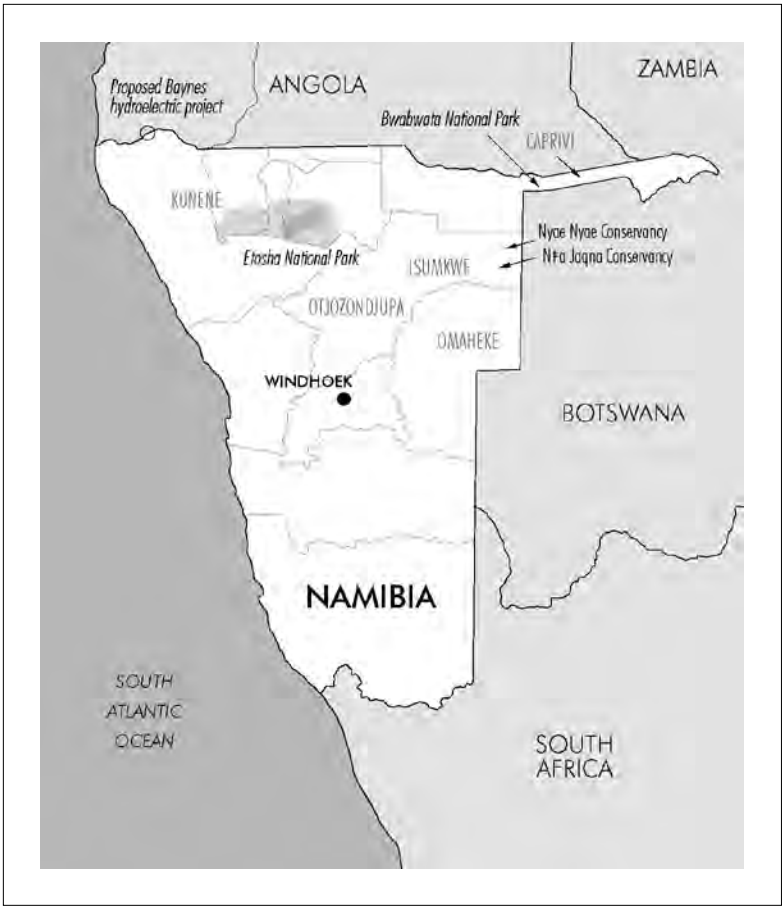
SOUTHERN AFRICA

NAMIBIA

It is generally accepted that the San (Bushmen), who number between 32,000 and 38,000 in Namibia,[1] are indigenous to the country. There are six different San groups in the country, each speaking their own language and with distinct customs, traditions and histories. The San were, in the past, mainly hunter-gatherers but, today, many have diversified livelihoods, working as domestic servants or farm labourers, growing crops and raising livestock, doing odd jobs in rural and urban areas and engaging in small-scale businesses and services. The San are scattered throughout many parts of Namibia, especially in the central and northern parts of the country. San groups include the Khwe, 4,400 people mainly in Caprivi Region and in Tsumkwe West, the Hai||om in the Etosha area of north-central Namibia (9-12,000), and the Ju|'hoansi, who number some 7,000 and live mainly in Tsumkwe District East in the Otjozondjupa Region.[2] Over 80% of the San have been dispossessed of their ancestral lands and resources, and today they are some of the poorest and most marginalized peoples in the country. The extent of San marginalisation is clearly evident in the United Nations Development Programme's (UNDP) socio-economic indicators of human development, where the situation of the San is consistently worse than for other groups in Namibia.[3]

Another group usually recognized as indigenous to Namibia is the Himba, who number some 25,000 and who reside mainly in the semi-arid north-west (Kunene Region). The Himba are pastoral (herding) peoples who have close ties to the Herero, also pastoralists who live in central and eastern Namibia. Another indigenous group is the Nama, a Khoe-speaking group who number some 70,000. The Nama include the Topnaars of the Kuiseb River valley and the Walvis Bay area in west-central Namibia, a group of some 1,800 people who live in a dozen small settlements and depend on small-scale livestock production, use of !*nara*



melons (*Acanthosicyos horrida*), and tourism. Taken together, the indigenous peoples of Namibia represent some 8% of the total population of the country.

Namibia does not have any national legislation that deals directly with indigenous peoples and the Namibian Constitution does not mention them. The Office of the Prime Minister has a San Development Program aimed at helping San citizens and other marginalized groups such as the Himba, as poverty-stricken minorities. Namibia voted in favour of the UN Declaration on the Rights of Indigenous Peoples. In 2010, the Namibian cabinet approved a Division for San Development under the

Office of the Prime Minister, which is an important milestone in the promotion of the rights of indigenous people/marginalised communities in Namibia.[4]

Land and natural resource management

When Namibia gained independence in 1990, it inherited two agricultural subsectors from the colonial era, namely communal and commercial agriculture. While the commercial areas (ca. 44% of the country's surface of 824,000 sq km) consist of the lands which were allocated to white commercial agriculture during colonial times and, subsequently, under the South African Administration, the communal areas (ca. 41%)[5] are the former homelands that were allocated to the various Namibian groups under the Apartheid system of the South African Administration of Namibia. The indigenous groups in Namibia are found on privately-owned commercial land and in urban areas, as well as on communal land.

The living conditions differ significantly in commercial and communal areas. While the majority of San on commercial land have no right to land and have to make a living as farm labourers, domestic workers or urban squatters, San, Himba and Nama on communal areas have – albeit limited – access to land and its resources.

Rural communities have the option of establishing conservancies and community forests on communal land. In Namibia, conservancies are locally-planned and managed multi-purpose areas on communal land, where land users have pooled their resources for wildlife conservation, tourism and wildlife utilization. Conservancy members are granted wildlife resource rights under Namibia's Nature Conservation Amendment Act of 1996. All in all, there are 59 registered conservancies in Namibia. There are at least 15 conservancies in Kunene Region in north-western Namibia, where the Himba live. Nama communities in the south of Namibia are involved in the management of at least six conservancies.[6] In the Otjozondjupa Region, there are currently two majority San conservancies: one is the N≠a Jaqna Conservancy in Tsumkwe District West; the other is the Nyae Nyae Conservancy in Tsumkwe District East. In the Bwabwata National Park in Caprivi, the Khwe (San) are involved in the Kyaramacan Association, which has special privileges with regard to the natural resource management of the National Park.[7] The conservancies and the Kyaramacan Association generate some income through tourism, hunting concessions (in Nyae Nyae), and filming and recording fees, a substantial portion of which is divided among all conservancy

members and distributed annually. Some individuals are employed by the conservancies but employment opportunities are generally scarce and attempts to provide sustainable livelihoods have proved difficult to maintain. Some food is still obtained from traditional subsistence methods. The San living in the two conservancies in Otjozondjupa Region and Bwabwata National Park are, however, fortunate in comparison to most other San in Namibia in that they have access to land, are managing the natural resources of the land and are able to practise, to varying degrees, their traditional lifestyles.

With regard to commercial land, in 2010 the Namibian government continued its land reform programme aimed at giving the historically disadvantaged majority access to some of the commercial land. Under the San Development Programme of the Namibian government, two farms were bought in 2008 for the resettlement of the Hai||om San on the southern border of the Etosha National Park (the ancestral land of the Hai||om) and one farm in the Otjozondjupa Region for other San groups.[8] The number of farms purchased on behalf of the Hai||om increased to five in 2010. Many Hai||om from the surrounding commercial area and the towns in the vicinity moved to these farms, while the Hai||om who are still living in Etosha National Park (as Park employees and their relatives) are reluctant to move to the farms as they fear losing their link with, and any access to, Etosha, which they consider as their homeland. As on other resettlement farms in Namibia, however, establishing sustainable livelihoods independent of government food aid and massive external support is difficult, if not impossible, at the moment.

Many San work as farm workers on commercial farms.[9] San farm workers are often the last ones to be hired and the first to be fired in times of economic uncertainty. Land reform initiatives have provided inadequate coverage for farm workers, some of whom have been expelled from farms that they had worked on for many years. San workers' knowledge of labour laws remains low and farm workers often report problems in accessing information due to their isolation. A low level of literacy among the San is an additional barrier to their knowledge of labour laws.

Tourism and other income-generating activities

Tourism represents one of Namibia's most important sources of income. In 2010, indigenous communities throughout Namibia were attempting to cash in on tourism-related projects. At least a dozen indigenous communities, mostly on com-

munal land, have established campsites for tourists. At least ten indigenous communities in conservancies are involved in joint venture tourism agreements with lodges and other tourism companies.[10] The Bwabwatata National Park community (including Khwe), represented by the Kyaramacan Association, has successfully tendered for a major tourism concession inside the National Park (which entails potential jobs as well as income).

Trophy hunting is another major source of income within the conservancies. For instance, the Nyae Nyae Conservancy generates significant income from trophy hunting, which is used for its operations and to distribute benefits to members.

Additionally, in the conservancies, a number of other projects addressing issues of poverty and hunger are taking place, including village gardens, a chicken farming pilot project and a cattle grazing pilot project, along with other income-generating projects such as the harvesting and marketing of indigenous plants (e.g. Devil's Claw) and craft production. The Kyaramacan Association may be able to substantially increase its profit from Devil's Claw harvesting since successfully gaining organic certification for Bwabwata National Park. This has secured an international niche market and may ensure better prices for Devil's Claw harvesters in 2011.

By contrast, indigenous people's initiatives on commercial land and in urban areas are much more limited, partly due to the lack of external support these people receive, as they are far more scattered and more difficult to reach. The San Development Programme has, however, initiated some income-generating projects on the resettlement farms that were bought for San under the programme.

Towards human resource development and training

The San Development Programme under the Office of the Prime Minister continued to support San students with bursaries in 2010. The Working Group of Indigenous Minorities in Southern Africa (WIMSA) has a special education programme which specifically supports Early Childhood Development but also helps with bursaries for San students in different fields (mainly care givers in Early Childhood Development Centres, nurses, lower primary school teachers and tour guides). In Bwabwata National Park, 15 traditional trackers were evaluated and certified through the Cyber Tracker Tracking Programme. The Namibia Association of Norway continued to support San primary and secondary education in Tsumkwe

in the Otjozondjupa Region in 2010. Various craft production training projects also took place in different regions throughout the year in order to enable San women and men to produce high quality products for the national and international market. The field of indigenous education and capacity building, however, requires far more support than it currently receives in Namibia.

Political representation

The Traditional Authority Act (25 of 2000) largely recognised traditional leadership as an accepted cultural institution. According to the Act, every traditional community is entitled to establish or maintain a Traditional Authority, comprising a chief or a senior traditional councillor and a number of traditional councillors, in accordance with the provisions of customary law. The main functions of Traditional Authorities are to co-operate with and assist the government, to give support, advice and information and to contribute to the welfare, peace and tranquillity of rural communities. There are currently 49 recognised Traditional Authorities in Namibia. Although not all the San Traditional Authorities are unanimously accepted by their respective communities, the San generally consider the institution and recognition of their own Traditional Authorities as an important step in voicing their concerns and negotiating with the government. The San struggled long and hard to get their own Traditional Authorities recognised by the government. Prior to 2010, only three Traditional Authorities had been recognized (Hai||om, !Kung, Ju|'hoansi); in 2010, two more were gazetted (Omaheke North and Omaheke South). The Traditional Authority of the Khwe in Western Caprivi is still waiting for official recognition.

The indigenous peoples' organisations

As many of the indigenous groups of southern Africa remain unrecognized in the nation states in which they reside, they are seeking to organize and to lobby in defence of their human rights.

The San are represented on a regional level by the Working Group of Indigenous Minorities in Southern Africa (WIMSA). WIMSA was able to appoint a new regional coordinator in October 2010, following two years in which this important post was left vacant. This has given more institutional strength to the organisa-

tion, which was also able to convene an Annual General Assembly in December 2010. The AGM was able to confirm the regional governance model of WIMSA. In the structure, WIMSA is made up of the National San Councils of Botswana, Namibia and South Africa.

The Nama are currently in the process of forming a separate indigenous peoples' movement: the Federal Indigenous Nama Rights Council (FINRIC). FINRIC is as an organization which aims to represent the interests of all Nama people in Namibia. Its specific focus is on promoting and protecting the rights of the Nama. Nama from different subgroups (Bondelswart, Topnaar, Witboois, Swartboois, Afrikaaner) are behind this initiative. Activities that were undertaken in 2010 included: researching archives and libraries about their own history and identity; organizing workshops on international human rights standards for indigenous people; and making contact with political figures in Nama-dominated areas. FINRIC aims to encourage pride in the Nama identity. In the past, many Nama rejected their identity and described themselves as Coloured or as Owambo (the majority ethnic group in Namibia) so that they would have better opportunities in Namibian society.

Threats to indigenous peoples' rights in 2010

Several issues are of concern with regard to the rights of the San:

- The Nyae Nyae Conservancy is seeking ways to limit the number of outside Herero farmers settling in Tsumkwe (the central town in the area is excluded from conservancy land). These farmers are illegally using conservancy resources for grazing, firewood etc., and potentially pose a threat to their land.[11]
- The Namibian government previously had plans to de-gazette around a third of the N≠a Jaqna Conservancy for use in small stock farming. This matter still requires attention as it is unknown whether the government abandoned these plans or not.
- Hai||om San still living in Etosha National Park fear that the government wants to transfer them to resettlement farms and that they will lose access to their ancestral land.
- Another concern of the indigenous peoples in 2010, notably the Himba in Kunene Region, was the plan by the governments of Angola and Namibia to

build the N$7 billion (US$ 1 billion) Baynes Dam after previous efforts to establish the dam and power station were shelved in the 1990s, when it was known as the "Epupa dam project". Himba are concerned that the influx of outsiders will force them to abandon their tradition and culture. The potential removal or destruction of ancestral graves located along the Kunene River is another major concern.[12]

Promoting indigenous peoples' rights in Namibia in 2010

In October 2010, Namibia hosted the Sub-Regional Conference on the Rights of Indigenous People/Marginalised Communities and the launch of the overview Report of the Rights of Indigenous Peoples in 24 African Countries. The conference was financed by the "Promoting & Implementing the Rights of the San Peoples of the Republic of Namibia" project, the Namibia component of the Indigenous Peoples Programme under the 2008/12 partnership programme of the Spanish Agency for International Development Cooperation and the International Labour Organisation, in cooperation with the Office of the Prime Minister, and was organised by the Legal Assistance Centre.[13] The objective of the conference was to increase participants' awareness of indigenous peoples' rights and to obtain inputs in terms of policy directives for a White Paper on Marginalised Communities.

The conference and launch were attended by representatives from the central and regional levels of the Namibian government, the NGO sector, Traditional Authorities, bilateral partners and indigenous communities from other neighbouring countries, as well as experts from the International Labour Organisation, the African Commission on Human and Peoples' Rights and the University of Pretoria.

The conference raised awareness about indigenous peoples' rights and developed initial ideas for a White Paper on Marginalised Communities. In 2011, these ideas are supposed to be formalised in a regulatory framework under the guidance of the Office of the Prime Minister, with support from the ILO.[13] ❍

Notes

1 **Suzman, James, 2001:** *An Introduction to the Regional Assessment of the Status of the San in Southern Africa*. Windhoek: Legal Assistance Centre.

2 Available figures on the number of San mostly date back to censuses in the 1990s. A new comprehensive census needs to be taken.
3 **UNDP, 2007:** *Trends in Human Development and Human Poverty in Namibia: Background paper to the Namibia Human Development Report*. Windhoek: UNDP.
4 The author would like to thank Mr Aaron Clase from the Office of the Deputy Prime Minister, Mr Friedrich Alpers from IRDNC, Ms Kathryn Blackmore from OST, Ms Lara Diez from NNDF, Mr Mathambo Ngakeaeja and Ms Eva Weitz from WIMSA, Ms Lesle Jansen, Mr Willem Odendaal, Mr Peter Watson and Ms Anne-Kathrin Schwab from the LAC for updates on 2010 from their respective organizations and other useful information and comments.
5 **Werner, Wolfang and Willem Odendaal, 2010:** Livelihoods after land reform. Namibia country report. Windhoek: LEAD, *Legal Assistance Centre*: 18.
6 **Namibian Association of CBNRM Support Organisations, 2010:** Namibia's communal conservancies: a review of progress and challenges in 2009. Windhoek: NACSO: 9.
7 Communities are not allowed to form conservancies in National Parks but the Kyaramacan Association fulfills the many functions which conservancies have on communal land. For instance, the association has access to natural resources in the National Park, the Ministry of Environment and Tourism has granted them a lucrative hunting concession, and the association decides on benefit sharing. It acts as a juristic person on behalf of the residents of the National Park.
8 **Office of the Deputy Prime Minister, 2008:** *The San Development Programme Report 2007/2008.* Windhoek: Office of the Deputy Prime Minister. **Office of the Deputy Prime Minister, 2011:** *Draft Annual Report for the Year 2009/2010*. Draft report.
9 No accurate figures are available on the number of San farm workers in Namibia.
10 **Namibian Association of CBNRM Support Organisations, 2010:** *Namibia's communal conservancies: a review of progress and challenges in 2009.* Windhoek: NACSO.
11 See **IWGIA, 2010:** *The Indigenous World 2010*. IWGIA: Copenhagen. P. 550. See also http://www.republikein.com.na/politiek-en-nasionale/algemeen/gam-boere-eis-miljoene.120035.php.
12 See **Muranga, Elvis, 2011:** Epupa déjà Vue. In *Insight Namibia*. December 2010, January 2011: 37.
13 The overview report is the outcome of a joint research project between the ILO, the African Commission on Human and Peoples' Rights and the University of Pretoria examining legislative protection of indigenous peoples' rights in Africa.

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BOTSWANA

The Botswana government does not recognize any specific groups as indigenous to the country, maintaining instead that all citizens of the country are indigenous. Some groups in Botswana maintain that they are indigenous, including the San (known in Botswana as the Basarwa) who, in July 2010, numbered some 54,000. The San in Botswana were traditionally seen as hunter-gatherers but, in fact, the vast majority of them are small-scale agropastoralists and people with mixed economies who reside both in rural and urban areas, especially in the Kalahari Desert and in the eastern part of the country. The San are sub-divided in Botswana into a large number of named groups, most of whom speak their own mother-tongue. Some of these groups include the Ju/'hoansi, Bugakhwe, //Anikhwe, Tsexakhwe, !Xoo, Naro, G/wi, G//ana, Kua, Tshwa, Deti, ǂKhomani, ǂHoa, //'Xauǂesi, Balala, Shua, Danisi and /Xaisa. The San are some of the poorest and most underprivileged people in Botswana, with a high percentage of them living below the poverty line.

In the south of the country are the Balala, who number some 1,300 in Southern (Ngwaketse) District and extending into Kgalagadi District, and the Nama, a Khoekhoe-speaking people who number 1,600 and who are also found in the south, extending into Namibia and South Africa. The majority of the San, Nama and Balala reside in the Kalahari Desert region of Botswana. The percentage of the population in Botswana that considers itself to be indigenous is 3.3%. There are no specific laws on indigenous peoples' rights in Botswana nor is the concept of indigenous peoples included in the Constitution. Botswana is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples.

Indigenous peoples' rights in Botswana and international mechanisms

Issues relating to indigenous peoples' rights were a focal point of public discussions and debates in Botswana in 2010 and were also debated at the international level. A report on the situation of the indigenous peoples of Botswana was presented to the United Nations by the Special Rapporteur on the rights of indigenous peoples, S. James Anaya, in February, 2010.[1] The Botswana government responded to the report in a statement to the Human Rights Council in Geneva on 20 September 2010.[2]

In April 2010, there was an official Botswana government presentation on Boarding Schools and Indigenous Peoples at the Ninth Session of the UN Permanent Forum on Indigenous Issues in New York.[3] The boarding schools or hostels associated with remote area schools have been a source of controversy because of poor conditions and mistreatment of San and other children. At the same meeting, Special Rapporteur James Anaya reported on his visit to Botswana.

Lack of implementation of the Central Kalahari Game Reserve (CKGR) High Court ruling

Botswana is one of the countries in Africa in which precedent-setting legal cases relating to indigenous rights have been argued (along with Kenya, South Africa and Tanzania).[4]

A major challenge for the indigenous peoples of Botswana in 2010 was the failure of the Government of Botswana to implement fully the decisions that had been reached in the Botswana High Court legal case involving the rights of residents of the Central Kalahari Game Reserve (CKGR), which came to its conclusion on 13 December 2006. As noted in previous issues of *The Indigenous World*, the CKGR case revolved around the issue of the relocation of some 2,000 people out of the Central Kalahari, the second largest game reserve in Africa, over the period 1997 - 2002. While the Botswana High Court judges awarded the former occupants of the game reserve the right to return, as well as to hunt in the reserve, government officials have continued to prevent people from moving back and have on occasion arrested those caught hunting within the boundaries of the reserve, a number of them in 2010. The govern-

ment also confiscated livestock belonging to people in the CKGR in March last year.

An important theme of the Special Rapporteur's report on the situation of the indigenous peoples of Botswana related to the Central Kalahari situation. As Mr. Anaya noted, "Those people currently in the reserve are struggling due to lack of water and social services and have asked to receive services at their communities within the reserve; even just the provision of water would significantly improve their current living conditions."[5] Mr. Anaya recommend that, "The Government should reactivate the boreholes or otherwise secure access to water for inhabitants of the reserve as a matter of urgent priority."[6] In his report, the Special Rapporteur argued that the denial of services to the Bushmen

and Bakgalagadi in the CKGR "does not appear to be in keeping with the spirit and underlying logic of the (High Court) decision, nor with the relevant international human rights standards." [7]

A new CKGR court case relating to water

On 9 June 2010, a new court case involving the CKGR people and the Government of Botswana commenced in the Lobatse High Court. The San and Bakgalagadi living in the reserve again went to court against their own government in order to obtain their basic human right, the right to access water. In particular, the applicants sought permission to re-commission, at their own expense, the borehole at Mothomelo that had been closed by the government in 2002, on land the applicants were recognized as being in "lawful possession of" in 2006.[8]

On 21 July 2010, High Court Justice L.S. Walia dismissed the applicants' request, affirming in essence that, "The applicants have made their own choice to live that kind of life since they have chosen to stay far from where there is water." In other words, the people in the CKGR have, in his view, become victims of their own decision to settle an inconveniently long distance from the services and facilities provided by the government.[9] Clearly, the High Court decision did not take in consideration the right of the San and Bakgalagadi to live in a land that has been recognized their own and the basic human right of these peoples to water. On the contrary, the High Court judgment is in line with the Botswana government's position, which is aimed at continuing its strategy of forcing the people to leave the reserve. An appeal against the judgment was filed on 1 September 2010. The appeal was accepted by the Court of Appeal, and it was decided that the court would hear the appeal in January 2011.

People who have returned to the Central Kalahari are not allowed access to water in the reserve, necessitating extensive trips outside of the reserve to find fresh water. Since some of them do not have this option, they have to depend on seasonal and sometimes brackish water that accumulates on the surface after rains or on water substitutes (e.g. melons or roots), which often requires substantial investments in labor and knowledge to obtain. Another problem with the lack of water for residents of the reserve is that children who are in schools

outside of the reserve cannot go back to see their families in the CKGR but instead have to remain with relatives in the settlements.

The stress caused by lack of water and the effects on public health in the Central Kalahari loomed large in the human rights debates in Botswana in 2010.[10] In November 2010, a San from the CKGR, Mr. Smith Moeti, spoke at the African Commission on Human and Peoples' Rights' 48th Ordinary Session (10-24 November 2010). He described the complex situations facing the people in the Central Kalahari. He spoke of the lack of access to water in the CKGR, which he said was severe. He also pointed out that the people in the CKGR had not been given hunting licenses, arguing that they needed these licenses to provide food to sustain themselves. As some of his relatives said, "We have been abandoned. Thirst and hunger are hunting us, and even our health is under threat." Mr. Moeti's grandmother (Xoroxloo [Qoroxloo] Duxee) died of thirst in the CKGR in 2005.

On 10 August 2010, the African Commission on Human and Peoples' Rights issued a press release entitled "The Situation Facing the Bushmen of the Central Kalahari Game Reserve in Botswana" and sent an Urgent Appeal to the President of Botswana. The African Commission argued for fairer treatment of the people of the Central Kalahari, in accordance with international human rights standards and the African Charter on Human and Peoples' Rights.

Diamond mining and railway construction

In 2010, diamonds represented 70-75 per cent of export earnings in Botswana. By comparison, tourism made up 12.5 per cent of the Gross Domestic Product (GDP), while livestock, a major interest of Botswana's elites, accounted for 2.8 per cent. In 2010, it was decided that a new open-pit diamond mine was to go ahead at Gope in the south-eastern part of the CKGR. The cost of this mine is at present projected to be some 53 billion Pula (7.8 billion US$).

An additional potential threat to the peoples of the eastern, central, and western Kalahari is the Trans-Kalahari Railway, which is currently being envisaged. An environmental impact assessment is already in the planning stages. The idea behind the railway, which would pass through the Central Kalahari, Ghanzi District, and on to the Namibian port of Walvis Bay, is to

export goods from Botswana, including coal. The railway would have significant effects on the ecology of the reserve, on wildlife movements, and on people wishing to move from one side of the railway to the other. There have been no efforts on the part of the government to consult local people about this proposed railway.

Tourism, community-based natural resource management and resettlement sites

On 6 September 2010, Wilderness Safaris, one of the largest safari companies in southern Africa, received the World Saviors Award for its tourism lodge in the CKGR, Kalahari Plains Camp. The San and Bakgalagadi were not consulted about the establishment of this lodge, and they receive no benefits from its presence in their area other than a few jobs.

Botswana has a Community-Based Natural Resource Management program that allows communities, including those in which indigenous peoples are found, to obtain access to wildlife resources in specified areas. In order to do so, the communities must form a Community Trust or establish an association or company, have a constitution, elect a management board, have an approved land-use and development plan, and a financial management system in which accounts are transparent and can be reviewed. One of the trusts, the Kgoe'sekani (New Xade) Trust, has made little progress despite substantial government support. Others have had difficulties, with leaseholders not paying the communities the funds that they had agreed upon when they received the leases. In addition, local people have been arrested for hunting in some of the community trust areas, in spite of the fact that the community trusts decided to allocate a portion of the wildlife quotas to community subsistence use.

There have been health problems in the resettlement sites and some people are not getting enough to eat. There is a lack of employment and most of those who do have jobs are associated in some way with the government. Many of the people in the settlements depend on food and money handouts, which have been cut back considerably. Women and children in particular are encountering difficulties due to a lack of food and income, something that is also true in some of the other remote area settlements in Botswana, including

those in Ghanzi, Kgalagadi, North West, Central, Kweneng and Southern Districts.

Government attitudes towards the people of the CKGR and others

The people of the Central Kalahari and, indeed, all of the peoples living in remote areas of Botswana are facing problems of discrimination and negative attitudes. While the government maintains that people in remote areas have equal access to land, services and development, analyses of the situations in the settlements reveal that there are difficulties faced by some members of these communities. A statement by President Seretse Ian Khama made at the diamond mining community of Orapa near the CKGR in December 2010 said: "The Bushmen are living a life of backwardness, a primitive life of deprivation alongside wild animals, and a primeval life of a bygone era of hardship and indignity." Prior to that, on 10 November 2010, the Minister of Environment, Wildlife and Tourism, Kitso Mokaila, said in an interview on the BBC: "I don't believe you would want to see our own kind living in the dark ages in the middle of nowhere as a choice, when you know that the world has moved forward and has become so technological."

First People of the Kalahari, the Working Group of Indigenous Minorities in Southern Africa (WIMSA), and other Botswana-based non-government organizations have been trying to counter these kinds of attitudes, to promote respect for all peoples in the country, and to ensure fair and just treatment of all communities and individuals both inside and outside of the Central Kalahari. ❍

Notes

1 **Anaya, S. James:** United Nations Human Rights Council, Twelfth Session, Agenda Item 3. *Promotion and Protection of Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development. Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, Addendum: The Situation of Indigenous Peoples in Botswana*. Geneva: Human Rights Council. A/HRC/13, 22 February 2010.

2 **Republic of Botswana, 2010:** *Remarks by M. Phologo Gaumakwe, Chargé D'Affaires, A.I., Permanent Mission of the Republic of Botswana to the United Nations, at the Ninth Session of the United Nations Permanent Forum on Indigenous Issues on the Issue of Boarding Schools and Indigenous Peoples*. 29 April, 2010. New York: Republic of Botswana and UNPFII.

3 **Republic of Botswana, 2010:** *Statement by Mr. Augustine Makgonagsotlhe, Secretary for Defence, Justice, and Security, Item 3. Response to the Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people,* 20 September, 2010, Geneva, Switzerland.

4 **Barume, Albert Kwokwo, 2010:** *Land Rights of Indigenous Peoples in Africa*. Copenhagen: International Work Group for Indigenous Affairs, especially pp. 85-173.

5 **Anaya, James:** *Addendum: The Situation of Indigenous Peoples in Botswana*. P. 30.

6 **Anaya, James:** *Addendum: The Situation of Indigenous Peoples in Botswana*. P. 37.

7 **Anaya, James:** *Addendum: The Situation of Indigenous Peoples in Botswana*. P. 30.

8 Legal Case No. MISCA 52/2002 in the Matter Between Roy Sesana, First Applicant, Keiwa Setlhobogwa and 241 others, Second and Further Applicants, and the Attorney General (in his capacity as the recognized agent of the Government of the Republic of Botswana. Judgment coram Hon. Mr. Justice M. Dibotelo, Hon. Justice U. Dow, Hon. Mr. Justice M. P. Phumaphi. 13 December, 2006.

9 The High Court of Botswana, Lobatse, in the matter between Matsipane Mosetlhanyene, first applicant, and Gakenyatsiwe Matsipana, second applicant, and further applicants, vs. Attorney General of Botswana respondent, June 9, 2010. MAHLB-0393-09, decided on July 21st, 2010 by L. S. Walia, Judge. P. 14.

10 For a discussion of the situation in the Central Kalahari in the latter part of 2010, see **Bearak, Barry, 2010:** For Some Bushmen, a Homeland worth the Fight. *New York Times*, November 5, 2010, pp. A1, A14.

Robert K. Hitchcock *is an American anthropologist who is on the board of the Kalahari Peoples Fund, a non-profit organization working on behalf of the peoples of southern Africa. Maria Sapignoli is an Italian anthropologist working towards a doctorate on indigenous peoples' issues in southern Africa at Essex University in the United Kingdom.*

SOUTH AFRICA

The various First Nations indigenous groups in South Africa are collectively known as Khoe-San, comprising the San people and the Khoekhoe. The San groups include the ǂKhomani San residing mainly in the Kalahari region, and the Khwe and !Xun residing mainly in Platfontein, Kimberley. The Khoekhoe include the Nama residing mainly in the Northern Cape Province, the Koranna mainly in Kimberley and Free State Province, the Griqua residing in the Western Cape, Eastern Cape, Northern Cape, Free State and Kwa-Zulu-Natal provinces and the Cape Khoekhoe residing in the Western Cape and Eastern Cape, with growing pockets in Gauteng and Free State Provinces.

The socio-political changes brought about by the current South African regime have created the space for a deconstruction of the racially-determined apartheid social categories such as the Coloureds. Many previously so-called Coloured people are now exercising their right to self-identification and embracing their African heritage and identity as San and Khoekhoe or Khoe-San. San, Khoekhoe and Khoe-San are used interchangeably depending on the context.

South Africa's total population is around 50 million, with the indigenous groups comprising just over 1%. In contemporary South Africa, Khoe-San communities exhibit a range of socio-economic and cultural lifestyles and practices. First Nations indigenous San and Khoekhoe peoples are not recognized in the 1996 Constitution but they may be recognised in an amendment to the Traditional Leadership Framework Act of 2008. South Africa is a signatory to the UN Declaration on the Rights of Indigenous Peoples.

Within the San and KhoeKhoen[1] structures, collectively called Khoe-San structures, there exist opposing understandings of events, processes, his-

tory and culture, and this has thwarted the formation of one umbrella body able to represent them at the different levels of political, cultural and legal negotiations. Besides these basic opposing views, there is also a trend towards tribalism that divides them further. Current genetic studies into genealogies are creating essentialist-based impressions of identity and authenticity, negating the "dialogical nature of identity formation"[2] over time. An example of these opposing views was played out in the National Khoe-San Council's (NKC) negotiating processes.

NKC (National Khoe-San Council) and COGTA (Department for Cooperative Governance and Traditional Affairs)

The nature of the NKC's engagement with government has been, for some, flexible and transparent, for others not. The latter argue that the NKC is not negotiating constitutional accommodation for all but simply Traditional Leadership for a select few (under the Traditional Leadership Framework Act). The NKC is made up of five recognised Khoe-San groups, namely the San, Griqua, Nama, Koranna and Cape Khoekhoen.[3]

By the end of 2010, a policy document produced by the NKC and COGTA regarding Khoe-San leadership and structures had been tabled in parliament. This followed a draft policy document which was produced by the NKC and the Department of Provincial and Local Government (DPLG) and submitted to cabinet in 2008 (*The Indigenous World 2009*). COGTA has replaced the DPLG as the government's negotiators with the NKC. These documents are always classified, resulting in the information not being shared or discussed by those on whose lives it would have a direct impact.

Many recently formed structures are calling for transparency in the NKC process, but neither the government nor the NKC are allowing this. Some have called for a national consultative conference in which the interventions made over the past nine years could be assessed and shared with newly formed first nation indigenous structures. The last Khoe-San consultative conference was held in 2001 (National Khoe-San Consultative Conference).

Some feel that the legislation to constitutionally accommodate Khoe-San peoples in the Traditional Leadership Bill would impose leadership structures on the Khoe-San peoples, whilst others support this process.

500-year commemoration of Khoekhoe/Portuguese conflict

2010 marked the quincentennial commemoration of the Khoekhoe/Portuguese conflict. As reported in *The Indigenous World 2010,* controversy arose between the NKC and some Western Cape Khoekhoe structures. Irrespective of this, the commemoration went ahead without government funding. The IZIKO Museum in Cape Town hosted a seminar in commemoration of the 500 years since the Khoekhoe-Portuguese conflict in Table Bay, in which scholars and Khoe-San representatives shared a platform. A public march was hosted in central Cape Town where the company gardens were renamed Gogosoa gardens, after the Goringhaiqua leader, Gogosoa,[4] who occupied that region of the Cape when European settlers arrived. He was a hero of the Khoekhoe/Dutch war of 1659 to 1660. The

march further handed a memorandum of grievances over to the representative of President Jacob Zuma.

Housing conflict in Cape Town

September, a month that South Africa uses to celebrate its diverse cultures and highlight cultural injustices of the past, known as "Heritage" month, saw Khoe-San descendents literally fighting local government for their right to decent housing. Khoe-San descendents in the fishing village of Hout Bay in Cape Town opposed the municipality's eviction notices and resulting demolition of their informal settlements. It was mainly people of Khoe-San descent who were evicted and they argued that their ancestors had been fishing in the area long before colonial settlement and have since suffered degradation of their societies and natural resources due to the encroachment of a kind of development that does not benefit them. This resulted in violent conflict between the police riot control forces and the residents, with many – including a pregnant woman and some children - being indiscriminately fired upon and beaten by the police. This struggle began when economically poor residents (mainly Khoe-San descendents) in Hout Bay opposed a plan on the part of property developers to take over prime real estate along the foot of Table Mountain. Human rights violations have been submitted to the South African Human Rights Commission.

Language Development

The first class of the Khoe-San Early Learning Centre, situated in Heidedal (see *The Indigenous World 2008*) in the Free State Province, graduated in 2010. Whilst this is a success story, similar activities in the Northern Cape Province have been terminated. Nama language classes - implemented around three years ago in schools in the Northern Cape Province - were terminated at the end of December 2010 by the Northern Cape Education Department. As reason for this they stated the need to assess the effectiveness of the language-learning project. Upon inquiry, by the authors of this article, into the nature of the assessment and who will be conducting it, the Pan South African Language Board (PanSALB) was elusive in shedding light on this call for an inquiry. Even the Na-

tional Khoe-San Language Board, which is a sub-section of PanSALB, has said nothing.

In the Western Cape Province, the Khoekhoegowab language-learning project has resulted in a strong desire, on the part of the youth, to further their Nama language studies. However, the only opportunity, currently, is a *Khoekhoegowab as Applied Language course* offered by the University of Namibia.

Sarah Bartmann Centre of Remembrance Project

Since the return of the human remains of our ancestor Sarah Bartmann in 2002, South Africa has had four different Ministers of Arts and Culture under whose jurisdiction the Sarah Bartmann Centre of Remembrance project falls. It has caused many delays in the implementation process for the project and resulted in the first peoples questioning the seriousness of the government. In 2010, the current Minister of Arts and Culture officially launched the Sarah Bartmann Centre of Remembrance in Hankey[5] and declared the project on schedule. However, by the end of 2010, the project seemed to have hit a major obstacle that threatened to delay it. There seems to be controversy regarding the legal owners of the land, which was donated to the Sarah Bartmann Centre of Remembrance project by Kouga municipality. According to a reliable source, the designated land is owned by the Department of Land Affairs and Kouga municipality therefore had no right to donate it to the project. The project now seems to be in limbo, and many Khoe-San peoples argue that, once again, the government has succeeded in delaying attempts to begin recovering from the gross human rights violations experienced throughout history at the hands of the different administrators of this southern African region.

Cultural development or continued assimilation?

Every year, more and more Khoe-San cultural youth groups are being formed, and these are taking part in local and national festivals. One festival, called the *Riel Dance Competition,* is advocated as an effort to reintroduce a Khoekhoe dance. It is hosted by the ATKV (the Afrikaans Language and Drama Association), established by the Afrikaaner whites during apartheid, and takes place at

the Afrikaans language monument in Paarl, Western Cape. This seemingly affords the youth access to Khoekhoe tradition in a fun, respected and entertaining manner, as well-known South African television celebrities join in the festivities. Most of the dance groups come from rural areas.

Eland Newspaper

During 2010, the *Eland* newspaper showed itself to be a necessary tool for disseminating information and for the voice of Khoe-San peoples to be heard. It is distributed nationally and reaches remote Khoe-San communities. Individuals from these communities produce most of the articles, shedding light on their local experiences and activities as well as sharing oral histories and stories. It also publishes some basic lessons in one of the Khoekhoen languages, Nama.

Another NGO established

The NGO *Khoe and Boesman Assembly* was established in Cape Town in mid-2010. It was funded by Uhuru Communications, and the director of Uhuru Communications is the Chairperson of the Assembly. The *Khoe and Boesman Assembly* was established to represent a number of Khoekhoen and Boesman (San or Bushman) peoples who are tired of not having access to minutes or reports of the NKC and COGTA meetings. Their aim is to make active interventions in this regard.[6]

Conclusion

The first peoples have the ability to stand united, based on an inherited trauma and shared historical and current experiences of marginalisation and dispossession. Of dire need is a common understanding of relevant international and domestic legal instruments and mechanisms relevant to their needs. A serious assessment - starting at grassroots level and leading up to a national consultative conference - of the processes leading to the constitutional accommodation of the Khoe-San peoples in South Africa must be undertaken as soon as possible. ❍

Notes

1 The spelling is compliant with the Nama language spelling. The 'n' at the end indicates its plural form. Hence Khoekhoen.

2 **Taylor, Charles, 1992**: Multiculturalism and "The politics of recognition": an essay by Charles Taylor; with commentary by Amy Gutmann, editor…(et al). New Jersey: Princeton University Press.

3 These 5 groupings were brought into being by the then Minister of Constitutional Affairs, which in itself shows the misrepresentation of Khoe-San groupings on this council. The representation per group is also unequal as, for example, the Nama (one of the Khoekhoe groupings) have equal representation with the Cape Khoekhoe (who represent a number of Khoekhoe groupings). Some argue that these constructed groupings promote tribalism and division. The NKC members, as negotiators for constitutional accommodation, come from various differing experiences over time, hence different expectations of the process.

4 Elphick, Richard. *Khoikhoi and the Founding of White South Africa*. Johannesburg: Raven Press, 1985.

5 http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=12374&tid=15718

6 www.uhurucom.co.za

Jean Burgess *is the chairperson of the First Indigenous Women's Movement in South Africa. She has been actively involved in the Khoe-San Movement, in leadership positions, since its inception in 1994. She has presented numerous conference papers regarding the state of Khoe-San peoples in South Africa. Prior to 1994, she was part of the Black Consciousness Movement for the liberation from apartheid South Africa and was imprisoned for her political beliefs.*

Priscilla De Wet *is a Khoe-San academic in South Africa. She has a Master's degree in Indigenous Studies from the University of Tromsø and is currently engaged in a PhD at Rhodes University in SA. Her interest is in "bridging the gap" between academia and indigenous peoples, especially regarding research methodologies used in and with Khoe-San communities and individuals.*

PART II

INTERNATIONAL PROCESSES

UN PERMANENT FORUM ON INDIGENOUS ISSUES

Established in 2000, the Permanent Forum on Indigenous Issues is an advisory body to the UN Economic and Social Council (ECOSOC) and is composed of 16 independent experts. Eight are nominated by governments and eight by indigenous peoples. It addresses indigenous issues in the areas of economic and social development, environment, health, human rights, culture and education. In 2008, the Forum expanded its mandate to include the responsibility to "promote respect for and full application of the Declaration and to follow up the effectiveness of the Declaration". According to its mandate, the Permanent Forum provides expert advice to ECOSOC and to UN programmes, funds and agencies; raises awareness about indigenous issues; and promotes the integration and coordination of activities relating to indigenous issues within the UN system.[1]

Preparatory work

In 2010, the pre-sessional meeting of the Permanent Forum took place on 17 and 18 March, on the shores of Lake Titicaca and in the city of La Paz, at the invitation of the Bolivian government. The annual pre-sessional meetings allow the members of the Permanent Forum to prepare for the annual sessions of the Permanent Forum.

9th session of the UN Permanent Forum on Indigenous Issues – 19-30 April 2010

The 9th session opened on 19 April in New York to a surprise announcement from the New Zealand government that it had reversed its position on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and would support it. The

estimated 1,500 participants, including indigenous representatives, NGOs, states and UN agencies welcomed the news with a standing ovation. The next day, the United States announced that it would begin consultations with indigenous peoples to review its position on the Declaration. This means that all four states that voted against the adoption of the Declaration in the General Assembly in 2007 now either support it or are actively reviewing their position; several others have yet to express a view.[2]

Special theme: Development with culture and identity

The special theme of the 9th session was *Indigenous peoples: Development with culture and identity; articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples.* A great number of participants spoke on the issue and, on the basis of these inputs, the Permanent Forum adopted 29 recommendations related specifically to the theme. The recommendations reflect the fact that it is fundamental for indigenous peoples to preserve and develop their cultures and ways of life. Development for indigenous peoples is therefore closely linked to many aspects of their lives, from education and indigenous languages, to health, to respect for traditional knowledge and traditional ways of living. Indigenous peoples' visions of well-being and development need to be heard by states, and indigenous peoples themselves must participate effectively in development processes.

It was encouraging that over 20 states took part in the discussion on the special theme.

Human rights

Human rights continues to be a major issue at each Forum session and this year was no exception. The Forum held a dialogue with Prof. James Anaya, the Special Rapporteur on the rights of indigenous peoples (SR), as well as with Janine Lasimbang, the Chairperson of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). During this dialogue, Mr. Anaya and Ms. Lasimbang discussed the work of their respective mandates over the past year.

In his response to the increasing state support for the UNDRIP, the SR welcomed Australia and New Zealand's endorsement of the Declaration but sent a pointed message to Canada and the US. He advised that any future statements of support should "be informed by the spirit and objectives of the Declaration' as well as the practical challenges facing indigenous peoples". This, in turn, prompted the Forum to recommend that Canada and the US "work in good faith with indigenous peoples for the unqualified endorsement and full implementation" of the Declaration.[3]

The SR also emphasized the importance of indigenous peoples' self determination in relation to the theme of development with culture and identity. In this regard, he said that "the right to development is a right of all peoples, including indigenous peoples". He also voiced concern at "mega-projects" that were aimed at developing the state as a whole but which actually have negative impacts on indigenous peoples. There was no adequate way for indigenous people to participate in their design or implementation. Moreover, to reduce indigenous peoples' social and economic disadvantages, efforts had to include those to advance their self-determination. He further stressed that respect for indigenous peoples' rights to self-determination in the development process was a matter of basic human dignity.[4]

Regional focus on North America

This year's regional focus on North America discussed identifying issues, challenges and positive measures of cooperation that could improve the situation of indigenous peoples in the region. At the conclusion of the panel discussion on North America, the Permanent Forum adopted a statement and recommendations on issues such as education, land rights, violence against women, health, environment, etc.

One of the highlights of the discussion on North America was the announcement from the United States that it would start a process of examining its position on the UNDRIP. A similar statement was made by Canada in March.

Half-day session on indigenous peoples and forests

A panel took place, made up of Permanent Forum members, the Director of the Secretariat of the UN Forum on Forests, indigenous experts and the representa-

tive of Brazil. Amongst the issues raised were the fact that conservation initiatives frequently lead to the displacement of indigenous communities due to the misconception that the only way to conserve forests is to remove all humans from them. Indigenous peoples' sustainable management of their forests was also discussed, as well as the need for governments to recognise indigenous peoples' right to manage their own lands. The Forum adopted some general recommendations on forests and indigenous peoples that will be submitted to the UN Forum on Forests in early 2011. The year 2011 is the International Year of Forests. Given the importance of forests for indigenous peoples, the Forum decided to hold an international expert meeting in January that year on this topic.

New method of work: follow-up to country visits

A significant new approach evident in this session was the follow-up discussion on the Forum's country visits to Bolivia and Paraguay to investigate forced labour and servitude among the Guaraní people of the Chaco region.[5]

The effectiveness of these visits was increased by the inclusion of the relevant UN country teams, as well as specialised UN organisations such as the International Labour Organisation and the Office of the High Commissioner for Human Rights. Each visit resulted in a report from the Forum that included comprehensive recommendations for both states and UN agencies. Both Bolivia and Paraguay submitted responses, which were included in the documentation for the 9th session.[6]

During the 9th session, the Forum developed a follow-up mechanism that took the form of an in-depth dialogue involving Forum members, representatives of each state, members of the respective UN country teams and indigenous peoples from the affected communities.

The challenge for the Forum is to remain engaged with all parties in Bolivia and Paraguay to ensure follow up and practical progress in the goals that the Permanent Forum as well as the governments of Bolivia and Paraguay have committed to. This is not only a challenge in political terms but also represents a significant time and resource challenge for the Forum, which has an expanding work load and a very limited budget.

However, if tangible results are achieved, it may well prove to be an effective way of directly engaging more states and UN country teams in the work of the Forum.

The potential for the Forum to produce more targeted and concrete recommendations as a result of this approach has been welcomed by indigenous peoples and a range of UN agencies. It remains to be seen how eager states will be to invite the Forum to undertake country visits. However, in an encouraging sign, the Forum has already undertaken a third visit following an invitation from Colombia, and this will be the topic of an in-depth dialogue at its next session.

Cooperation with UN Treaty bodies

For the first time, the Forum directed a number of detailed and concrete recommendations to the UN treaty bodies.

These recommendations are intended to draw states' attention to their treaty obligations in respect of indigenous peoples' human rights (as set out in the UNDRIP), and the fact they should be reporting on these matters under the treaties. This could prove an effective means of countering the misperception that the UNDRIP is "aspirational", rather than much of it being grounded in binding international human rights obligations.

For example, the Human Rights Committee, which oversees the implementation of the International Covenant on Civil and Political Rights (ICCPR), was asked by the Forum to "require" State parties to report on how they are giving effect to indigenous peoples' right to self-determination under Article 1 of the ICCPR and Article 3 of the UNDRIP.

The Forum also asked that states "consult and cooperate" with indigenous peoples when drafting their reports. Further, the Human Rights Committee was encouraged to update a range of its general comments that pre-date the adoption of the UNDRIP, such as General Comment No. 12 on the right to self-determination.

The Forum also made itself available to "work closely" with the treaty bodies to assist them in operationalising the UNDRIP, and issued a standing invitation to several of them to participate in future sessions.

Given the role of the treaty bodies in developing jurisprudence and interpreting international human rights law, this direct cooperation between the two entities could be mutually beneficial.

It would allow for the sharing of perspectives, experiences and best practices. Together with the Forum's more established practice of encouraging UN agencies and, more recently, UN country teams to use the UNDRIP to inform their work with indigenous peoples, this cooperation with the treaty bodies could add an important new dimension to the goal of tackling the implementation gap.

Future work

Forum members are increasingly undertaking research projects on a range of complex problems that confront indigenous communities. For this session, there were ten such reports on issues ranging from the doctrine of discovery to indigenous peoples and corporations, and the impact of the global economic crisis on indigenous communities. The consideration of these reports took up much of the second week of the session. Given the complexity of the problems they address, each of these issues will be the subject of a further report at the next session. In addition, the Permanent Forum decided to commission six new studies for the 10th session, among them the elaboration of a study on the implementation of the Chittagong Hill Tracts Accord of 1997.

The 10th session of the Forum will be held in New York from 16 to 27 May 2011. It will review recommendations from previous sessions related to the following themes: economic and social development; environment; and free, prior and informed consent.

The half-day discussion will be on indigenous peoples' right to water. The regional focus will be on the situation of indigenous peoples in Latin America and the Caribbean. Looking further ahead, the special theme for the 11th session in 2012 will be "The Doctrine of Discovery: its enduring impact on indigenous peoples and the right to redress for past conquests (articles 28 and 37 of the Declaration)".

Elections of Permanent Forum members for the 2011-2013 term

On 28 April 2010, the Economic and Social Council (ECOSOC) held elections for its subsidiary bodies, including the Permanent Forum. On that occasion, the Council elected the eight members nominated by governments and the President of ECOSOC announced his appointment of the eight members nominated by in-

digenous peoples' organizations, who will all serve as members of the Permanent Forum for the 2011-2013 term.

The 8 indigenous experts nominated by the President of ECOSOC were:

Alvaro Esteban Pop from Guatemala
Anna Naikanchina from the Russian Federation
Dalee Sambo Dorough from the United States
Edward John from Canada
Mirna Cunningham from Nicaragua
Paul Kanyinke Sena from Kenya
Raja Devashish Roy from Bangladesh
Saul Vicente Vazquez from Mexico

The 8 elected members nominated by governments were:

Eva Biaudet from Finland
Helen Kaljulate from Estonia
Megan Davis from Australia
Mirian Masaquiza from Ecuador
Paimaneh Hasteh from Iran
Simon W. M'Viboudoulou from the Congo
Valmaine Toki from New Zealand
Andrei Nikiforov from the Russian Federation

Notes

1 More information is available from the Forum's website: http://www.un.org/esa/socdev/unpfii/en/session_ninth.html
2 Australia, Canada, New Zealand and the US voted against the Declaration. Eleven states abstained but, of these, Colombia and Samoa have since come out in support of the Declaration. Azerbaijan, Bangladesh, Bhutan, Burundi, Georgia, Kenya, Nigeria, Russian Federation and Ukraine have not revised their positions.
3 See also the articles on the US and Canada in this volume.
4 The Special Rapporteur's Statement is available at: http://www.un.org/esa/socdev/unpfii/documents/statement%20by%20SR.pdf

5 The Forum members who visited both Bolivia and Paraguay were the Forum Chairperson, Ms Victoria Tauli-Corpuz, and members Mr Lars Anders-Baer, Mr Bartolomé Clavero and Mr Carlos Mamani. They were assisted by two officials from the DESA and accompanied by a range of representatives from UN agencies working in Bolivia, Paraguay and Peru.

6 All documentation for the Forum's 9th session is available at: http://www.un.org/esa/socdev/unpfii/en/session_ninth.html

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UN EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES

In December 2007, the UN Human Rights Council decided to establish the Expert Mechanism on the Rights of Indigenous Peoples.

The Expert Mechanism reports directly to the Human Rights Council (the main human rights body of the United Nations). Its mandate is to assist the Council in the implementation of its mandate by providing thematic expertise on the rights of indigenous peoples and making related proposals to the Human Rights Council for its consideration and approval.

The Expert Mechanism consists of five independent experts. They are appointed by the Human Rights Council for staggered terms of from one to three years and may be re-elected for one additional period. In June 2008, the Council appointed five independent experts for the period 2008-2010.

The Expert Mechanism meets once a year for up to five days and is open to representatives of indigenous peoples, states, NGOs, United Nations bodies and agencies etc. The sessions of the Expert Mechanism provide a unique space for focused multilateral discussions on the scope and content of the rights affirmed to indigenous peoples under international law, and how the implementation of these rights can be advanced.

Introduction

In 2010, the main activities of the Expert Mechanism on the Rights of Indigenous Peoples were: writing of the progress report for the study on indigenous peoples and the right to participate in decision-making; its 3rd annual session, which took place from 12 to 16 July 2010; reporting to the Human Rights Council at its September session; and participation in other relevant international meetings.

The right to participate in decision-making

In 2009, the Human Rights Council asked the Expert Mechanism to carry out a study on indigenous peoples and the right to participate in decision-making.[1] The Human Rights Council also requested the submission of a progress report at its September session in 2010 and a final study in 2011.

Research and methodology

Following the same methodology as its first study on the right of indigenous peoples to education,[2] the Expert Mechanism made a call for written contributions as the basis for drafting an advanced version of its report, which was then discussed at its annual session. The progress report on indigenous peoples and the right to participate in decision-making was submitted, in its final version, to the Human Rights Council and orally presented at its 15th session in September 2010.[3]

The contributions to the study submitted by states, indigenous peoples and other human rights organisations and institutions proved fundamental in drawing up evidence-based studies that reflect the diversity of realities in which indigenous peoples live. Accordingly, it is worth mentioning the large number of written contributions received by the Expert Mechanism in 2010.[4] The Expert Mechanism's research was further supported by two specific activities: an international seminar on the right of indigenous peoples to participate in decision-making, which was organised by the International Work Group for Indigenous Affairs (IWGIA) and the Asia Indigenous Peoples Pact Foundation (AIPP), and a technical workshop on indigenous peoples and the right to participate in decision-making organised by the Office of the High Commissioner for Human Rights (OHCHR).

Key features of the study's content

The progress report for the study on indigenous peoples and the right to participate in decision-making "examines the international human rights framework as it relates to indigenous peoples, their internal decision-making processes and institutions, and participation in decision-making mechanisms linked to both state and non-state institutions, and processes affecting indigenous peoples."[5]

In the progress report, the Expert Mechanism presents the international human rights framework as it relates to indigenous peoples and the right to participate in decision-making. It elaborates on key provisions of the United Nations Declaration on the Rights of Indigenous Peoples[6] and other international and regional human rights instruments, in particular International Labour Organisation Convention 169. The report also develops an analysis of the right to self-determination as the normative international human rights framework for the collective right to participate in decision-making. A specific sub-chapter on the right of free, prior and informed consent concludes the presentation of the international human rights framework.

Furthermore, taking into account the contributions made from various countries, the study presents general principles defining what can be considered indigenous peoples' internal decision-making processes and institutions, including indigenous parliaments, organisations and legal systems. Specific subchapters address the importance of indigenous women's participation in decision-making and the challenges faced by indigenous governance. Finally, the progress report covers a wide range of state and non-state institutions and related processes affecting indigenous peoples' rights where mechanisms for the participation of indigenous peoples should be guaranteed.

The third annual session of the EMRIP

The annual session is the main activity of the Expert Mechanism as it allows for its members to formally meet, discuss their work with participants and take decisions appropriate to its mandate. As previously mentioned, the 3rd annual session took place from 12 to 16 July 2010.

Increasing participation

At the opening, the United Nations High Commissioner for Human Rights and the President of the Human Rights Council commended the work of the Expert Mechanism in contributing to the Council's mandate to advance the rights of indigenous peoples. Welcoming speeches were also given by a Board member of the United Nations Voluntary Fund for Indigenous Populations and an indigenous representative. Then, in accordance with the rotating principle, Mr. José

Carlos Morales and Mr. José Molintas were elected as the new Chairperson-Rapporteur and Vice–Chairperson-Rapporteur, respectively.

The third session attracted increasing attention, with around 600 accreditations, including indigenous representatives, state delegations, national human rights institutions, non-governmental organisations and universities as well as representatives of United Nations agencies.[7] Notably, the Special Rapporteur on the Rights of Indigenous Peoples, Mr. James Anaya, and the Chairperson of the United Nations Permanent Forum on Indigenous Issues, Mr. Carlos Mamani, participated in the session, making substantive contributions to the discussions. Furthermore, a full programme of side-events was organised on topics relating to the session's discussions.[8]

In addition to the study on indigenous peoples and their right to participate in decision-making, the session included additional items open to plenary discussion: the United Nations Declaration on the Rights of Indigenous Peoples and the proposals to be submitted by the Expert Mechanism to the Human Rights Council.

Promoting the United Nations Declaration on the Rights of Indigenous Peoples

Firstly, the discussion focused on the use of the United Nations Declaration on the Rights of Indigenous Peoples to promote and protect the rights of indigenous peoples. In accordance with Article 42, the Expert Mechanism has a duty to promote the Declaration in the context of its mandate. Indeed, the discussion gave an opportunity for indigenous and governmental representatives to share good practices and achievements in promoting and implementing the Declaration. The need to disseminate information about the Declaration at the national and local levels and to strengthen the role of national human rights institutions were identified as being among the challenges that emerged from the discussions.

Submitting proposals to the Human Rights Council

Secondly, at the end of the session and reflecting the session's discussions, the Expert Mechanism adopted several proposals that were subsequently submitted to the Human Rights Council. Some of them were partially or fully approved

by the Council through its annual resolution on human rights and indigenous peoples.[9]

Proposal No. 1 focused on the important role of regional and national human rights institutions in promoting and protecting the rights of indigenous peoples. Accordingly, it was proposed that the Council formally invite states to establish and strengthen national human rights institutions, in accordance with the Paris Principles, as regards their capacity to promote and protect indigenous peoples' human rights. As a result, the Council encouraged national human rights institutions to develop and strengthen their capacity to advance indigenous issues.[10]

Proposal No. 2 concerned the Human Rights Council's consideration of the rights of indigenous peoples at its regular sessions, including panel discussions on the rights of indigenous peoples as a mechanism to follow up the Expert Mechanism studies. In this case, the Council only partially approved the proposal. The Council did agree to organise a panel discussion on the role of languages and culture in promoting and protecting the well-being and identity of indigenous peoples. However, the Council did not consider such panel as a space for discussing the follow-up to the Expert Mechanism's studies. Instead, the Council indicated that such follow-up discussions should continue to take place in the annual sessions of the Expert Mechanism.[11]

Proposal No. 3 proposed that the Council should foresee the participation of the Expert Mechanism and indigenous representatives in its review process in order to ensure the strengthening of the Expert Mechanism and the Council's ability to promote and protect the rights of indigenous peoples.[12] Without specifying how this would be undertaken, the Council nevertheless recognized the importance of the contribution of all relevant stakeholders in this process.[13]

Proposals No. 4 and 5 were based on the United Nations Declaration on the Rights of Indigenous Peoples. With specific reference to Article 42, the Expert Mechanism requested authorization to annually review developments relating to the promotion and protection of the rights of indigenous peoples and, within the framework of its mandate, to advise the Council on possible measures to be taken to achieve the objectives of the Declaration. While the Council has not yet taken up this proposal, its content is in line with the current practice to discuss the Declaration at the annual session of the Expert Mechanism. Indeed, the second and third sessions showed that these discussions represent a construc-

tive contribution to identifying appropriate ways and means of promoting and implementing the provisions of the Declaration effectively.

Furthermore, the Expert Mechanism considered it important to recall the scope of Article 38 of the Declaration, which provides that states, in consultation and cooperation with indigenous peoples, shall take appropriate measures, including legislation, to achieve the purposes of the Declaration itself. On this basis, the Expert Mechanism proposed that the Human Rights Council call upon states to follow up on strategies and measures aimed at full implementation of the Declaration. Albeit only partially, the Council has taken up this proposal in its annual resolution on human rights and indigenous peoples by "encouraging States that have endorsed the Declaration on the Rights of Indigenous Peoples to adopt measures to pursue the objectives of the Declaration in consultation and cooperation with indigenous peoples, where appropriate".[14]

The last proposal for the Human Rights Council, Proposal No. 6, referred to the extension of the mandate of the United Nations Voluntary Fund for Indigenous Populations. The Council, and subsequently the General Assembly, have given a positive response. Henceforth, indigenous peoples can seek support through the Voluntary Fund to participate in Treaty Bodies and Council sessions.

Finally, the Expert Mechanism adopted other proposals that reflect various concerns, such as the necessary attention to indigenous peoples' rights in the Universal Periodic Review, indigenous peoples and truth and reconciliation commissions, further strengthening of the Expert Mechanism Secretariat and cooperation with United Nations agencies.

Coordination and cooperation building

The United Nations mechanisms with a specific mandate on indigenous peoples

In 2010, the Human Rights Council welcomed the cooperation and coordination between the three United Nations' mechanisms with a specific mandate on indigenous peoples, namely the Special Rapporteur, the Permanent Forum and the Expert Mechanism.[15] As good practice, the Expert Mechanism attended the Permanent Forum expert meeting and annual session while the Permanent Forum and the Special Rapporteur participated in the third session of the Ex-

pert Mechanism, in addition to contributing substantively to its study. In a complementary manner to the Expert Mechanism's mandate, the Special Rapporteur, as in previous sessions, held parallel meetings with indigenous representatives who wished to submit a complaint of human rights violations.

Other human rights mechanisms and institutions

Cooperation has been expanding with other human rights institutions as well, such as the national human rights institutions and the Working Group on Indigenous Populations/Communities of the African regional human rights system. The Expert Mechanism also participated in other international meetings, such as the Forum on Minority Issues and the International Parliamentary Conference on "Parliaments, minorities and indigenous peoples: effective participation in politics", organised by the Inter-Parliamentary Union.

Visibility and outreach

Another noteworthy collaboration was IWGIA's production, in cooperation with the OHCHR, of a video on the Expert Mechanism, aimed at contributing to awareness raising of its mandate and encouraging indigenous peoples to actively participate in its work and annual sessions.[16]

Conclusion

In 2010, the constructive relationship between the Expert Mechanism and the Council reached a new stage. The inclusion of a specific discussion on human rights and indigenous peoples in the Human Rights Council's programme of work was further consolidated. Indeed, all the reports on human rights and indigenous peoples are now discussed at the same annual session of the Council, in September. Indigenous peoples' participation is thereby facilitated and will be supported in future by the extended mandate of the Voluntary Fund for Indigenous Populations. From 2011 on, the Expert Mechanism will report to the Council through an interactive dialogue, like the Special Rapporteur. Finally, the Council agreed to the idea of holding panel discussions on specific issues related to the rights of indigenous peoples.

Moreover, the Expert Mechanism has contributed to an understanding of indigenous peoples' right to participate in decision-making through its research and thematic work in 2010. This represents a new step forward in advancing the rights of indigenous peoples as recognized by the United Nations Declaration on the Rights of Indigenous Peoples.

In this context, a new membership will take over the work of the Expert Mechanism in 2011 in order to further advance the rights of indigenous peoples.[17] On 23 March 2011, the Human Rights Council appointed the following members: Ms. Jannie Lasimbang (Malaysia) and Mr. Wilton Littlechild (Canada) for a three-year term; Mr. José Carlos Morales Morales (Costa Rica) and Ms. Anastasia Chukhman (Russian Federation) for a two-year term; and Mr. Vital Bambanze (Burundi) for a one-year term. ❍

Notes

1 Human Rights Council resolution 12/13.
2 A/HRC/12/33.
3 A/HRC/15/35.
4 For the full list of contributions and information on the International seminar and OHCHR workshop, see document A/HRC/EMRIP/2010/4. Available at: http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/3rd/index.htm
5 A/HCR/15/35, Summary.
6 Arts. 3-5, 10-12, 14, 15, 17-19, 22, 23, 26-28, 30-32, 36, 38, 40 and 41.
7 See annex 1 to the Report of the Expert Mechanism on the Rights of Indigenous Peoples on its third session, Geneva, 12-16 July 2010 (A/HRC/15/36).
8 http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/3rd/docs/ProgLunchTimeEvents.pdf
9 See the report of the third session for the full and detailed content of each proposal (A/HRC/15/36) and the Human Rights Council resolution 15/7.
10 Human Rights Council resolution 15/7, para 12. For more information on national human rights institutions and the Paris Principles, see http://www.nhri.net.
11 Human Rights Council resolution 15/7, para 6 and 8.
12 For more information on the Human Rights Council's review, see: http://www2.ohchr.org/english/bodies/hrcouncil/HRC_review.htm
13 Human Rights Council resolution 15/7, para 11.
14 Human Rights Council resolution 15/7, para 15.
15 Human Rights Council resolution 15/7, para 13.
16 http://www.iwgia.org/sw37812.asp.

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UN SPECIAL RAPPORTEUR ON THE RIGHTS OF INDIGENOUS PEOPLES

This year marks the third year of the mandate of Professor James Anaya as the United Nations Special Rapporteur on the rights of indigenous peoples. Over the past year, the Special Rapporteur continued his work in four principle areas: responding to cases of alleged human rights violations; country assessments; thematic studies; and promoting good practices. The specific activities carried out in each of these areas were described in detail in the third annual report of the Special Rapporteur to the Human Rights Council (A/HRC/15/37). In-depth reports on specific activities carried out within the framework of the mandate of the Special Rapporteur are attached as annexes to this annual report, including his reports on the situation of indigenous peoples in Botswana, Colombia, Australia, the Russian Federation, and Ecuador. All documents related to the work of the Special Rapporteur can be found at www.unsr.jamesanaya.org. In September 2010, the Human Rights Council renewed the mandate of the Special Rapporteur, extending the position for a further three years.

Responding to cases of alleged human rights violations

As in past years, the Special Rapporteur has placed priority on examining specific situations of allegations of human rights violations that have been brought to his attention. For some of the cases reviewed from September 2009-September 2010, the Special Rapporteur developed a new practice of drafting a series of detailed observations and recommendations regarding the action that he believed states and, as appropriate, other interested parties should take to address particular situations. These observations are included either in his re-

port on communications, together with summaries of the Special Rapporteur's communications to governments and the replies received, or in special reports. Through this practice, Professor Anaya endeavours to identify the substantive issues in specific cases and to encourage cooperation between states and indigenous peoples in the search for constructive solutions to those problems.

Cases addressed by the Special Rapporteur in which he has issued detailed observations and recommendations include, among numerous others, cases concerning the forced removal of an indigenous Mapuche community in Argentina; oil extraction and land tenure security of the Lubicon Cree community in Canada; land laws and policies concerning indigenous peoples in Cambodia; the effect of the construction of the Mapithel dam on indigenous peoples in northern India; the proposed eviction of the Ogiek people from the Mau Forest Complex in Kenya; the situation of indigenous peoples in voluntary isolation in Paraguay; the situation of the Batwa people in Uganda; and the removal of indigenous pastoralists from their traditional lands in Tanzania.

In June 2010, as part of his work to follow up on specific allegations, the Special Rapporteur visited Guatemala to investigate the situation of indigenous peoples affected by the Marlin Mine in the Sipacapa and San Miguel Ixtahuacán districts. During his visit, the Special Rapporteur also examined general questions concerning the application of the principles of consultation with indigenous peoples in the country, in particular in relation to extractive industries. The visit to Guatemala attracted significant attention at all levels, with one meeting attended by some 15,000 indigenous people, and has spurred subsequent dialogues and consultation procedures between the government, private companies and indigenous peoples. A preliminary report on the Marlin Mine and consultation in Guatemala was issued upon completion of the visit in June 2010 and two final reports on these issues will be made public in the coming months.

Country assessments

In April 2010, Professor Anaya attended a conference in the Sápmi region, which is the traditional territory of the Saami people in Norway, Sweden, Finland and Russia. The conference gathered together representatives of the Saami parliaments of Norway, Sweden and Finland, government officials from each of these countries, and representatives from Saami non-governmental organisations from

the Nordic countries and the Russian Federation. This visit was unique in that it was the first visit by a Special Rapporteur to the traditional territory of an indigenous group, rather than a specific country. The Special Rapporteur considers that the participation of representatives of the Nordic States and Saami people in the April 2010 conference represents good practice for examining the situation of indigenous people that are divided by international borders. The draft report on the situation of the Saami people in Norway, Sweden and Finland was made public in early 2011.

In July 2010, the Special Rapporteur visited New Zealand, at the invitation of the government and with the encouragement of Maori leaders, to follow up on the work of the previous Special Rapporteur on the rights of indigenous peoples, Rodolfo Stavenhagen, who visited the country in 2005. During the visit, the Special Rapporteur was especially interested in examining the process for settling historical and contemporary claims based on the Treaty of Waitangi. The report on the situation of the Maori people in New Zealand is currently pending comments from the government, although a preliminary note was issued upon conclusion of the visit by the Special Rapporteur.

In what marked his second visit to Africa as Special Rapporteur, Professor Anaya carried out a mission to the Republic of Congo in November 2010. The Special Rapporteur visited the capital, Brazzaville, as well as the villages of Impfondo, Dongou, Bisembi, Dolisie, Sibiti, Mambouana and Indo where he met with local departmental authorities and visited local communities. The visit came at a significant moment in the country's history as it was considering adopting Africa's first ever law on the protection of indigenous peoples' rights. Significantly, one month after the visit the historic law was passed, an event that was commended by Professor Anaya in a press release.

Thematic studies

The Special Rapporteur continues to pursue his own investigations into questions that he sees recurrently as he carries out his mandate and which reflect widespread patterns or common problems faced by indigenous peoples in the enjoyment of their human rights. Over the past year, the Special Rapporteur took a special interest in analyzing the role of companies with regard to indigenous

rights, a question that is examined in detail in his annual report to the Human Rights Council made public in September 2010.

Professor Anaya has also addressed matters relating to the right of indigenous peoples to development with culture and identity; the right of indigenous peoples to participate in decision-making; and the content and nature of the United Nations Declaration on the Rights of Indigenous Peoples. The Special Rapporteur's comments on these themes were included in his annual report to the General Assembly of August 2010. Among other themes that the Special Rapporteur is studying or plans to study are legal pluralism and indigenous customary law; the situation of indigenous peoples living in isolation; and the situation of indigenous communities and individuals living in urban areas.

Promoting good practice

In accordance with his mandate from the Human Rights Council, the Special Rapporteur has provided technical assistance to governments with regard to advancing the rights of indigenous peoples. In December 2009, the Government of Ecuador invited the Special Rapporteur to visit the country in order to provide technical assistance in the drafting of new legislation aimed at harmonizing indigenous and ordinary jurisdictions. This also provided an opportunity to follow up on the visit that the Special Rapporteur made in 2008, as a result of which he submitted a series of observations to the government on the constitutional reform process that was taking place in the country at the time. As part of his follow-up activities, the Special Rapporteur prepared a report with additional observations and recommendations to the government.

In May 2010, the Special Rapporteur participated in a seminar on "Interculturality and the gas and petroleum industry in Latin America and the Caribbean", held in Cartagena, Colombia, and sponsored by the Regional Association of Natural Gas and Petroleum in Latin America and the Caribbean (ARPEL). The seminar provided the Special Rapporteur with an opportunity to discuss international standards concerning the rights of indigenous peoples with representatives and heads of petroleum and gas companies in the region.

In addition, in July 2010, the Special Rapporteur advised the Colombian government on a draft bill on consultation with indigenous peoples. The Special Rapporteur's advisory services were part of an initiative by the Office of the United

Nations High Commissioner for Human Rights (OHCHR) in Colombia which, at the request of the Ministry of the Interior and Justice of Colombia, is carrying out a consultation with the country's indigenous peoples with a view towards developing a law on consultation in Colombia.

Renewal of the mandate of the Special Rapporteur

In September 2010, the Human Rights Council renewed the mandate of the Special Rapporteur for a further three-year period and, in doing so, changed the title of the mandate from "Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people" to "Special Rapporteur on the Rights of Indigenous Peoples" (A/HRC/15/14). This name now mirrors the title of the United Nations Declaration on the Rights of Indigenous Peoples and the Expert Mechanism on the Rights of Indigenous Peoples. ❍

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UNIVERSAL PERIODIC REVIEW

The creation of the Universal Periodic Review (UPR) was one of the most significant innovations of the Human Rights Council (HRC). Under this system, the human rights records of all UN member states will, for the first time, be regularly examined through a common mechanism. Its creation is based on the UN General Assembly Resolution[1] that established the HRC. Consequently, in June 2007, the HRC decided to establish the UPR as one of the key elements of its institution-building package.[2]

The goal of the UPR mechanism is to improve the human rights situation on the ground; assess the fulfilment of states' obligations and commitments; enhance the states' capacity; and share best practices among states and other stakeholders.

A country review is based on three official documents: the National Report, a compilation of UN information, i.e., reports from UN mechanisms and special procedures relating to the human rights situation of the country under review, and a ten-page summary of stakeholders' information, the latter two being compiled by the Office of the High Commissioner for Human Rights (OHCHR).

Each state is reviewed once every four years, in a three-hour session consisting of the presentation of its report and an interactive dialogue with all member states. Only states have the possibility of taking the floor during the review. The report from the review is adopted by the Human Rights Council at one of its subsequent sessions.

The adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in September 2007 has established the minimum standard for the recognition of the collective rights of indigenous peoples. The UNDRIP therefore needs to be mainstreamed into the work of the UN Human Rights Council as well, particularly within - but not limited to - the UPR.

Indigenous issues in the UPR

2010 saw the seventh, eighth and ninth sessions of the UPR take place. During these sessions, various countries with indigenous populations were up for review and they included Angola, Bolivia, Nicaragua, Sweden, Kenya, Kiribati, Honduras and the United States of America.

While the reviews for Angola and Kiribati were largely silent on indigenous issues, the trend for most states was interactive dialogue sessions that contained numerous inquiries and recommendations regarding their indigenous populations. Sweden, for example, received multiple questions on the measures taken to address the concerns of the Sami people while Kenya, Honduras and Bolivia faced numerous queries on the responsiveness of their legal frameworks to indigenous issues.[3]

The common threads throughout the recommendations issued to various states included the ratification or proper implementation of ILO Convention 169, the adoption or implementation of the UNDRIP, constitutional recognition for indigenous peoples, addressing all forms of discrimination against indigenous peoples and guaranteeing the participation of indigenous peoples in public affairs. Sweden and Kenya were noted for their commitment to review their respective stances on ratification of ILO Convention 169, while the United States of America voluntarily undertook to review its position on the UNDRIP.

The states under review were also able to highlight the domestic reforms they were undertaking in order to enhance the rights of indigenous peoples. Honduras, for example, was able to outline its Programme for the Comprehensive Development of Indigenous Peoples while Kenya made mention of its constitutional review process, which included provisions that would safeguard the land rights of indigenous peoples and introduce affirmative measures.

Indigenous peoples' involvement in the UPR process

Involvement in the UPR process needs to be considered in the following phases: the preparation and submission of the State and Stakeholder Reports to the OHCHR; participation in the interactive dialogue session; participation in the adop-

tion of the report; and follow-up on implementation of the recommendations accepted by the state.

Various organizations representing indigenous peoples did prepare and submit reports that were included in the stakeholder summary prepared by the OHCHR. In certain instances, such as Kenya, civil society organizations were invited to critique and inform the State Report prior to its submission to the OHCHR. In recognition of the fact that NGOs are not permitted to make interventions during the interactive dialogue sessions, most organizations conducted side-events in Geneva to generate awareness and garner support for various recommendations among the working groups that would undertake the reviews of their respective states. Kenyan NGOs, under the banner of the Kenya Stakeholders' Coalition on Universal Periodic Review (KSC-UPR), were commended for their preparation of an Advocacy Charter[4] - a tool designed to convey a summary of Kenya's human rights concerns along with proposed questions and recommendations to the state. Indigenous peoples were also represented during the adoption of State Reports at sessions of the Human Rights Council, where they made interventions compelling their respective governments to accept recommendations pertaining to their rights and to commit to definitive implementation agendas.[5]

Experiences with the UPR process

The universality aspect of the UPR mechanism cannot be gainsaid. In carrying out a holistic analysis of the human rights situation of a state under review, the UPR has been instrumental in propelling the concerns of indigenous peoples into mainstream discourse and providing much needed impetus to stalled processes. Sweden, for example, was reminded of its commitment to implementing the UNDRIP while Kenya was urged to declare its commitment to implement a decision from the African Commission on Human and Peoples' Rights pertaining to the land rights of the Endorois community.

The UPR process is, however, plagued by structural shortcomings that limit its effectiveness. Most NGOs consider the parameters guiding stakeholder submissions to be restrictive (a 5-page limit for individual submissions and a 10-page limit for group submissions). The interactive dialogue sessions are, in some instances, heavily diluted by states encouraging their allies to dominate the speakers list and consequently spend the entire time celebrating the successes of the

state rather than interrogating their shortcomings. NGOs are dismayed by the fact that their spoken interventions only take place during the adoption of the report, when most of the substantive work has already been done. This is further compounded by the fact that the speaking slots for NGOs are only two minutes each in duration.[6]

An initial analysis of the traction gained by indigenous peoples in the UPR indicates limited success. The first five UPR sessions saw 166 recommendations out of a possible 5,000 focus on indigenous peoples.[7] This has been attributed to limited awareness of the UPR process and a predisposition to more mainstream issues such as civil and political rights. Indigenous communities must therefore adopt innovative approaches to ensure their issues capture the attention of the UPR process. The Kenyan approach was notable in this regard: indigenous communities joined a wider coalition (KSC-UPR) that included their national human rights institution and participated in preparing a single multi-stakeholder report. Some of the benefits of this approach included placing indigenous issues at parity with other human rights issues, the uptake of and advocacy for indigenous issues on the part of the national human rights institution, consultations with the state prior to the review and the exposure to wider platforms for lobbying and advocacy during the review in Geneva.

As the UPR looks to the second cycle of reviews, there is a need to consider the implementation of recommendations by states. It is incumbent upon states that have undergone review to prepare their respective Plans of Actions in regard to implementation of UPR recommendations. States are expected to convert the recommendations into actionable policy interventions, while stakeholders are expected to advise the state and monitor the rate of implementation.

It is also hoped that the final report of the "Open-ended intergovernmental working group on the review of the work and functioning of the Human Rights Council", due in 2011, will yield recommendations aimed at enhancing the effectiveness of the UPR. ❍

Notes

1 General Assembly Resolution 60/251 mandates the Human Rights Council to "undertake a universal periodic review based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States".

2 A/HRC/RES/5/1
3 The final reports of the respective states are available at http://www.upr-info.org/-Sessions-.html
4 Available at http://www.upr-info.org/IMG/pdf/Kenya_Advocacy_Charter.pdf
5 See also the article on Kenya in this volume.
6 For a comprehensive analysis of the effectiveness of the UPR from an NGO perspective, refer to, "Analytical Assessment of the Universal Periodic Review 2008-2010", a report prepared by UPR. INFO.ORG and available at http://www.upr-info.org/IMG/pdf/UPR-Info_Analytical_assessment_of_the_UPR_2008-2010_05-10-2010.pdf
7 Refer to factsheet prepared by UPR-INFO.org available at http://www.upr-info.org/IMG/pdf/IA_Indigenous_Peoples_FactSheet_S1-5.pdf

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UN FRAMEWORK CONVENTION ON CLIMATE CHANGE

The United Nations Framework Convention on Climate Change (UNFCCC) is an international treaty created at the Earth Summit in Rio in 1992 to tackle the growing problem of global warming and related harmful changes in the climate, such as more frequent droughts, storms and hurricanes, melting of ice, rising sea levels, flooding, forest fires, etc. The UNFCCC entered into force in 1994, and has near universal membership, with 192 countries as ratifying parties. In 1997, the Convention established its Kyoto Protocol, ratified by 184 parties, by which a number of industrialized countries have committed to reducing their greenhouse gas emissions in line with legally binding targets.[1] In 2007, the Convention's governing body, the Conference of the Parties (COP), adopted the Bali Action Plan - a road map for strengthening international action on climate change and enabling full implementation of the Convention through an agreement covering all parties to the Convention. The elements of the Bali Action Plan (a shared vision, mitigation, adaptation, technology development and transfer, provision of financial resources and investments)[2] are negotiated in the Ad-Hoc Working Group on Long-Term Cooperative Action (AWG-LCA). Apart from the Kyoto Protocol's working group (AWG-KP) and the AWG-LCA, the convention has two permanent subsidiary bodies, namely the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI).[3] Indigenous rights issues cut across almost all areas of negotiation but have been highlighted most significantly within the negotiations on forest conservation, known as REDD+ (Reduced Emissions from Deforestation and Forest Degradation), one of the mitigation measures negotiated under the AWG-LCA.

A clear failure, a small step in the right direction or a lifeboat for a desperate multilateral system? Indeed, assessing the outcome of the 16th Conference

of the Parties of the UNFCCC, held in Cancún in December 2010, is a complex exercise given the many elements and variables to be taken into account. Observers and participants alike did not expect more than a low-key compromise outcome to keep the negotiations running in the years to come. In order to obtain this, many of the more contentious issues were glossed over or put to one side in order to prevent another fiasco comparable to the Copenhagen flop in 2009. The outcome of the Cancún negotiations was therefore mixed: on the one hand, the determination to keep the negotiations alive resulted in a reiteration of the key role of the UNFCCC as a multilateral setting for climate change policies; on the other, the minimum agreement that was reached risks undermining effective action on climate change. As a matter of fact, no real commitment was undertaken on the reduction of emissions or on quantifiable targets, leaving space open for national-level discretionary policies and for a voluntary system based on "pledge and review", which may undermine future binding regimes once the first commitment period of the Kyoto Protocol comes to an end (2012). On finance, some progress was made in the setting up of the Climate Green Fund, but still no clarity was shed on the actual amount of funding that will be made available, while the World Bank has been given the role of Fund trustee (a decision to be reviewed in three years' time). Other significant decisions were taken – mostly in terms of the process and setting up of dedicated bodies, an adaptation framework, dedicated bodies to oversee transfer of technologies and capacity building.

Given this context, one of the most significant results was the definite launch of REDD+ Readiness, already announced in Copenhagen and for which almost 4 billion USD had been allocated. Some substantial elements remained undefined, however. The general impression was that what counted most was to ensure that a strong mandate was delivered in Cancún, in order to intensify support and proceed with REDD readiness while diluting some of the key requirements in terms of rights and safeguards.

Indigenous peoples' advocacy and strategies

Indigenous peoples have been following the UNFCCC process very closely and with increasing commitment. Initially focused almost exclusively on REDD, given the strict relevance to the rights and livelihoods of indigenous peoples living in tropical rainforests, indigenous peoples' organisations and networks have pro-

gressively fine-tuned their broader advocacy strategy and demands by producing consistent platforms and coordinating advocacy efforts with likeminded organisations and government delegations. One important event in this process was the organisation of a global workshop of indigenous leaders from all over the world and key government representatives, held in Xcaret, Quintana Roo, Mexico in September 2010, shortly before the UNFCCC session in Tianjin, China. Over the course of this workshop, indigenous peoples met, discussed and agreed their key demands and messages aimed at informing advocacy and alliance building. Of the key objectives pursued in the process towards Cancún, three cut across the whole negotiation: the adoption of a rights-based approach to climate change and related actions, by incorporating the UN Declaration on the Rights of Indigenous Peoples; the recognition of the right to Free, Prior and Informed Consent (FPIC); and the recognition and protection of indigenous knowledge and cultural heritage, innovations, technologies, traditional cultural expressions and indigenous peoples' spiritual beliefs. As far as the UNFCCC process is concerned, indigenous peoples have been advocating for more effective and informed participation in, and access to, all mechanisms, bodies and procedures established under the UNFCCC, including mitigation, adaptation, finance, Monitoring, Reporting and Verification (MRV) and technology transfer. This would, among other things, involve the setting up of indigenous expert groups and support funds to enable proper engagement with the UNFCCC process. Moreover, the UNFCCC should ensure indigenous peoples' direct and immediate access to finance, appropriate technologies and capacity building and ensure that perspectives of gender and inter-generational equity (children, women, youth and elderly) are included in all negotiations. As regards the Kyoto Protocol and global commitments for emissions reductions, indigenous peoples advocated for developed countries' target aggregate GHG emissions to be reduced by 50% (from 1990 levels) by 2017, and by at least 95% (from 1990 levels) by 2050. Moreover, UNFCCC parties were asked to support alternatives to carbon market-based mechanisms for mitigation and adaptation.

COP 16 outcomes

During the COP 16 in Cancún, indigenous organisations were organised in the Indigenous Peoples' Caucus on Climate Change. The Cancún Agreement partly

acknowledged and reflected the key demands of indigenous organisations, while leaving some other options open for further consideration and proposals. The shared vision text, which maps out the general framework and context for the implementation of the Bali Action Plan, for instance, explicitly refers to indigenous peoples as vulnerable groups and to the need to ensure their full and effective participation in climate policies and programmes as well as respect for their human rights, with a general reference to the UN Human Rights Council's resolution on climate change and human rights. This was possibly one of the most interesting outcomes since it marks a shift in the recognition of indigenous peoples from vulnerable groups to rights-holders. As regards participation in the negotiations, a number of indigenous representatives were members of government delegations nevertheless, this still falls short of ensuring the truly full and effective participation of indigenous peoples who have made various proposals, and of enhancing their role as observers in the UNFCCC processes. As far as REDD is concerned, in spite of strong resistance from various governments, language on safeguards and rights - although weakened - was retained in the final text, as well as reference to the UNDRIP, although still in a non-committal formulation, i.e. "noting that UNDRIP has been adopted by the UN General Assembly". The message that came out of the Cancún COP was that safeguards can be supported and promoted, but not necessarily implemented. Likewise, any reference to Monitoring, Reporting and Verification (MRV) in REDD+ has been watered down to avoid generating additional conflicts among parties on an issue that has proven to be the key divisive issue, together with financing and emissions reduction commitments. Hence, only a "system of information" on how safeguards are applied will now be required. What remains unclear, and will possibly be the task of the SBSTA to define, is the kind of information that will be required, what sort of decisions such information will inform, and whether this will also be used as a sort of "eligibility" criterion by which to disburse funds. The SBSTA work plan for 2011 includes defining reporting methods for various aspects related to REDD, including "(d) A system for providing information on how the safeguards referred to in annex I to this decision are being addressed and respected throughout the implementation of the activities referred to in paragraph 70, while respecting sovereignty".[4] This could provide an opportunity to advocate for stringent criteria by which to monitor the implementation of safeguards. Additional language was also adopted on the need to ensure the full and effective participation of indigenous peoples and local communities but still no specific reference was made to Free,

Prior and Informed Consent. It also specifies that REDD+ should respect the knowledge of indigenous peoples and local communities. No decision was taken on the role of markets in financing REDD+, since carbon trading and markets have been one of the key contentious issues and, as with other "irritants", decisions on the matter were postponed in order to prevent a breakdown in the talks at Cancún. The Indigenous Peoples' Caucus on Climate Change expressed concern and criticism regarding market mechanisms to finance climate actions and also regarding the use of forest offsets to mitigate greenhouse gas emissions in the global North. As to the role of markets in mitigation and other climate action, the parties were requested to provide proposals and submissions to inform the discussion in the lead up to COP16 in Durban.

The way forward

In the light of the nature and scope of the Cancún outcome, 2011 offers different opportunities for indigenous peoples to advocate for respect for their rights. At the global level, the UNFCCC agenda offers some key opportunities to consolidate and build on past achievements.

The Ad-Hoc Working Group on Long-Term Cooperative Action has set up a Transitional Committee that will discuss and define the modalities of the Green Climate Fund, and indigenous representatives will have a chance to argue for stringent social, environmental and rights-based safeguards, as well as for participation in the Fund and direct access to financial resources. Moreover, the Working Group will define steps to assess and consider the social and economic impacts of response measures.

The Subsidiary Body on Scientific and Technological Advice will discuss options for monitoring, reporting and verifying of REDD+, while Parties are invited to develop a system of information on how safeguards are being respected in REDD+, and the modalities of this will, indeed, be able to determine how effective the safeguard system will be in protecting indigenous peoples' rights. It will also offer opportunities for indigenous peoples to participate in MRV with parallel reports, based on their perception of the social and environmental risks and opportunities associated with REDD+ as well as on their traditional knowledge.

The Subsidiary Body on Implementation will discuss how to enhance the participation of observers and, in this case, indigenous peoples will have an opportu-

nity to advocate for more effective participation in the UNFCCC bodies and processes.

The Cancún Agreement explicitly notes the UN Declaration on the Rights of Indigenous Peoples when assessing the impacts of response measures that would include adaptation and mitigation activities and programmes. In the light of the above, the Cancún agreements offer a complex but interconnected architecture that can be built upon to consolidate an effective rights-based approach to climate change programmes and policies.

Parallel to advocacy in the UNFCCC, another level of engagement relates to the processes that will implement and mainstream key elements of the Cancún Agreement, with the purpose of preventing further dilution or selectivity. The risk that indigenous peoples' rights may be lost "in translation" exists, especially in the context of REDD+ and the modalities and policy-making of relevant programmes, such as the Forest Carbon Partnership Facility and the UN-REDD. As a matter of fact, the convergence between haste to access funds for readiness and to start putting carbon credits on the market, and the lack of political will to ensure stringent checks and balances could represent a major threat to indigenous peoples and the environment. Close scrutiny and engagement will therefore be needed to ensure that the implementation of the Cancún agreements does not affect the way rights are being operationalized. This key task of indigenous peoples and support organisations spans from international to national and community-level advocacy and training. At the same time, more efforts will be needed to support indigenous peoples' organisations in their own countries, with the aim of helping to challenge governments and international institutions to fully respect international obligations and standards on indigenous peoples' rights. This is a commitment that should cross over into other crucial international processes, ranging from the Convention on Biological Diversity to the preparations for the 2012 Rio+20 Conference, at which the concept of the "green economy" will be discussed along with opportunities to ensure convergence of the climate change and biodiversity conventions' activities and programmes. The Convention on Biological Diversity will be holding a series of regional workshops on biodiversity safeguards in REDD+ that can contribute to enhancing cooperation and interaction between the CBD and UNFCCC while strengthening the focus of the REDD+ debate on non-carbon values and multiple benefits as well as on traditional knowledge and other indigenous rights. As a matter of fact, indigenous peoples' culture, traditional livelihoods, concepts and practices can offer unprecedented contribu-

tions aimed at supporting a deep shift in the economic and development paradigm, something that is needed now more than ever to ensure a fair and just future for generations to come. ❍

Notes

1 The Kyoto Protocol entered into force in 2005 and, during its first commitment period from 2008-2012, 37 industrialized countries and the European Union committed themselves to reducing their greenhouse gas emissions by an average of 5 percent by 2012, in relation to the 1990 level.

2 The Bali Action Plan can be downloaded from the UNFCCC website: http://unfccc.int/resource/docs/2007/cop13/eng/06a01.pdf#page=3 (accessed on 9 March 2009).

3 Sources: UNFCCC's website (http://unfccc.int/press/items/2794.php), **International Institute for Environment and Development (IIED), 2009:** *COP15 for journalists: a guide to the UN climate change summit* (available at: http://www.iied.org/pubs/display.php?o=17074IIED).

4 www.unfccc.org/ http://unfccc.int/documentation/decisions/items/3597.php?such=j&volltext=/CP.16#beg

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CONVENTION ON BIOLOGICAL DIVERSITY

The Convention on Biological Diversity (CBD) is an international treaty under the United Nations. The CBD has three objectives: to conserve biodiversity, to promote its sustainable use and to ensure the equitable sharing of the benefits arising from its utilization.

The Convention has developed programs of work on thematic issues (such as marine, agricultural or forest biodiversity) and cross-cutting issues (such as traditional knowledge, access to genetic resources or protected areas). All these programs of work have a direct impact on indigenous peoples' rights and territories. The CBD recognizes the importance of indigenous knowledge and customary sustainable use for the achievement of its objectives (articles 8(j) and 10(c)) and emphasises their vital role in biodiversity.

The International Indigenous Forum on Biodiversity (IIFB) was established in 1993, during COP3, as the indigenous caucus in the CBD negotiations. Since then, it has worked as a coordination mechanism to facilitate indigenous participation in, and advocacy on, the work of the Convention through preparatory meetings, capacity-building activities and other initiatives. The IIFB has managed to get many of the CBD programs of work to consider traditional knowledge, customary use or the effective participation of indigenous peoples, and has been active in the negotiations regarding access to genetic resources in order to defend the fundamental rights of indigenous peoples that should be included therein.

CBD negotiations during 2010 were subordinated to the elaboration and negotiation of a binding Protocol on access to genetic resources and the sharing of the benefits arising from their utilization. This instrument was finally adopted at the 10th COP. It is the second Protocol under the CBD and is known as the Nagoya Protocol.[1]

2010 was a very important year for the CBD as it was the deadline for achieving the objectives that the Parties had adopted in 2002, including the so-called *2010 Biodiversity Target* (Target 2010), the aim of which was "to achieve, by 2010, a significant reduction in the current rate of biodiversity loss at the global, regional and national level as a contribution to poverty alleviation and to the benefit of all life on Earth". This target was later adopted by the UN World Summit on Sustainable Development[2] and by the UN General Assembly and was incorporated as a new target into the Millennium Development Goals.

An assessment of the progress made in achieving Target 2010, conducted by Global Biodiversity Outlook,[3] showed that it had been a failure. The CBD had begun a process to establish a new Strategic Plan for the period 2011-2020. The adoption of this plan, and the allocation of the financial resources needed to implement it, was linked to the adoption of the Nagoya Protocol. Despite extremely tense moments in the negotiations, COP10 did finally adopt a new Target and Strategic Plan, a resource mobilisation plan and the Nagoya Protocol, along with decisions on the implementation of some other articles.[4]

Negotiation of the Nagoya Protocol: process and results[5]

The work of the WGABS[6] at its eighth meeting, in 2009, had produced an unworkable negotiation document (the Montreal annex).[7] In an attempt to find converging positions through informal meetings, the Co-chairs[8] (Timothy Hodges, Canada, and Fernando Casas, Colombia) called an initial meeting of the "Friends of the Co-chairs" in January 2010 in Montreal. Two representatives of the indigenous and local communities were invited to that meeting, which was part of a process encompassing intra- and inter-regional preparatory meetings for the ninth meeting of the WGABS, at which substantial agreements would have to be made if the Protocol was to be adopted by COP10.

The WGABS-9 met in Cali, Colombia, in March 2010. Following the failure of several contact groups, the Co-chairs decided to establish an Inter-regional Negotiating Group (ING) comprising five representatives per UN region plus two representatives per group of observers (indigenous and local communities, industry, public sector and civil society). The International Indigenous Forum on Biodiversity (IIFB) appointed representatives (one per biocultural region) who could rotate at the negotiation table. The remaining indigenous representatives

attended the meetings as observers and consultants to the negotiators. The Co-chairs made use of their prerogative to submit a Co-chairs' text to replace the unworkable Montreal annex. All the Parties, whilst expressing reservations, accepted the text as a basis for negotiations. However, Cali again showed the deep differences between the positions of the Western countries (particularly Canada, Australia, New Zealand and the European Union), together with other developed industrialized countries such as Japan and Korea, and those held by developing countries, grouped in the African Group, the Like-Minded Megadiverse countries from Asia Pacific and GRULAC.[9]

In the contact groups, in the meetings with the Co-chairs and with the Parties and in the Inter-regional Negotiating Group (ING), the IIFB expressed its disappointment with the Co-chairs' text, requesting, as a minimum: (1) full respect for indigenous peoples' and local communities' rights; (2) that their free, prior and informed consent should be obtained before accessing traditional knowledge and that this could not be subject to national legislation; (3) recognition of indigenous peoples' and local communities' rights over their genetic resources; (4) that traditional knowledge and indigenous peoples' rights should be fully considered throughout the whole Protocol, particularly under the compliance section; and (5) recognition of indigenous peoples' customary law.[10]

The Cali meeting did not manage to agree on a negotiated text. A new roadmap was set for the continuation of the negotiations, now based on the "Cali annex", and the meeting was postponed until the following July in Montreal, where it would form an ING meeting. In this second part of the WGABS-9 meeting, no substantial advances were made on key issues and so, after a week of intense work, the meeting was adjourned once more, to be reconvened in September. There were intense contacts among the Parties in the interim period but the September meeting was again unable to reach agreement on the issues at hand. The main issues of concern had, nonetheless, now been pinpointed, the proposals and positions of the groups had been identified and the basic structure of the Protocol had been laid. Parties would have to wait for Nagoya to find out if the process would deliver a binding instrument to be adopted by COP10 or not.

The WGABS-9 reconvened in Japan, as an ING meeting, five days before the start of the COP, and preceded by informal consultations. In the closing plenary of the meeting, the longest WG meeting in the history of the CBD (from April to October), the Co-chairs announced that, in spite of some progress, no

agreement had been reached. The COP instructed the Co-chairs to continue the negotiations during the COP and to report back on progress to the Plenary, so the negotiators' group worked parallel to the COP during the two weeks of its duration. The final agreement, to some extent forced by Japan as Conference host, was only achieved on the very last day of COP10. As the adoption of the Protocol was, for many developing countries, a prerequisite to accepting the Strategic Plan for 2011-2020, together with sufficient funding provision, it was not until early in the morning of October 30 that all the decisions could be jointly adopted.

Although a careful analysis is needed to adequately assess the content of the Nagoya Protocol in terms of indigenous peoples' rights, it can be seen that the Protocol does establish a framework for regulating access to genetic resources in provider countries and ensures there is an equitable sharing of the benefits arising from the utilization of those resources, as well as prescribing measures for monitoring, compliance, access to justice, awareness raising and capacity building. The Nagoya Protocol is ambiguous in the description and obligatory nature of many of these measures, so both Parties and observers have pointed out that it is only a starting point, a first step, in the fight against the misappropriation of genetic resources and associated traditional knowledge.[11]

In terms of indigenous rights, the text of the Protocol is equally weak.[12] The recognition of rights is highly qualified, and linked to recognition within national regulatory frameworks (laws, policies and other measures) that now need to be developed. Although the Protocol takes note of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) within its preamble and states in its objective that the Protocol will respect "all rights" to resources, the various articles referring to indigenous peoples are quite limited in the recognition of rights. For the provisions on respect for indigenous peoples' prior and informed consent, their rights of ownership over their resources and knowledge, and their right to equitable benefit-sharing to be applied in accordance with indigenous rights, indigenous peoples will need to work to develop measures deemed appropriate both within their territories and at the national level. It is vital that indigenous peoples know about and analyze the Protocol and the processes that are now bound to commence in their countries and their own territories to ensure that their rights are fully recognized and respected in this regard.

The Protocol will be open for signature and ratification on 15 February 2011. It will enter into force after the 50th ratification. An Intergovernmental Committee has been established, which is due to meet for the first time in June 2011 to put in place some of the mechanisms envisaged in the articles (such as the clearing-house,[13] the multilateral mechanism for sharing of the benefits arising from the utilization of resources for which consent cannot be obtained,[14] etc.). Later on, once the Protocol has entered into force, its compliance will be assessed in Meetings of the Parties (MOP) of the Conference of the Parties (COP) to the Convention.

Other decisions taken by COP10

Besides the adoption of the Nagoya Protocol, COP10 adopted a new Strategic Plan 2011-2020. The Strategic Plan includes a specific target on the protection of traditional knowledge.[15] The new Strategic Plan will influence not only the implementation of the CBD over the coming years but also many aspects of global and national policies on conservation, such as the protected areas policies. The Plan incorporates indicators to be used to measure progress towards the objectives and targets, including indicators of great importance to indigenous peoples, such as those referring to traditional occupations or land use. The implementation of the Strategic Plan could potentially form a framework within which indigenous peoples can work to obtain affirmation of their rights.

COP10 also adopted several decisions on Article 8(j), on indigenous peoples' traditional knowledge. One very interesting issue is the attention Parties are going to pay to one of the so-called related provisions: Article 10 (c). Article 10 (c) states that the Parties will protect and encourage the "customary sustainable use" of biological diversity. In order to assess how this very important article could be implemented, an expert seminar will be held to advise the WG8J[16] on possible implementation activities, including a program of work. In addition, the WG8J will also work to implement the pending tasks in its program of work. The elements of a code of ethical conduct to ensure respect for indigenous peoples' heritage were also adopted.[17] ❍

Notes

1 The other Protocol adopted under the CBD is the Cartagena Protocol on Biosafety (adopted 29 January 2000, entered into force 11 September 2003), which has a supplementary protocol on responsibility and redress also adopted in Nagoya (Kuala Lumpur – Nagoya Protocol).

2 World Summit on Sustainable Development, Johannesburg, 2002. Declaration and Program of Action in A/CONF.199/20.

3 See http://gbo3.cbd.int/

4 The texts of COP10 decisions at http://www.cbd.int/nagoya/outcomes/. Daily bulletins on the progress of the meeting at http://www.iisd.ca/biodiv/cop10/. Broadcasting of the Conference at http://webcast.cop10.go.jp/ondemand.asp. IIFB statements and activities at http://iifb.indigenousportal.com.

5 The protocol is one of the instruments of the International Regime on access to genetic resources and benefit-sharing, which also includes the CBD itself, the Bonn Guidelines and other complementary instruments.

6 Ad hoc Open-ended Intersessional Working Group on Access to Genetic Resources and the Fair and Equitable Sharing of the Benefits Arising from their Utilization.

7 See *The Indigenous World 2009*.

8 Appointed as Co-chairs for the whole of the negotiation process in COP8. See *The Indigenous World 2008 and 2009*.

9 The eastern European region played a very low key role in the negotiations. The megadiverse countries, which had established a grouping that cut across regional divisions, broke up in Cali, where the Like-Minded Megadiverse countries from Asia-Pacific emerged, mainly led by Malaysia and the Philippines. The groupings of the Parties changed over the course of the process, as negotiations evolved.

10 IIFB, *Opening statement*, Cali 22 March 2010.

11 See, for instance, the statement by Namibia on behalf of the African Group at the closing plenary session, stating it was not the best of instruments they had hoped for but that they would try to work with it as a starting point and trusted that it would become useful in its implementation. Other Parties made similar statements.

12 The Protocol, like the Convention, uses the term "indigenous and local communities". The IIFB insisted all through the process on the use of the term "indigenous peoples and local communities", stating that the adoption of UNDRIP called for this change in terms. This was not accepted by the Parties on the grounds of language consistency with the CBD text. The term used did undoubtedly make the recognition of the specific rights of indigenous peoples in the Protocol more difficult.

13 Article 11, advance unedited version.

14 Article 7a, advance unedited version.

15 Strategic Goal E, Target 18: "By 2020, the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, subject to national legislation and relevant international obligations, and fully integrated and reflected in the implementation of the Convention with the full and effective participation of indigenous and local communities, at all relevant levels." Target 14, Strategic Goal D, states "By 2020, ecosystems that provide essential services, including services related to water, and contribute to health, livelihoods and well-being,

are restored and safeguarded, taking into account the needs of women, indigenous and local communities, and the poor and vulnerable." (Decision X/2)

16 Ad hoc Open-ended Intersessional Working Group on Article 8(j) and Related Provisions.

17 *The Tkarihwaié:ri code of ethical conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities* (Decision X/42).

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AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights (ACHPR) was officially inaugurated on 2 November 1987 as a sub-body of the then Organization of African Unity (OAU). The OAU was disbanded in July 2002, and has since been replaced by the African Union (AU). In 2000, the African Commission established its Working Group on Indigenous Populations / Communities in Africa, which was a remarkable step forward in the promotion and protection of the human rights of indigenous peoples in Africa. The Working Group has produced a thorough report on the rights of indigenous peoples in Africa, and this document has been adopted by the ACHPR as its official conceptualization of the rights of indigenous peoples.

The human rights situation of indigenous peoples has, since 2000, been on the agenda of the African Commission and henceforth has been a topic of debate between the ACHPR, states, national human rights institutions, NGOs and other interested parties. Indigenous representatives' participation in the sessions and the Working Group's continued activities – sensitization seminars, country visits, information activities and research – all play a crucial role in ensuring the vital dialogue.

ACHPR sessions: 47th and 48th sessions

In 2010, the ACHPR held two ordinary sessions. Many indigenous peoples' representatives participated and contributed by making statements on the human rights situation of indigenous peoples in Africa. The ACHPR Working Group on Indigenous Populations / Communities (Working Group) also presented its progress reports. The participation of indigenous representatives, as well as the intervention of the Working Group's chairperson during the sessions, contributed to raising awareness of indigenous peoples' rights. Important statements were

made with regard to gross human rights violations, in Tanzania, Botswana, Burundi and Mali, for example.

During each session, the ACHPR also examines the periodic reports of African states, in accordance with Article 62 of the African Charter on Human and Peoples' Rights. The periodic reports of Cameroon and Rwanda were presented at the 47th session and the report of the Democratic Republic of Congo was examined at the 48th session. During the different state report examinations, Commissioner Bitaye, chairperson of the Working Group, made sure that the issue of indigenous peoples' rights was raised and clarified. IWGIA's partner organizations also contribute with shadow reports that provide an alternative source of information and assist the ACHPR's commissioners in asking substantiated critical questions on indigenous peoples during the constructive dialogue with the state and in the drafting of the concluding observations. Shadow reports were prepared for Cameroon and the Democratic Republic of Congo. Questions and recommendations were drafted for Rwanda.

Some initiatives were also taken in 2010 to ensure follow-up to the ACHPR's ruling in favor of the Endorois indigenous communities in Kenya. Representatives from the Endorois Welfare Council participated in both the 47th and 48th sessions. They made statements and held meetings with different commissioners regarding the way forward. The Kenyan government also made a very positive statement at the 48th session recognizing the importance of the ruling and committing itself to its implementation.[1]

Urgent appeal

The Working Group decided in 2009 that urgent human rights situations relating to indigenous peoples should be brought to the attention of the Working Group so that the Working Group could make urgent appeals to governments on critical issues. In 2010, the Working Group sent a second and a third urgent appeal to the President of Tanzania (a first urgent appeal was sent in 2009) concerning the serious human rights abuses that were being committed in relation to the forced evictions and destruction of property belonging to the Maasai community in Loliondo, northern Tanzania. The Government of Tanzania finally replied to the appeal in December 2010. An urgent appeal was also sent to the Government of Botswana regarding the situation facing the San communities in the Kalahari

Desert, especially in relation to their right to access water on their ancestral land. Unfortunately, the African Commission has not yet received a response from the Government of Botswana.

Publications

In 2010, the Working Group published a report from the research and information visit to Gabon[2] as well as a report from the country visit to Rwanda.[3] Moreover, as a testimony to its continuing support for and advocacy of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the Working Group also published the UNDRIP together with the African Commission's Advisory Opinion on the UNDRIP.[4]

In addition to these new publications, it is important to note that the Working Group report on the rights of indigenous peoples in Africa, published in 2005, is still a key document for understanding indigenous peoples' rights in Africa.[5] Thanks to this document, and the work of the Working Group in distributing and explaining it, many African states have now become more sensitive to the issue. To increase the visibility of this report, a Summary report[6] was also published in French, English, Portuguese and Arabic. The Working Group has also initiated its translation into African languages, and in 2010, the Summary report was translated and published in Tamasheq and Fulfulde.

Country visits

An important part of the Working Group's mandate is to undertake country visits to African countries in order to monitor the human rights situation of indigenous populations / communities in that country. These consist of gathering information, and meeting with the relevant ministries, the main international organizations and NGOs, the national human rights institution and the indigenous communities. Such visits also contribute to increasing dialogue between the government and the indigenous communities. This is extremely helpful in terms of understanding each other's points of view and, in the longer term, finding solutions to the different problems identified.

A research and information country visit was carried out to Kenya from 1-19 March 2010. The mission team managed to visit many indigenous communities all over the country. It was noted that, despite some positive developments in Kenya, indigenous peoples continue to suffer from severe forms of marginalization and economic deprivation as a result of the confiscation of their ancestral land and natural resources, a lack of political representation, discrimination, denial of access to justice, perpetual insecurity and conflict.

A country visit was also conducted to the Republic of Congo from 15-24 March 2010. The delegation visited indigenous communities near Sibiti and made observations on the following areas of rights: citizenship, justice, non-discrimination, involvement in public administration, education, health, land and resources, and employment. The analysis also focused on the bill of law that was being discussed by the Government of the Congo at the time of the visit.

In both visits, the delegations held meetings with stakeholders such as government ministries, national and international NGOs and indigenous communities in order to gather information on the human rights situation of indigenous populations in the countries, and to provide information about the Working Group's report and the position of the African Commission on the rights of indigenous populations.

Participation in international meetings

Participation in international meetings strengthens collaboration between the various institutions by improving knowledge of one another's activities, but also provides an important forum for discussion and identifying appropriate ways forward. The participation additionally provides an important link between a regional African institution and the international community by allowing African representatives to explain their perspectives and cases at the international level, whilst bringing back the international indigenous rights regime to the African Commission.

Mr. Mohamed Khattali, member of the Working Group, was invited to participate in a workshop organized by the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) to discuss its thematic report on indigenous peoples and decision-making. The workshop took place in Geneva, from 23-24 March 2010. The draft report looks at all the legal instruments on the rights of indigenous peo-

ples and concludes that indigenous peoples' participation at the decision-making level is internationally binding. The draft report also refers to good practices in Malaysia, Bolivia, Burundi and Rwanda. Mr. Khattali made different comments on the draft report. He indicated that it did not mention the African Charter on Human and Peoples' Rights and that regional instruments should also be taken into account. He also noted that very few references were made to Africa in the report and that no reference was made to the ACHPR or the Working Group. He also suggested that the report should look at the many challenges facing indigenous peoples in terms of accessing decision-making positions.

Mr. Mohamed Khattali and Mr. Kalimba Zephyrin, members of the Working Group, also participated in a seminar organized by the ILO and the OHCHR in Yaoundé, Cameroon, 26-28 May 2010. The seminar provided information about the relevant ILO instruments, the UNDRIP, the outcome of the joint ILO-ACHPR publication and the existing national measures or relevant initiatives related to indigenous peoples in the central African region. The seminar also made use of the recommendations from the regional ACHPR's sensitization seminar on indigenous populations in Central Africa, held in Cameroun in 2006.

Commissioner Musa Ngary Bitaye, Chairperson of the Working Group, participated in the 9th session of the UN Permanent Forum on Indigenous Issues (UNFPII), held in New York from 19-30 April 2010. The main issue covered was development and indigenous peoples' culture and identity (Arts. 3 and 32 of the UNDRIP). Commissioner Bitaye had the opportunity to meet with many different stakeholders, including government representatives and indigenous peoples' representatives. Commissioner Bitaye held a meeting with the African Indigenous Caucus and discussed with them their composition and organization. Ways forwards for collaboration were also explored with the UN Special Rapporteur on the rights of indigenous peoples. ❍

Notes

1 See also article on Kenya in this volume.

2 **African Commission on Human and Peoples' Rights & International Work Group for Indigenous Affairs, 2010:** *Report of the African Commission's Working Group on Indigenous Populations / Communities: Research and information visit to the Republic of Gabon, September 2007.* Denmark. (also available in French). Can be found at: www.iwgia.org/sw41799.asp

3 **African Commission on Human and Peoples' Rights & International Work Group for Indigenous Affairs, 2010:** *Report of the African Commission's Working Group on Indigenous Popula-*

tions / Communities: Mission to the Republic of Rwanda, December 2008. Denmark. (also available in French). Can be found at: www.iwgia.org/sw44194.asp

4 **African Commission on Human and Peoples' Rights & International Work Group for Indigenous Affairs, 2010:** *Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous Peoples & the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).* Denmark (also available in French). Can be found at: www.iwgia.org/sw43430.asp

5 **African Commission on Human and Peoples' Rights & International Work Group for Indigenous Affairs, 2005:** *Report of the African Commission's Working Group of Experts on Indigenous Populations / Communities: submitted in accordance with the "Resolution on the Rights of Indigenous Populations/Communities in Africa", adopted by the African Commission on Human and Peoples' Rights at its 28th ordinary session.* Denmark. (Also available in French) Could be found at: www.iwgia.org/sw25165.asp

6 **African Commission on Human and Peoples' Rights & International Work Group for Indigenous Affairs, 2006:** *Indigenous peoples in Africa: The forgotten people?* Denmark (also available in French). Can be found at: www.iwgia.org/sw41900.asp

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ARCTIC COUNCIL

The Arctic Council is an intergovernmental forum created in 1996. It includes Canada, Denmark (including Greenland and the Faeroe Islands), Finland, Iceland, Norway, the Russian Federation, Sweden and the United States of America. The Arctic Council is unique in that it includes representatives of indigenous peoples. Six international organizations representing Arctic indigenous peoples have the status of Permanent Participants of the Arctic Council. These organizations are: the Aleut International Association, the Arctic Athabaskan Council, Gwich'in Council International, the Inuit Circumpolar Council, the Russian Association of Indigenous Peoples of the North and the Saami Council. The Arctic Council is devoted to furthering sustainable development in the Arctic region, including economic and social development, improved health conditions and cultural well-being, and to protecting the Arctic environment. The category of Permanent Participant was created to ensure the active participation and full consultation of Arctic indigenous representatives within the Arctic Council.

Denmark, Greenland and the Faroe Islands took over the Arctic Council chairmanship following the Ministerial Meeting in Tromsø, Norway in April 2009 and will pass it on to Sweden at the Ministerial Meeting in Nuuk, Kalallit Nunaat (Greenland) in May 2011.

In its program, the chairmanship has put the Arctic peoples in the fore and has placed special emphasis on health issues, in particular through the Sustainable Development Working Group (SDWG), which is usually chaired by the same country as the Arctic Council. This is in addition to the usual focus on climate change, biodiversity and contaminants.

Strengthening of the Arctic Council

During the Norwegian chairmanship, and now that of Denmark, Greenland and the Faroe Islands, there has been a tremendous increase in global interest in the Arctic and thus also in the Arctic Council. The work the Arctic Council has conducted in the field of climate change has raised global awareness of the challenges facing the region, where the increase in temperature is expected to happen twice as fast as in the rest of the world. There are also expectations that the Arctic Sea ice will change and the ice edge move northwards, which will lead to greater access to parts of the Arctic that were previously inaccessible.

This increased global interest has, among other things, led to more applications for observer status to the Arctic Council, both from non-Arctic states, such as China, the Republic of Korea, Italy and Japan; from international governmental organisations such as the European Commission; and from non-governmental organisations. The Tromsø Declaration, from the Arctic Council Ministerial Meeting of 2009, stated: "Acknowledging the leadership of the Arctic Council on Arctic challenges and opportunities, and the increasing international interest in the work of the council".

The Arctic Council was on the point of feeling overwhelmed, and serious discussions began as to the role of observers to the Arctic Council. The discussions on observers soon led to a discussion on strengthening the Arctic Council in general.

From an indigenous perspective, there have been concerns regarding the prominent role the indigenous organisations hold within the Arctic Council as Permanent Participants (PP). The unanimous position of the representatives of indigenous peoples' organisations has been that the role of observers must not weaken the role of the PPs. The indigenous representatives have also taken this opportunity to raise the question of how applicants to observer status will treat or work with indigenous peoples. The PPs have been of the opinion that, if the observers do not respect indigenous peoples' rights, they should not be granted observer status to the Arctic Council.[1]

Most of the organisational discussions have been conducted in closed sessions, for example, the Arctic Council Senior Arctic Officials (SAO) and Permanent Participants' Heads of Delegation. As interest in the Arctic has increased, and when discussions have touched upon sovereignty and natural resource man-

agement in the Arctic, indigenous peoples' interests have tended to be left out and the Permanent Participants have had to remind states of their position on the Council. With this in mind, there has been concern that the strengthening of the Arctic Council discussions and the interest from observers would weaken the position of the Permanent Participants even more. Fortunately, so far, the experience has been the opposite. In part due to the firm leadership of the chairmanship, the Permanent Participants' position on the Arctic Council has been fully included in the discussions and in the paperwork. It sometimes seems that the status of the Permanent Participants is used to ensure that the observers do not gain too strong a position in the Arctic Council.

Capacity building

The SDWG made serious efforts during 2010 to create effective mechanisms to bring together the requisite expertise to improve its institutional capacity. One example of this was the Arctic Human Health Expert Group (AHHEG). Arctic human health activities were energized during the chairmanship of Denmark, Greenland and the Faroe Islands by the launch of the AHHEG, which provides guidance on circumpolar human health issues and priorities, and has undertaken practical actions to acquire knowledge and to build capacity in the circumpolar region. The circumpolar collaboration is expected to strengthen cooperation on health promotion, disease surveillance and culturally appropriate health care delivery.

The integration of local and traditional knowledge and different areas of cooperation that include indigenous peoples and Arctic communities as respected research partners form a critical link to building knowledge and capacity at the community level. The SDWG/IPY EALAT project demonstrates how the Association of World Reindeer Herders worked with circumpolar indigenous communities using traditional knowledge, science and technology to devise practical approaches on how communities could adapt to the impacts of climate change on reindeer grazing lands.[2] This is an example of how the Arctic Council can strengthen the capacity of indigenous peoples and Arctic communities. ❍

Notes

1 An example is documented in the article on Inuit regions in Canada: due to the European Union's ban on the import of sealskin products, Inuit have opposed the EU's attempts to join the Arctic Council as observer.

2 More about the Ealat project can be found here: http://icr.arcticportal.org/index.php?option=com_content&view=frontpage&Itemid=78&lang=en

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PART III

GENERAL INFORMATION

ABOUT IWGIA

IWGIA is an independent international membership organization that supports indigenous peoples' right to self-determination. Since its foundation in 1968, IWGIA's secretariat has been based in Copenhagen, Denmark.

IWGIA holds consultative status with the United Nations Economic and Social Council (ECOSOC) and has observer status with the Arctic Council and with the African Commission on Human and Peoples Rights.

Aims and activities

IWGIA supports indigenous peoples' struggles for human rights, self-determination, the right to territory, control of land and resources, cultural integrity, and the right to development on their own terms. In order to fulfil this mission, IWGIA works in a wide range of areas: documentation and publication, human rights advocacy and lobbying, plus direct support to indigenous organisations' programmes of work.

IWGIA works worldwide at local, regional and international level, in close cooperation with indigenous partner organizations.

More information about IWGIA can be found on our website, www.iwgia.org, where you can also download our Annual Report.

IWGIA PUBLICATIONS IN 2010

Publications can be ordered online at:
www.iwgia.org

In English

Cæcilie Mikkelsen (ed.), 2010: *The Indigenous World 2010*. Copenhagen: IWGIA. ISBN 978-87-91563-75-1

Mark Nuttall, 2010: *Pipeline Dreams: People, Environment, and the Arctic Energy Frontier.* Copenhagen: IWGIA. ISBN: 978-87-91563-86-7

Albert Kwokwo Barume, 2010: *Land Rights of Indigenous Peoples in Africa*. Copenhagen: IWGIA. ISBN: 978-87-91563- 77-5

Pat Robbins, 2010: *A Red Spotted Ox – a Pokot life*. Copenhagen: IWGIA. ISBN: 978-87-91563-70-6.

What is REED? A guide for indigenous communities. 2.nd. Edition. Chiang Mai: IWGIA, AIPP, FPP & Tebtebba 2010. ISBN: 978-87-91563-66-9

Alejandro Parellada & Ana Cecilia Betancur J., 2010: *The Rights of Indigenous Peoples - The cooperation between Denmark and Bolivia*. Copenhagen: DANIDA and IWGIA. ISBN: 978-97-91563-80-5

Geneviève Rose & Jens Dahl (eds): *Indigenous Affairs 1-2/10. Development and Customary Law*. Copenhagen: IWGIA. ISSN: 1024-3283

In English & Francais

Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration of Indigenous Peoples/ Avis Jurdique de la Commission Africaine des Droits de L'homme et des Peubles sur la Déclaration des Nations Unies sur les Droits des Peubles Autochtones. Copenhagen: ACHPR and IWGIA 2010. ISBN: 978-87-91563-58-0

Report of the African Commission's Working Group on Indigenous Populations / Communities. Research and Information Visit to Rwanda, 1-5 December 2008/ Rapport du Groupe de Travail de la Commission Africaine sur les Populations/Communautés Autochtones: Mission en Republique du Rwanda 1-5décembre 2008. Copenhagen: ACHPR and IWGIA 2010. ISBN: 978-87-91563-89-8

Report of the African Commission's Working Group on Indigenous Populations/Communities - Research and Information Visit to the Republic of Gabon, 15-30 September 2007/ Rapport du groupe de travail de la Commission Africaine sur les populations/communautés autochones: Visite de recherche et d'information en Republique du Gabon, 15-30 Septembre 2007. Copenhagen: ACHPR and IWGIA 2010. ISBN: 978-87-91563-74-4

Quāest-ce que la REED? Guide à lāíntention des communautes autochtones. Lima: IWGIA, AIPP, FPP & Tebtebba 2010. ISBN: 978-87-91563-93-5

En Castellano

Cæcilie Mikkelsen (ed.), 2010: *El Mundo Indígena 2010*. Copenhague: IWGIA. ISBN: 978-87-91563-76-8

Claire Charters & Rodolfo Stavenhagen (eds). 2010: *El Desafío de la Declaración: Historia y Futuro de la Declaración de la ONU sobre Pueblos Indígen*as. Copenhague: IWGIA. ISBN: 978-87-91563-72-0

¿Qué es REDD? Una Guía para las Communidades Indígenas. Lima: IWGIA, Servindi, AIPP, Forest Peoples Programme & Tebtebba. ISBN: 978-87-91563-92-8

Mónica Chuji, Mikel Berraondo & Pablo Dávalos, 2010: *Ecuador - Derechos Colectivos de los Pueblos y Nacionalidades - Evaluación de una década 1998-2008*.

Alejandro Parellada & Ana Cecilia Betancur J. 2010: *Derechos de los Pueblos Indígenas: La Cooperación entre Dinamarca y Bolivia.* Copenhague: IWGIA & La Embajada Real de Dinamarca en Bolivia. ISBN: 978-87-91563-79-9

María del Pilar Valencia García y Iván Égido Zurita, 2010: *Los Pueblos Indígenas de Tierras Bajas en el Proceso Constituyente Boliviano:*

*Nuevos sueños y desafíos para solucionar viejos problemas***,** Santa Cruz: CEJIS, IWGIA, AECID & HIVOS. ISBN: 978-99905-886-9-9

Aiguel González, Araceli Burguete Cal y Mayor y Pablo Ortiz-T (ed.), 2010: *La autonomía a debate - Autogobierno Indígena y Estado plurinacional en América Latina*. Quito: FLACSO, GTZ, IWGIA, CIESAS & UNICH. ISBN: 978-9978-67-264-8

Martín Correa & Eduardo Mella, 2010: *Las razones del illkun /enojo*: Memoria, despojo y criminalización en el territorio mapuche de Mallelco. Santiago de Chile: LOM Ediciones, Observatorio de Derechos de los Pueblos Indígenas & IWGIA. ISBN: 978-956-00-0151-1

María Micaela Gomiz y Juan Manuel Salgado, 2010: *Convenio 169 de la O.I.T. sobre Pueblos Indígenas - Su aplicación en el derecho interno argentino.* Buenos Aires: ODHPI & IWGIA. ISBN: 978-87-91563-83-6

Pablo Rey, 2010: *Viaje al Chaco Central*. Buenos Aires: AECID, CCEBA, INADI, Oremedia, RUMBOSUR & IWGIA. ISBN: 978-987-05-8993-8

Dario Aranda, 2010: *Argentina Originaria: Genocidios, Saqueos y Resistencias.* Buenos Aires: Lavaca & IWGIA. ISBN:978-987-21900-6-4

Axel Köhler, Xochitl Leyva Solano, Xuno López Intzín, Damián Guadalupe Martínez Martínez, Rie Watanabe, Juan Chawuk, José Alfredo Jiménez Pérez, Floriano Enrique Hernández Cruz, Mariano Estrada Aguilar & Pedro Agripino Icó Bautista, 2010: *Sjalel kibeltik. Sts'isjel ja kechtiki'. Tejiendo nuestras raíces*. Mexico: Cesmeca-Unicach, CIESA, UNAM, IWGIA, Orê, Xenix Filmdistribution, PVIFS, RACCACH, CDLI-Xi'nich,Sociedad Civil Las Abejas, Sak Tzevul, OMIECH & Oxlajunti'. ISBN: 978-60-77510-47-5

Ágruila del Mar, Alejandra Reynoso, Carlota Cadena, Elena de Hoyos, Guadalupe Salgado, Leo Zavaleta, Lupita, Miranda, Rosa Salazar, Rosalva Aída Hernández y Susuki Lee Camacho. 2010: *Bajo la Sombra del Guamúchil: Historias de vida de mujeres indígenas y campesinas en prisión.* Mexico: CIESAS, IWGIA & Ore-Media
ISBN:978-87-91563-88-1

Carlos Camacho Nassar, 2010: *Entre el Etnocidío y la Extinción: Pueblos indígenas aislados, en contacto inicial e intermitente en las tierras bajas de Bolivia*. Informe IWGIA 6. Santa Cruz: IWGIA, CIDOB & IPES. ISBN: 978-87-91563-79-9

Paola Colleoni y José Proaño, 2010: *Caminantes de la Selva - Los pueblos en aislamiento de la Amazonía Ecuatoriana*. Informe IWGIA 7. Quito : IWGIA, CONAIE & IPES. ISBN: 978-87-91563-84-3

Luis Jesus Bello, 2010: *Los pueblos indígenas aislados o con poco contacto en Venezuela*.Informe IWGIA 8. Caracas: IWGIA, WATANIBA & IPES. ISBN: 978-87-91563-82-9

Beatriz Huertas Castillo, 2010: *Despojo Territorial, Conficto Social y Exterminio - Pueblos Indígenas en Situación de la Aislamiento, Contacto Esporádico y Contacto Inicial de la Amazonía Peruana.* Informe IWGIA 9. Lima: IWGIA, IPES, CIPIACI & FENAMAD. ISBN: 978-87-91563-91-1

Geneviève Rose & Jens Dahl (eds), 2010: *Asuntos Indígenas 1-2/10. Desarrollo y Derecho Consuetudinario.* Copenhague. IWGIA. ISSN: 1024-3275

VIDEOS

In English

Eampe Punie Pajeami – The Chaco Forest and its People. 2010. Direction: Facundo López; Production: Alejandro Parellada. An IWGIA production in association with ORE-MEDIA and the assistance of Inciativa AMOTOCODIE.

Postcards from a possible world: Pottery. An IWGIA and ORE-MEDIA production with the assistance of ORDECOFROC. 2010.

En Castellano

Eampe Punie Pajeami - El Monte y su Gente. Dirección: Facundo López; Producción: Alejandro Parellada. Una producción de IWGIA & ORE-MEDIA con el apoyo de Inciativa AMOTOCODIE. 2010.

Postales de un Mundo Posible: Cerámica. Una producción de IWGIA & ORE-MEDIA con el apoyo de ORDECOFROC. 2010.

Postales de un Mundo Posible: Cacao. Una producción de IWGIA & ORE-MEDIA con el apoyo de ORDECOFROC. 2010.

CD

Fiesta del Agua en los Ayllus de Puquio. Producción: Roberto Wangeman, IWGIA & ORE Media, 2010.