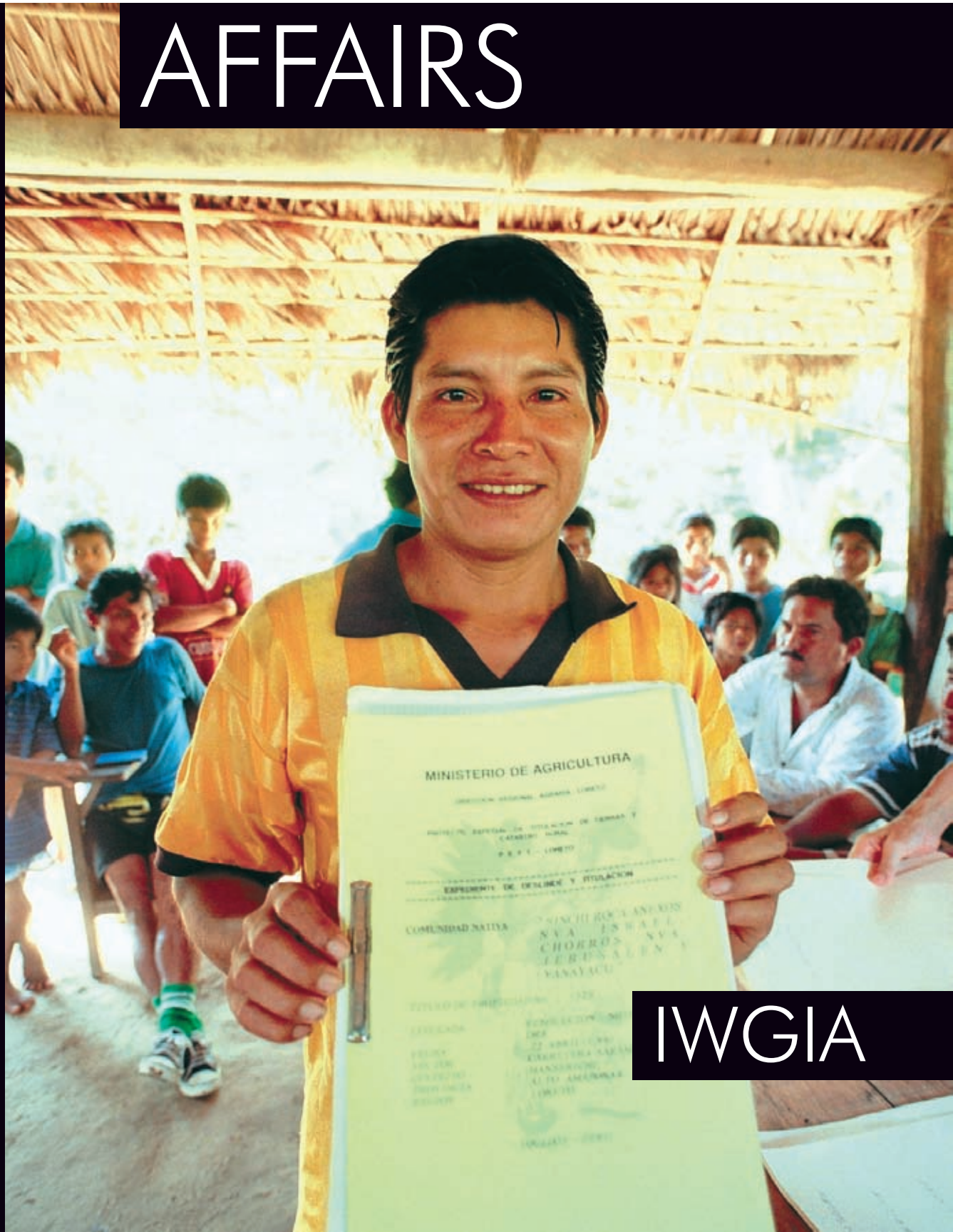


4/04

INDIGENOUS AFFAIRS

LAND RIGHTS: A KEY ISSUE



IWGIA

contents

editorial

Marianne Wiben Jensen

4

americas

GOVERNANCE, THE TERRITORIAL APPROACH
AND INDIGENOUS PEOPLES

Pedro García Hierro

8

asia

SECURING LAND TENURE RIGHTS FOR
CAMBODIA'S INDIGENOUS COMMUNITIES

Jeremy Ironside

14

TITLING ANCESTRAL DOMAINS:
THE PHILIPPINE EXPERIENCE

Lourdes Amos

20

circumpolar north

STRENGTHENING INDIGENOUS PEOPLES'
INFLUENCE: "CLAIMS BOARDS" IN
NORTHERN CANADA

Graham White

26

USING LAND USE AND OCCUPANCY MAPPING
TO ESTABLISH A PROTECTED AREA NETWORK
IN THE DEH CHO TERRITORY, CANADA

Grand Chief Herb Norwegian and Petr Cizek

30

africa

TRADITIONAL WATER KNOWLEDGE AND
EMANCIPATION OF HUNTER-GATHERERS
IN SOUTHERN AFRICA

Cornelis VanderPost, Joram Useb and Nigel Crawhall

36

THE CENTURY-LONG DISPLACEMENT AND
DISPOSSESSION OF THE MAASAI IN KENYA

Joseph Ole Simel

42

THE ENDOROIS AND THEIR LOST HERITAGE

Bill Rutto and Korir Sing'oeie

47



In December 2004, the UN General Assembly adopted a resolution establishing a second Decade devoted to the rights of indigenous peoples. IWGIA welcomes this decision. As we said in the last issue of this magazine, a proactive approach must be taken to the second Decade in which the main challenge for indigenous peoples will be to put the international achievements gained during the first Decade into practice in order to protect the rights of indigenous peoples in national and regional contexts.

In December, the UN Working Group dealing with drafting a declaration on the rights of indigenous peoples met in an extraordinary session in Geneva. As usual, IWGIA took active part and facilitated indigenous participation. Unfortunately, the working group was unable to make substantial progress and now, 10 years on, there is still no outline of a declaration and its future is completely uncertain. It is now up to the UN Commission on Human Rights to decide if the working group's mandate should possibly be extended for one or two years. However, the future of the declaration is uncertain not least because a number of governments are completely unwilling to accept even the most basic demands of indigenous peoples, such as rights to lands and territories. It has been sad to observe how some governments' rhetoric remains firmly rooted in a colonial history.

One such country is Australia which, with the re-election of the conservative government, has initiated a firm vendetta against indigenous peoples – at home and abroad. The Australian government tries systematically to undermine indigenous rights and has returned to an era of paternalism and re-

vision of Australia's colonial past, using a rhetoric of assimilation as if ILO Convention 169 had never existed. Other governments, like the US, continue to insist that self-determination for indigenous peoples must be defined as 'internal self-determination', as if that concept had any meaning in international law.

The African Commission on Human and Peoples' Rights (ACHPR) and its Working Group on the Rights of Indigenous Populations/Communities met in November in Senegal. IWGIA took an active part and funded the participation of 13 indigenous representatives. The human rights situation of indigenous peoples was raised during the ACHPR session, with a particular focus on Rwanda.

In the last quarter of 2004, IWGIA published a book on indigenous peoples' rights in southern Africa and another on the situation of the indigenous groups on the Andaman Islands in India. The latter turned out to be tragically relevant as the Andaman Islands were severely hit by the Tsunami disaster a few weeks after publication of the book.

IWGIA's annual Forum meeting for members took place in Copenhagen on December 11, 2004. The theme this year was '*Indigenous Women and IWGIA's Gender Strategy: Tradition, Self-determination and Democracy*'. This year we had two indigenous guests, Rhoda Rotino from "Pokot Indigenous Peoples for Sustainable Development" in Kenya and Grace Shatsang from the "Naga Women's Union" in Manipur, India. Both gave very stimulating presentations on how their work is challenging the traditional practices that are experienced as oppressive by women in their societies. □

Indigenous Affairs is published 4 times per year

ISSN 1025-3283



INTERNATIONAL WORK GROUP FOR INDIGENOUS AFFAIRS

International secretariat

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

Editor of this issue: Marianne Wiben Jensen

Translation & proofreading: Elaine Bolton

Price: Single copies US\$ 7.50 + postage

Subscription rate for 2005 (*Indigenous Affairs* + *The Indigenous World*)
US\$ 60.00 (individuals) US\$ 90.00 (institutions)

Please note that the views in this journal are those of the authors and do not necessarily reflect those of the Work Group. No reproduction of any part of this journal may be done without the permission of IWGIA.

Subscribe to IWGIA's publications - 2005

Subscription Rates:	INDIVIDUALS			INSTITUTIONS		
	Overseas	Europe	Denmark	Overseas	Europe	Denmark
	US\$	EUR	DKK	US\$	EUR	DKK
<i>Indig. Affairs</i> + <i>The Indig. World</i>	60.00	50.00	375.00	90.00	80.00	600.00
<i>Indig. Affairs</i> + <i>The Indig. World</i> + documents	120.00	100.00	750.00	160.00	140.00	1050.00
<i>Asuntos Indígenas</i> + <i>El Mundo Indígena</i>	60.00	50.00	375.00	90.00	80.00	600.00
<i>Asuntos Indígenas</i> + <i>El Mundo Indígena</i> + documentos	90.00	80.00	600.00	140.00	120.00	900.00

Payment by creditcard: Mastercard/Visa or Eurocard - indicate name of cardholder, number and expiry date, please remember your signature. Payment by cheque: payable only in US\$, EUR or DKK to IWGIA. Bank: Sydbank: 70311094414, swiftcode: sybkdk22

Marianne Wiben Jensen

Land is the foundation for the lives and cultures of indigenous peoples the world over. Without access to and rights over their land and natural resources, indigenous peoples' distinct cultures, and the possibility of determining their own development and future, become eroded. It is therefore not surprising that the right to land and natural resources is a key demand of the international indigenous movement and of indigenous peoples and organizations everywhere.

Throughout the world, indigenous peoples have faced the threat of severe land dispossession - beginning with colonization and continuing to this day. Such dispossession would, in many cases, have led to the extinction or complete assimilation of many indigenous groups. While this has sadly been the case in some places, the past 20 years or more have seen a great mobilization among indigenous communities to secure their rights to the land. This movement has made considerable progress and achieved important results in many areas but is still only in its infancy in others.

IWGIA has for many years focussed its work on supporting indigenous peoples in their attempts to secure fundamental land rights, and in this issue of *Indigenous Affairs* we bring together articles on the current land rights situation of indigenous peoples from different parts of the world. People from our network and long-term partners have contributed their experiences and perspectives to reveal a picture of both progress and victories but also of immense problems that continue to exist.

The Circumpolar North

From a global perspective, and in broad terms, it is fair to say that substantial progress has been made in several areas of the Circumpolar North, although indigenous peoples clearly have differing experiences with regard to their right to land and resources.

In *Northern Canada*, land claims by Inuit and First Nations have been settled over the past 10 years. The Nunavut land claim agreement, for example, grants the approximately 25,000 Inuit of the Eastern Arctic title to around 350,000 square kilometres of lands and resources, 10% of which includes subsurface rights. Inuit have priority rights to harvest wildlife and equal representation with government in the co-management institu-

tions, such as the Nunavut Wildlife Management Board (see article by Graham White). In the Western Arctic region of Northern Canada, the Yukon First Nations have signed an Umbrella Final Agreement regulating regional land claims whereas, in the Northwest Territories, different indigenous peoples have signed or are negotiating land claims (see article by Grand Chief Herb Norwegian and Petr Cizek). In *Alaska*, indigenous peoples have gained cooperative rights to land through the Alaska Native Claims Settlement Act (ANCSA). This Act helped to form over two hundred village corporations that own in total about 12% of the land of Alaska.

In *Greenland*, indigenous Greenlanders achieved Home Rule status from the Danish realm in 1979. Under Home Rule, Greenlanders have taken responsibility for managing and developing living and non-living resources. The land is owned by the Greenlandic population through the state.

In *Sápmi*, the indigenous Saami have achieved considerable influence in decision-making processes in Sweden, Finland and Norway through the Saami parliaments. However, the Nordic governments have continually undermined rights to land and resources. A Land Management Act for Finnmark County (northern Norway), for example, was presented in 2003. This Act was supposed to end the controversy over Saami land rights issues that had started in the 1970s. Unfortunately, the Act failed to properly identify and recognize the Saami rights to their land either on an individual, community or collective level.

In *Russia*, rights to lands and resources are protected under three federal laws. Unfortunately the laws have so far only been implemented to a very limited degree and the uncertain transitional economy only serves to strengthen the unclear rights to lands and resources.

Latin America

Over the past 20 years or more, indigenous organizations in Latin America have put great efforts into safeguarding their land rights through titling and legislation of their territories (this work has been supported by IWGIA since 1989). This process, which began in the 1980s and reached its peak in the 1990s, has developed differently in different countries but most of the areas

titled are now contemplated in the region's national legislations (see article by Pedro Garcia Hierro).

In *Colombia*, indigenous peoples (who represent 2% of the population) have achieved the legalisation of indigenous territories corresponding to one third of the national territory. In *Brazil* the State has recognised over 15 million hectares in favour of indigenous peoples. In *Peru*, the Amazonian indigenous organisations have to date achieved the titling of 7 million hectares of land, which corresponds to approximately 10 % of the Peruvian Amazon. A total of 18 million hectares are claimed by the indigenous peoples of Peru. In countries such as *Bolivia*, the legal recognition of indigenous territories is moving somewhat slowly while, in *Venezuela*, demarcation is only now beginning. In the south of the continent, where the colonisation process is very ingrained, the recovery of indigenous territories has more modest perspectives.

Although land titling has been a fundamental step and a great achievement for the indigenous communities in Latin America, many of them are still far from having real control over their territories. Property titles and deeds cover areas that do not always correspond to the communities' areas of use and subsistence. Also, the value of property titles is relative in countries like Colombia, where the armed conflict has driven thousands of indigenous peoples from their lands. Existing land titles are also under threat in places such as the Peruvian and Ecuadorian Amazon, where the land titles the communities have secured are under serious threat from the activities of oil and lumber companies.

Asia

The situation with respect to the state's recognition of indigenous peoples' rights to land and resources varies significantly between the different countries of South and Southeast Asia.

In *Thailand*, there is virtually no recognition of indigenous peoples' (here called "hill tribes") rights to land and forests. There exists no possibility of obtaining legal documents for communal or individually owned farms, swidden land, or even community forests. In neighboring Laos and in Vietnam the situation is somewhat better. In *Laos* land, including forest land, has been allocated to communities. These allocations



Cambodia - Photo: New Savin / Health Unlimited



Land-titling in Peru. Photo: Pablo Lasansky

however do not cover the entire traditional village territories, resulting in insufficient land for swidden farming and consequent soil degradation. In *Vietnam*, transferable and mortgageable land use certificates can be obtained for agricultural and forest lands. But these are given only to individuals or companies. A recently passed law provides for the allocation of forest land to communities. This signifies a first step in the recognition of communal land rights.

Cambodia is far more progressive: both its land and forest laws provide for communal land rights and communal forest use. The challenge it faces at present is to formulate the by-laws necessary for implementation of these laws. Pilot projects in Ratanakiri province are trying to create the necessary experience in feasible and just procedures that will inform the formulation of the by-laws (IWGIA supports this through an exchange programme with the Philippines). Although communal land rights can be titled and long-term use rights over forests obtained, the two are separate processes that also divide the traditional village territories, each part being under the jurisdiction of a different government agency. This means that the legal system in Cambodia falls short of recognizing indigenous communities' territorial rights (see article by Jeremy Ironside).

The *Philippines* comes much closer to this. There, the so-called ancestral domains of indigenous peoples and communities can be titled. It is however a long and complicated procedure for which most communities need outside assistance (such as the land titling project supported by IWGIA). Furthermore, the government's special agency for indigenous peoples, the National Commission on Indigenous Peoples, does not have the capacity to respond to the large number of applications. And there is great resistance to the titling of indigenous territories on the part of vested interests, especially the mining and agro-industries. Progress in titling indigenous territories is therefore slow (see article by Lourdes Amos).



Endorisor people, Kenya. Photo: CEMIRIDE

In countries such as *Indonesia* and *Malaysia*, indigenous communities enjoy some recognition of their customary rights over their territories. But even though in Sarawak and Sabah, in the Malaysian Federation, there are legal provisions recognizing customary lands, these lands have not been demarcated and the law has not been enforced.

In *India* the picture is very complex. The 5th Schedule of the Constitution prohibits sale of land to non-tribals in tribal areas of mainland India. The 6th Schedule provides for similar protection of indigenous land in certain areas of Northeast India (basically the Autonomous Districts in Assam, Mizoram, or Meghalaya, Tripura. A similar state-level law exists for the tribal hill areas in Manipur). In Arunachal Pradesh and Nagaland and the other area of Mizoram, the so-called Inner Line Regulation, among others, provides the same protection of indigenous land. There, and in the 6th Schedule areas, land and resource rights are regulated by indigenous customary law. And yet these laws and regulations cannot prevent increasing encroachment on indigenous lands by outsiders and government development and infrastructure programs. A most worrying recent development is the rapid privatization of communal land, encouraged by government bank loan policies and programs promoting cash crops. Often, the local indigenous elite manages to manipulate the process to their advantage and what is virtually an indigenous landlordism is in the making in Northeast India.

Africa

The land rights situation of indigenous peoples in Africa is by and large very bad and land dispossession continues at a disturbing rate. Throughout Africa, pastoralists and hunter/gatherers have historically lost large tracts of land, and this loss of land continues. This is caused by a number of factors, including unfavorable

national land policies and expansion of areas for agricultural production; establishment of national parks and conservation areas; large-scale infrastructure projects and natural resource extraction operations.

Only very few African states recognize indigenous peoples' rights to land and natural resources. An important exception is *South Africa* where some groups have been able to get their land claims recognized. In other countries of southern Africa, such as *Namibia* and *Botswana*, the land rights situation remains bad. Many indigenous groups have faced dispossession and development-related relocations, often as a result of post-colonial policies based on the same arguments as those used by the colonial governments, and indigenous groups today are among the poorest of the poor (see article by Cornelis Vanderpost et. al).

In *Tanzania* the government enacted two land laws in 1999 that restructure the system of land ownership. The new acts recognise customary ownership of land. However, the status of the pastoralists remains uncertain and their serious problems still go largely unattended. In spite of this, it is now possible for land titling to be implemented on a collective basis, and some organizations are using this opportunity to title land in some of the northern districts that have large pastoralist populations (IWGIA supports such a land titling programme). This is one of the few examples of land titling relating to indigenous communities in Africa (see article in *Indigenous Affairs* no 4 2003 by Benedict Ole Nanagoro).

No clearly defined land policy has been put in place in *Kenya* and illegal land grabs have taken place on a large scale. Individualization and privatization of land ownership has been promoted, which has caused massive land dispossession among indigenous communities. A process of formulating a national land policy began in 2003 and is still ongoing; however, indigenous peoples have to a large extent been excluded from this process (see articles by Joseph Ole Simel and Bill Rutto & Korir Sing'oeie).

In *Ethiopia*, pastoralists have continually been marginalized from official macro-economic policies, and eviction of pastoralists from their ancestral land is a huge problem that has exacerbated their poverty status. However, a vocal pastoralist civil society has emerged that is lobbying for policy reform and improved conditions for pastoralists. The government now appears to be employing a more positive rhetoric

with regard to pastoralism but any real changes in policy and administration remain to be seen.

The land rights situation of indigenous peoples in Central Africa, such as in *Rwanda*, *Burundi*, the *Democratic Republic of Congo (DRC)*, *Congo Brazzaville*, the *Central African Republic*, *Gabon* and *Cameroon*, remains extremely vulnerable. While in some places the indigenous peoples, notably the Pygmies, still retain their traditional forest-based way of life and access to land, they have been severely dispossessed and totally impoverished in places such as *Rwanda*, *Burundi*, *Uganda* and parts of the *DRC*. There is virtually no recognition of, nor legal provisions for protecting, the land rights of indigenous peoples in Central Africa and they remain highly vulnerable to land dispossession caused by logging, forest clearance for agriculture, development projects and wildlife conservation.

The indigenous peoples in West Africa are also in a vulnerable situation with regard to access to and rights over their traditional territories. The particular problems, conditions and development needs of the nomadic groups in the Sahara, in countries such as *Niger* and *Mali*, are being neither recognized nor given the requisite policy attention. This, combined with poverty, drought and competition for resources and access to political decision making with other groups moving to the nomadic pastoralists' areas, threatens to erode the foundations of the nomadic way of life in the Sahara.

As the articles in this issue of *Indigenous Affairs* testify, the recognition and protection of land rights still remains a great challenge for indigenous peoples – although the situation varies tremendously from region to region. The political and economic environments in which indigenous peoples find themselves throughout the world offer different spaces for action. In some places, legal titles to land have to a large extent been secured and the major challenge now is the defence and management of these territories. In other places, legal recognition of territories or other forms of protection is still far from being a reality. However, the objectives remain the same and recognition of indigenous peoples' rights to their land and resources is a fundamental global responsibility in terms of safeguarding cultural diversity and the right and possibility of all peoples to determine their own future. □



GOVERNANCE, THE TERRITORIAL APPROACH AND INDIGENOUS PEOPLES

Pedro García Hierro

The route travelled by the Amazonian communities, the indigenous peoples and their organisations with regard to the reconstruction, legalisation and ownership of their territories is significant. The indigenous generations of the last half century have played a role that may well be crucial to the survival of their peoples, in spite of the distortions and losses they have been forced to accept, and the errors they may have contributed to.

For those who look on the forest as a habitat, the Amazonian indigenous territories are viewed very positively. For those of an opposite view, who have always seen the Amazon as an expendable supply of raw materials, the indigenous territories are seen as a hindrance and a headache.

In legal terms, the indigenous lands have achieved constitutional ranking, in some cases even being defined as territories. Countries consider themselves to be multi-ethnic and pluricultural and the legal subject of "indigenous people" can now be found in the constitutions of Ecuador and Bolivia. This was also considered a viable proposal in the process of regulatory and constitutional reform in Peru. In Ecuador (as in Colombia), the Constitutional Court has already passed judgement on the territorial problems of specific indigenous peoples and has even protected this right in the face of transnational companies. This is not the general rule of course, but it is worth noting when it comes to evaluating results. There

are legal initiatives and proposals relating to territory in almost all countries.

The involvement of indigenous organisations in issues relating to the demarcation of their territories has been on the increase, either through political agreement, as in Bolivia, administrative operations, as in Peru, or via the path of social mobilisation, as in Ecuador.

With the exception of Bolivia, the legalised territories are gradually achieving the goals put forward by the indigenous movement in each of the Andean countries and, in a good number of cases, now fulfil conditions of sufficient size and resources to be able to plan a life project, provided that short term decisions do not hasten what may already be an irreversible deterioration.

The representative organisations were originally set up as an external relations mechanism aimed primarily at creating the political and legal spaces in which to establish the main indigenous demands, territory in particular. Those peoples who have managed to legalise and gain control of a territory that they believe satisfactory to their needs are now considering defining and constructing a new 'subject' for the next stage of the process, whilst maintaining the important yet subsidiary role of their political and representative organisations.

In this respect, the subject of 'people' is forcefully appearing as the new organisational focal point around which to build a future within each territory.



AIDSEPs fieldwork team in Ucayali Region. Photos: Alejandro Parellada

In addition to a powerful engine for indigenous mobilisation, territory has proved to be a very fertile concept for their other demands. These have been linked to issues such as culture, education, intellectual property, spirituality, justice administration, government and internal self-determination, economy, well-being, state reform, territorial management and development, political participation, market and so many other issues have been boosted on the basis of the development of territorial claims.

Outstanding problems

To summarise the territorial problems of the Amazonian indigenous peoples in the Andean area is no easy matter. But we can highlight some of the issues that regularly appear as most problematic in terms of their situation:

Legalisation of lands

There are still many indigenous lands and territories that have not been legalised. In Bolivia, the process is still in its infancy. In Peru, there are many physical spaces between the communities that appear as gaps in their territories, and so a wide “extension” process needs to be supported to ensure that the territorial areas are consolidated as soon as possible.

The form of recognition preferred by indigenous peoples is the “territorial method” of titling but the only country that has legalised in this way, Bolivia with its TCOs (Tierras Comunitarios de Origen - Communal

Native Lands), applies this in a limited manner and the hoped for results have not been achieved.

Regulations

In the first place, it must be noted that in the regulatory journey from constitution to ordinary legislation and, below this, to local guidelines and administrative acts, there remain many avenues to indigenous territorial law. This often means that the final shape of an indigenous territory is more a response to a bargaining game than a true territorial design. The indigenous peoples must have access to legal mechanisms with which to reorganise their legalised territories in line with a logic that responds to their own rationale.

The procedures for legalising lands are generally unnecessarily complex, long and costly, and highly vulnerable to administrative and legal chicanery. The civil code criteria for assessing pre-existing rights are not impartially enforced. There is a need for pluricultural criteria by which to evaluate those rights.

Transfer of the issue of indigenous lands to the current common law jurisdiction is also a problem that must be envisaged. The judicial power evaluates from an absolutely prejudicial point of view with regard to common law and the courts are still virtually inaccessible to the indigenous social organisations for a variety of reasons.

It continues to be very important that the indigenous territories are provided with appropriate legal features that enable their management and protection. The features of imprescriptibility, non-seizability and inalienability are classic. But there are also others that could

strengthen their integrity and exclusivity with regard to decision-making on the different land uses. In this last aspect, one feature that should be characteristic of the exercise of territorial rights is autonomy, with all its practical expressions (particularly rights of regulation, jurisdiction, exclusion, inclusion, contracting and prior consultation).

The procedures for reversion and recovery of lands are not duly considered in any of the legal regulations and, in many cases, are absolutely necessary in order to reconstruct territories whose integrity has been destroyed over the last few years by illegal or violent acts.

Land registry and cadastre

One aspect of great importance is the technical aspect of the instruments that express indigenous ownership and enable its incorporation into the common land registry and cadastre system. Many of the maps are not well defined, virtually none are well referenced and many of them overlap. Many group maps show inconsistencies that are invisible until the appropriate technology becomes available (large gaps of land of territorial importance that were believed titled, for example). The files are often incomplete, lost or damaged. In many cases, the property register has been neglected, etc. These are aspects that must be taken into account because they will be a cause for concern in the near future when indigenous ownership faces challenges from interested third parties.

The technical reconstruction of plans and reports, for land registry and cadastral purposes, is an outstanding task that requires the development of adequate procedures in order to avoid boundary reviews leading to the possibility of new conflicts. There is an urgent need to rebuild, reorganise and put into order the land dossiers of the communities and peoples. Efficient files under the responsibility of the organisations with appropriate technical instruments are essential to territorial protection and planning.

Protection

The greatest problem for indigenous territoriality remains a lack of effective resources with which to ensure the legal protection of their territories. There are very few indigenous peoples who enjoy the peaceful environment necessary for stable and long-term territorial management decision-making. Conflict is the general rule. Unlike other owners or beneficiaries, indigenous peoples and communities are forced to rely on their

own initiatives for territorial protection. The prejudices of officials and judges, the lack of presence and, in some cases, the bias of the local state apparatus facilitates, if not promotes, a disregard of indigenous rights on the part of settlers, loggers and other economic agents. There is an underlying colonial vision of “pioneers conquering new lands infested with Indians”. The indigenous communities and peoples that take their disputes to court, at the cost of great internal tension and considerable expense, generally end up disappointed by the results. Among the Aguaruna of northern Peru, the evictions of illegal settlers that followed legal victory have twice resulted in acts of violence, even involving the police who had come to ensure that the ruling was enforced. It is often the case that the message received by the indigenous is one of official exclusion from the protection of the law.

Colonization

One serious problem is the extreme competition for Amazonian lands and resources and the ecological environment’s vulnerability to withstanding this. The following are some the region’s common features:

- The agrarian problem throughout the whole region has moved largely eastwards and there are high levels of conflict.
- Amazonian social problems are complex and, on occasions, violent because due to disputes over land and resources between autochthonous or already settled populations, and migrants.
- Economic adjustment programmes, the concentration of farm ownership, the current situation of Andean farming, demographic growth and the systematic decline in job opportunities in the towns mean that the eastward move of the agrarian problem is unlikely to slow down, quite the opposite.
- Although the states are under pressure from the outside to provide indigenous peoples and communities with lands, this is not their true plan for Amazonian occupation, which is more in line with plans for colonization and extraction. This often means that their attention to indigenous territorial problems results in a belated concern for “faits accomplis”.
- In some cases, such as that of Peru, considerable expenses have been incurred in order to encourage colonization. The economic weight of the region is on the increase and some countries, such as Ecuador, rely on Amazonian oil for their main

source of budgetary income. Bolivia and Peru have doubled the lands under production since the incursion eastwards, and coca has at times become an important budget item for national economies. Although there is local economic coordination, these processes are speeding up, the economy is ageing prematurely. In the Peruvian Amazon, many people have gone from abundance to scarcity in just one generation. Urban concentration and expanding slums are ever present features, begging is on the increase, and the inhabitants of the Amazonian "bread basket" have to import food to survive. Physical capacity of the land, the most obvious limiting factor in the Amazon, could be very close to breaking point and the increasing complexity of the economy may be no more than a time bomb: the goose that lays the golden eggs is being slaughtered.



Alto Amazonas - Photos: Pablo Lasansky

In summary: the Amazon has not been exclusively indigenous for some time now. Official data reveals that, overall, the indigenous constitute a minority population in relation to other Amazonian inhabitants. Many people are today interested in the Amazonian lands, and the main problem for indigenous peoples is one of being able to preserve their territorial spaces in the midst of such competition. Indigenous peoples now have to take into consideration the other sectors with which they share the region, not only when demarcating and legalizing their territories but afterwards, too, in their plans. It would not seem easy to overcome the differences. In countries such as Peru it is unlikely that alliances can be achieved in the short term. And yet it is not constructive to live in continual confrontation, and common ground must be found so that population groups that are trying to become established and the indigenous population can benefit mutually from each other, or at least not live in permanent hostility.

Official chaos

Badly organised settlement programmes, as in the Peruvian case, or programmes organised haphazardly on the basis of interventions that originally had other aims, such as the oil industry in Ecuador, or perpetrated with the aim of favouring certain power groups, such as the inappropriate settlement of the Santa Cruz region of Bolivia, have generated such dramatic processes that they are outside the realms of any possible state control. The initial complexity has overwhelmed the state's management capacity and it has, in some cases, been local authorities (including officials but in their instrumental role within the local civilian authorities) that have won the day for the state. In other cases, it is the organised

social forces, or the illegal mafias or simply paid thugs who direct local policy.

Renewable resources

The Amazonian "conquest" has destroyed the resource base, in some cases irreversibly. The forest resources have been opened up to large and medium-scale capital, which acts selectively and with absolute impunity. The legal or allowed superimposition of private logging rights on top of indigenous territorial rights is a constant in the Amazonian conflict. This is a powerful sector that handles much more than resources and is desperate to finish off the Amazonian fine woods. Many experts now believe we will have to wait until the mahogany and cedar woods are exhausted before we can truly talk of indigenous forest management. And we are a lot closer to this point of no return than one might think. The logging concessions and forest production reserves are one of the main factors limiting indigenous territoriality. It is normal, moreover, that the logging front should create the conditions for further settlement.

Non-renewable resources

In all three countries of the region, oil plots cover a good proportion of the Amazon, with mining concessions scattered to a lesser extent throughout some regions. Each one of these square grids, superimposed on indigenous lands, implies a latent and often definitive conflict. Although many promises for the future may be made, there is not one verifiable case of an indigenous people coming through the experience of a concession unscathed, however limited it may have been. The persistent blind eye that is turned to cases such as Texaco in Ecuador or, more recently, the case of the Nanti people of the Peruvian Uribamba is, quite frankly, immoral. The link between the arrival of the oil camps and deaths due to hepatitis B among Kandoshi community members in the Peruvian Pastaza cannot be overlooked. Peoples such as the Achuar or the Kichwa in Peru and Ecuador have spent more than a decade at conflict with the oil companies.

Some constitutional rulings, in Colombia and Ecuador, seem to indicate that we must get used to the fact that acceptance of the oil companies is not an "untouchable" issue and that the rule should be the converse: a concession cannot be granted without the absolute security of the people and heritage of the indigenous peoples or, of course, without their consent. In Peru, Colombia, Bolivia and Ecuador, processes have been implemented to regulate such activities when undertaken on indigenous territories. Experiences to date have been very frustrating for the indigenous organisations, which see no favourable signs. As long as there is "unavoidable" interference in indigenous autonomy, it will be impossible to talk of territorial management in anything more than symbolic terms.

The multinationals' sights are set on exploiting many of these resources and they demand special conditions for their investments. Liberal modernisation is a very appropriate framework within which to make these effective. But the governments are torn between tolerance, making them accomplices in serious ecological disasters, and the demands of an international "green" group that has achieved significant levels of political leverage. This puts the dependent regional governments in a difficult situation. The indigenous peoples will undoubtedly retrospectively manage to put many oil transnationals in the docks of international courts for crimes against humanity, but it seems we will have to wait until it is too late to be able to repair the damage.

The external agenda and indigenous territories

Many of the new land legalisation programmes are linked to international agenda objectives, in particular

poverty reduction and the liberalization and revitalisation of the land market.

Indigenous identity having been taken up as a clear demand in the face of its historic unfavourable connotations, a new assignation of identity is becoming increasingly widespread, in which the indigenous are qualified as poor. This is not an innocent identification as it promotes 'victimism', political clientelism and dependence. The formula for reducing indigenous poverty consists of market-related economic projects. But indigenous poverty has often been created by precisely this kind of initiative and there is a close link between indigenous poverty and proximity to markets and commercial channels. To link or condition funding of land legalisation to the presentation of development proposals (the World Bank's proposal) leads to establishing preferences towards those who supposedly offer more to development. The Beni landowners, in Bolivia, are imposing the idea that if the indigenous obtain title to areas currently devoted to cattle ranching, the region will become impoverished and the indigenous themselves will suffer the ensuing unemployment.

Many projects in support of land titling aim to consolidate ownership in order to be able to revitalize the land market. Sometimes, indigenous land legalisation programmes fall within this type of initiative, which prioritises a mass regularisation of non-indigenous property followed by a distribution of the remaining state lands. These programmes, which receive ample funding, may deprive the indigenous territories of many spatial possibilities. In Peru, the PETT says it has completed regularization of hundreds of thousands of settler properties. In Bolivia, indigenous land regularisation (saneamiento) requires private property to be regularised first.

Natural areas, resources in the public domain and indigenous territories

All the countries experience difficulties in harmonizing the conservation of natural areas with the allocation of indigenous territories. Some progress is being made in Bolivia and Peru to overcome the problems of overlap. In Bolivia, one of the indigenous territories is also a protected area. In Peru, the proposal is to reconsider the advantages of indigenous territories as such, in order to encourage true conservation in situ. In Ecuador, the issue requires special consideration as it affects all the indigenous peoples in one way or another.

Another serious problem for indigenous territorial integrity is that of resources which, in accordance with the constitution or laws, belong to everyone or are of

public interest. This includes the rivers, lakes and artificial pools, river banks, highways and their areas of access etc. The case of the waters is essential because they tend to have a sacred and fundamental nature in addition to being essential to the economic life of each people. Very often, the public use areas have formed the entry point for large territorial invasions (for example, rights of access to the areas along highways).

The indigenous peoples without contact or in sporadic contact

This is a very particular problem. These are highly vulnerable peoples whose survival may depend on the political choices made by government. They currently occupy areas which, because of their inaccessibility, hold resources precious to the extractors and which are beginning to be bombarded in different places. The case of the Nanti people in the Peruvian Urubamba has highlighted the resistance of states and companies to recognising the high risk of extinction run by these people in the face of development mega-projects.

Conclusion

In spite of all these difficulties, the Amazonian indigenous peoples, at least those that have reconquered an acceptable territorial area, have the possibility of exercising a governance that is both modern and rooted in the endogenous, given the features of their traditional power and decision-making systems and the territorial focus of their initiatives. They also have the opportunity of offering alternatives to economic and cultural homogenisation and of escaping the Darwinian mercantilist greed.

For this reason, it is important to avoid theoretical avant-gardism and external technological proposals, and to trust in the common sense of each of the peoples. It is important to counter the "Great Truths" imposed

by globalisation, the "technical truths of the experts", with the small truths of peoples and local communities, particularly indigenous peoples, in order to influence a global paradigm change, extending and diversifying the availability of alternative non-state public spaces.

The only guide to achieving this is common sense, and one's own experimentation, born of wisdom.

Perhaps more important than wholehearted incursions into capitalism, so frequent among the modern initiatives of indigenous peoples, is a supportive curiosity with regard to peer experiences, and creative alliances with which to face up to the issues of the future.

But above all, a process of reflection that is free from pressure (whether from resources or from external advisors).

In summary: referring to a people (or nation), the concept of territorial management (as a factor of governance) thus implies the freedom of that people (or nation) to enjoy and manage the resources and wealth of their heritage, on the basis of their own development priorities, as well as to determine the content of their relationships (social, cultural, economic, legal, etc.) with neighbouring societies or with societies that exist within it spatially.

This freedom, in a territory under the control of a nation (or a people), is none other than what indigenous peoples call self-determination. In other words, a familiar proposal in indigenous political ideology.

What is new here is that the current scenario raises new challenges. It is in this context that a reflection around what we are at this precise moment takes on "foundational" importance, aimed at imagining ourselves and constructing what we could be. Perhaps the current work of greatest interest is that of discovering the ideal conditions in which the question that seems to be a key pre-condition to management can naturally arise: so what now? □

Pedro García Hierro is a lawyer. He has worked as an advisor to various Amazonian indigenous organisations over the last 30 years.

IWGIA's support to land titling in Latin America

IWGIA has been supporting various land titling initiatives for indigenous peoples in Latin America. In Peru, we have been working with the national organisation, AIDSEP, since 1989 on the titling of more than two million hectares for Amazonian communities and on establishing protected areas for indigenous communities living in voluntary isolation. IWGIA also works in Venezuela, Bolivia, Argentina and Chile funding technical support and organisational strengthening for the legalisation and defence of indigenous territories.



SECURING LAND TENURE RIGHTS FOR CAMBODIA'S INDIGENOUS COMMUNITIES

Jeremy Ironside

In 2001, a new Land Law was passed in Cambodia that allowed for recognition of communal title for indigenous communities.¹ This followed the wishes of indigenous leaders during consultations carried out in 1999, where communal title was considered more in keeping with traditional land use and would better protect indigenous lands and culture. In 2003, the Ministry of Land Management, Urban Planning and Construction (MLMUPC) began to implement communal titling in 3 pilot villages in the north-east of the country, to provide experiences for drafting a Sub-Decree that will outline the process for communal titling. This article briefly outlines the context within which this work is happening.

Indigenous communities within Cambodia

Cambodia's indigenous populations are predominantly found in the sparsely populated extremities of the country, in the border areas with Vietnam, Laos and Thailand. These are the north, north-east and south-west of the country. These indigenous groups all belong to the same Proto-Indo-Chinese culture. They also all belong to the Mon Khmer linguistic group, except for the Jarai (12,000 pop.) who speak a Malayo-Polynesian language.

In Mondol Kiri and Ratanak Kiri Provinces (north-east of the country - populations 100,000 and 30,000 respectively), the Khmer and Lao ethnic groups are more recent arrivals, settling along rivers and in lowland and urban areas, and the 'minorities' are actually the majority at around 70% of the total population.

For several reasons, there have been no real attempts to precisely determine the populations of Cambodia's indigenous minority groups. Census data (1998) that asked about people's mother tongue (language) probably understates the true figure, as many minority groups are likely to deny their ethnicity, finding it easier to say they are part of the majority Khmer culture. Studies in Preah Vihear Province (in the north of the country) found the population of the Kuy group (19,496) was more than four times larger

than that shown in the 1998 census (4,536) (Helmerts and Wallgren, 2002). The 1998 census concluded that there were 17 different indigenous groups and estimated them to number 101,000 or 0.9 per cent of the total population.

Indigenous peoples' traditional land use and management

Numerous studies have shown that indigenous people operate a well-developed land allocation and land management system that relies on communal decision-making through traditional structures. Communal forms of land tenure allow for the rotation of upland agriculture fields, and for the equitable distribution of land among community members. Two key principles of sustainable management have guided this form of land use:

1. Minimise impact and allow sufficient time for forest regeneration by rotating over the village area and not farming one swidden plot for too long.
2. Maintain evenly dispersed populations rather than concentrating settlements in one area.

Bourdier (1995) points out that the equidistant distribution of populations over the landscape was one of the features of the hill tribe cultures in the past. This, and the constant need of swidden farmers to promote forest regeneration for soil fertility replenishment, means that extensive forest cover (forest and secondary forest) has been maintained in several indigenous areas for centuries. Relatively low population densities assisted this maintenance of forest cover, but actually aerial photographs taken in 1953 show that areas of the most productive soils, such as on the Ratanakiri basalt plateau, were intensively used for swidden farming.

To allow for fallow regeneration, there were and still are strong traditional taboos preventing one village from encroaching onto the land of another group. As a Brao (indigenous group) elder put it, "Outsiders seem

only concerned about protecting the forests, but they do not realise that to protect the forests, one has to also protect the soils, and the agriculture system that they want us to adopt will not do that.⁷² Many indigenous farming people therefore have a difficult time accepting the call for them to continue production on single plots for many years. In their view, such a strategy - especially on the relatively poor and fragile soils that are found in many areas of the country - will lead to both ecological and social problems.

The swidden system is therefore part of a balanced livelihood system that has developed over centuries. However in many areas swidden systems are breaking down because, in the present situation of mass land insecurity, the fallow cycles cannot operate and the result is that both villagers and outsiders are clearing forest land to compensate for the increase in cash crop farming.

title allows a community to allocate individual or family use rights.

Land selling and alienation

Land tenure in indigenous communities is based on informal and de facto possession rights, which means they have no legal rights to their land. Traditionally indigenous communities have not sold land and land could not be sold if someone left the village.

A dramatic increase in the immigration of Khmers to the highlands is taking place, encouraged by policies to increase economic development and facilitated by new roads, etc. Between the 1992 census and the National Census in 1998, the population of Ratanak Kiri Province grew by around 41 percent and the provincial capital Banlung increased by 82 percent. During the same period, the national average population growth was only 29 percent (ADB 2001).

Illegal land transactions are occurring at an alarming rate without thought of the problems of landlessness of marginalized indigenous people with few skills other than gaining their livelihoods from farming and forests. A summary of land alienation problems is as follows:

Lack of awareness of legal rights and lack of representation

- Indigenous people are not aware of their legal position or the market value of their land.

Community members and outside buyers

ies within communities. People who have not sold land feel pressure to sell before the land is lost.

- Land is being sold because of the high prices (by villagers' standards), encouraging the young to sell land to buy a motorbike, etc.
- 'Mey Kloun' (land brokers) both outsider and indigenous, are now operating in several provinces.

Forest clearing

- Forest areas are being illegally cleared.
- Cash cropping farmers along the road claim the right to clear all the forestland behind their land.

In-migration into indigenous areas

- With the opening up of the market economy and population pressure in lowland areas, people are migrating to remote provincial towns and along main roads.

Forced land selling

- Even if indigenous people are able to obtain treatment, the 'hidden' charges in the health system mean that they are forced to sell land for ill health and other emergencies.

Voluntary land selling

- Communities are selling land because they see it as a way of obtaining consumer goods – televisions, motorbikes, etc.

A combination of factors is therefore causing an ongoing cycle of displacement, land encroachment and deforestation in indigenous areas. The absence of the rule of law compounds the mounting social and environmental problem. The Land Law protecting the rights of communities to maintain their land prior to communal titling is not being respected and enforced. This is exacerbated by a culture of corruption and impunity, and a lack of access to information. Where communities have greater understanding of their legal rights, and where they are not so vulnerable to misinformation, the rate of land alienation is less.

In a major speech at a recent National Land Forum (18/10/04), Prime Minister Hun Sen declared a campaign, starting first with officials in his government, against people who possess large areas of land illegally and keep the land vacant without development. Despite these positive signs there has been a recent increase in high-level government officials buying very large areas of land (500-1,000ha).

Indigenous groups' more communal understanding of property means they have no idea of what a land market is or what would be a fair market prize for their land. Land is sold for ridiculously low prices of \$50/ha or

less and often for less than the value of one year's crops.

These problems serve as a severe impediment to resolving conflicts before titling can take place. In the hardest hit communes in some provinces, the majority of the land is no longer owned by the indigenous communities. Landlessness in Cambodia has been found to be inextricably linked to poverty.³ In an environment of a weak rule of law, encouraging the settling of traditional indigenous homelands will likely benefit the few and cause large-scale social and environmental/forest destruction. Tackling these issues is urgent.

Forest and agricultural concessions, and protected areas

Several "land concessions" awarded by the government include clearing 5,000ha of forest and people's agricultural land for a rubber plantation; proposals for pine plantations covering 200,000 ha; a pulpwood plantation covering 300,000 ha; tourism/golf course developments near a sacred hot springs; etc.

Forest concessions have been on hold in the past few years, but some are likely to be approved for continued operation soon. Illegal logging however has continued unabated, often with the involvement of the armed forces and provincial authorities. The destruction of Cambodia's forests has been an ongoing problem for some years now. Indigenous people in Cambodia do not have secure management rights over the forest areas they traditionally use and manage. Both forest concessionaires and illegal loggers intimidate indigenous communities and cut their resin trees, which communities tap for income. Indigenous communities are also blamed for forest clearing when they shift their agricultural areas into forest areas because of land alienation.

Protected Areas now cover 23% of the land area of Cambodia, not counting also a system of protected forests. In the largest province in the country – Mondul Kiri (around 14,000km²), some sort of protected status now covers 80% of the province. Existing legislation supports establishing community management in parts of these protected areas. Central-level recognition of such community management agreements however has to date been slow.



Land rights training. Photo: The Ratanakiri Network Support Project

Indigenous land rights - activities to date

Land Use Mapping and Planning

Provincial governments in Ratanak Kiri and other provinces and NGOs have been working on promoting land security through community-based natural resource management. This has resulted in provincial recognition of many community natural resource management areas. Various mapping and planning methods have been tried, with the main finding being that communes under the most severe land pressure along roads and near market towns have largely been unable to deal with the intense land pressure in these areas, even with provincially recognized land use plans and maps.

These experiences in community resource management are now being implemented in several other parts of the country. A standardized national participatory land use planning (PLUP) process is now beginning to be implemented throughout the country under the Ministry of Land Management. This planning process is the necessary preliminary step to identifying indigenous community areas that are eligible for communal titling. It is not likely that this work will be implement-

ed fast enough to deal with the rapid land use changes presently underway. There is scope however to speed this process up through preliminary community-level land use planning activities in advance of both the PLUP and land titling activities.

Consultative groups and no sales agreements

Indigenous peoples' networks are being developed in Ratanak Kiri (the Highlanders Association and NRM Network) and other provinces. Regular consultative meetings and exchanges between indigenous representatives from different provinces have been initiated. One strategy being tried in order to prevent further land sales is commune-level No Sales Agreements. Villagers agree that their community will stop selling land and members thumbprint a No Sales Agreement document. This document is then handed to the commune authorities for their recognition and approval. So far in Ratanak Kiri, 4 No Sales Agreements have been developed and approved by their communes.

Other strategies have included joint declarations from representatives of several communes and several indigenous groups to higher levels of government.

First ever National Forum of Indigenous People

From the 9-12 September 2004, a meeting was held with indigenous representatives from 14 provinces throughout the country, representing 11 different groups. For some, this was the first time they had ever met people from another indigenous group. The meeting discussed how an indigenous person should be defined in Cambodia, how these different groups manage their lands and what common problems they are facing. Information gathered will feed into the drafting of the Sub-Decree on Communal Land Titling. This Forum formed the basis of further consultations in the different regions to obtain input for the Sub-Decree, and to develop a network of Indigenous Peoples throughout the country.

One output of this meeting was a joint statement outlining the representatives' request for land security and recognition of their rights. The statement was presented to the Ministry of Land Management. It has since been revised following comments from the Ministry and meetings of indigenous representatives in Ratanak Kiri Province. This statement will be further revised following the planned consultations in different areas of the country.

Pilot communal land titling

In March 2004, the Ministry of Land Management, Urban Planning and Construction (MLMUPC) formed an inter-ministerial National Taskforce (NTF) to coordinate the work of pilot communal land titling activities, and to oversee the development of a Sub-Decree for Communal Land Titling for Indigenous Communities. A consultation forum has also been set up to allow for the involvement of indigenous peoples and civil society. Two Provincial Taskforces (PTF) in Ratanak Kiri and Mondol Kiri, including government and civil society representatives, have also been formed. It is the aim of the MLMUPC to finish all land titling in Cambodia by 2007, including indigenous lands, though this may be rather optimistic.

The Sub-Decree for communal land titling will be prepared in the coming months, with ratification expected in 2005. Efforts are also underway to get the government to declare a moratorium on registering private land in areas eligible for communal title until the adoption of the Sub-Decree. Investigations into the legality of all recent land sales are now required and a process to resolve conflicts and prosecute offenders.

To date, activities have been slow. A significant amount of time has gone into developing extension material and informing communities in the pilot villages about the Land Law and the options of communal

and individual land ownership that are open to them. On the 21 and 22 September 2004, in workshops attended by the Ratanak Kiri Provincial Governor and the relevant provincial department heads, the villagers in both pilot villages voted unanimously for communal title. They were then asked to submit their application to the Provincial Department of Land Management.

Exchanges of experience with the Philippines

With the assistance of IWGIA, an expert on communal titling recently worked with the Ministry of the Interior, the Ratanak Kiri Provincial Rural Development Committee and indigenous communities to define how these communities traditionally choose their representatives and how such representation will be legally recognized in the communal title. A study trip was also organized in November 2004 (co-funded by IWGIA and a GTZ/MLMUPC Project) where National Taskforce (NTF) members were sent to the Philippines to learn about experiences of communal land titling.

Consultation and ratification of a national Indigenous Peoples' Policy

One of the priorities for ethnic minorities in the Cambodian Government's National Poverty Reduction Strategy 2003-2005 is the ratification of an Indigenous Peoples' Policy. This would assist in guiding the activities of the government in indigenous areas, give indigenous people a way to make sure proper procedures are followed, assist with pushing for proper indigenous and independent representation in government land conflict resolution and court processes, etc.

A 'General Policy for Highland Peoples' Development' was developed in 1997. This document calls for the preservation of indigenous cultures, languages and belief systems, the provision of culturally appropriate services, the protection of traditional lands and forest use rights, the recognition of traditional farming systems, etc. This policy was submitted to the Council of Ministers in 1997 and discussed at two sessions but was not approved. The Department for Ethnic Minorities' Development is now resurrecting this policy and conducting consultations with the aim of getting it ratified by 2005.

Conclusion

By including a chapter in the 2001 Land Law, the National Assembly implicitly recognized that Cambodian development should not be seen as a uniform model

for the entire population and special requirements were needed to respond to the situation of indigenous peoples in Cambodia. The rapid socio-economic and land use changes underway in many indigenous areas mean that land tenure security is an urgent priority in order to allow these communities and their farming systems time to adjust to these changes, to prevent large-scale land dispossession and to ensure that poverty within these communities is reduced rather than increased.

In most of the areas where Cambodia's indigenous peoples live, the issues of land and forest tenure security are inextricably linked. There are interesting possibilities of giving indigenous communities rights of communal ownership to agricultural areas and of developing community forestry agreements for areas outside this. The communal lands could act as a future buffer between cash cropping areas and forested areas, with the swidden areas being more a mix of cropping, agroforestry and fallows. The most logical development pathways of swidden systems and for upland areas could actually be agroforest-type options rather than clearing forest to plant monoculture plantations or annual cash crops.

In many areas where indigenous people live, however, there is what could be termed a crisis of land use policy. The talk of opening up these areas to cash cropping, economic concessions, etc. outstrips the government's capacity to make sure that these changes will not actually impact severely on the people and the natural resources of the area. Much needs to be done to assist indigenous communities to protect their land before and after land titling.

For all these reasons, communal titling methods are required that can be simply and efficiently implemented. If not, the promise of land security through communal titling will not be realized. Indigenous communities have a significant contribution to make in the sustainable management of their traditional areas and they need the tenure security of their communal lands to develop models that combine economic development with social and environmental considerations. □

Notes

- 1 In this law, indigenous community land can be defined as residential land, agricultural land and land kept in reserve as part of the traditional rotational cultivation system.
- 2 Ironside and Baird, 2003.
- 3 See, for example, the ADB Poverty Reduction Analysis (2003), which identified landlessness as a significant factor in poverty in Cambodia.

References

- Asian Development Bank (ADB).** 2001. *Capacity Building for Indigenous Peoples/ Ethnic Minority Issues and Poverty Reduction. Cambodia Country Report*, (ADB, Phnom Penh).
- Bourdier, F.** October 1994-July 1995. *Knowledge and Practices of Traditional Management of Nature in a remote Province*, 1995, Report of a Research Mission on the Theme of Environment in Cambodia, under the sponsorship of AUPEL/UREF.
- Ehrentraut, S.** 2004. *The Theory Of Multiculturalism and Cultural Diversity in Cambodia*, Master's thesis in Political Theory, University of Potsdam, Germany.
- Helmers, K. and Wallgren, P.** 2002. *Cambodia: Rural Investment and Local Governance Project: Indigenous Upland Minorities Screening Study*, Final Report, The World Bank, East Asia and Pacific Region, Rural Development and Natural Resources Sector Unit.
- Inter-Ministerial Committee for Highland Peoples' Development (IMC).** 1997. *Project Activities for the Highland Peoples' Development in the Northeast of Cambodia*. Paper prepared for the HPP/ILO Conference on Grassroots Development, 12 November 1997. Chiang Mai Workshop, 17-21 November 1997 (IMC, Phnom Penh).
- Ironside, J. and Baird, I.G.** 2003. *Wilderness and Cultural Landscape: Settlement, Agriculture, and Land and Resource Tenure in and adjacent to Virachey National Park, Northeast Cambodia*. Biodiversity and Protected Area Management Project (BPAMP), Department of Nature Conservation and Protection, Ministry of Environment, Ratanak Kiri Province, Cambodia.
- Ironside, J.** 2004. *Mapping Issues and Processes for Implementing Communal Land Titling in Ratanak Kiri* (Draft Report), Seila/PLG, Ratanak Kiri, February 2004.
- Ratanak Kiri NGO/IO NRM Working Group, DRAFT NGO Statement on Indigenous Affairs - 20 October 2004.**
- Statement by Indigenous People made in Trang Village, Chh'en Commune, Oral District, Kompong Speu Province, 12 September 2004.
- Royal Government of Cambodia.** 2002. *National Poverty Reduction Strategy 2003-2005*.

Jeremy Ironside is from Aotearoa/New Zealand and has worked in Ratanakiri Province since 1996, and in other indigenous areas of Cambodia more recently. He works in the areas of upland agricultural development and community-based natural resource management (CBNRM). Main areas of work recently have included support to 2 of the pilot communal land titling villages, preparation of the policy document for communal land titling for the Ministry of Land Management and ongoing support to agriculture and CBNRM activities.

TITLING ANCESTRAL DOMAINS: THE PHILIPPINE EXPERIENCE

Lourdes Amos



The Philippines is renowned as a pioneer in Asia, and is probably one of the few countries in the world to have comprehensive legislation on indigenous peoples' rights - the Indigenous Peoples' Rights Act (IPRA) otherwise known as Republic Act 8371. The law's core mandate is the recognition of land and resource rights and titling of indigenous lands and territories – so-called Ancestral Lands and Domains. The Indigenous Peoples' Rights Act is the result of decades of relentless advocacy work by indigenous organizations and support groups and is definitely one of the success stories in the centuries-long struggle of the indigenous peoples of the Philippines to retain their self-determination and control over their land and resources. However, the past seven years of implementation of the Indigenous Peoples' Rights Act have been a sobering experience and most recent developments seem to confirm fears that the Philippine government lacks the political will to enforce the law.

A reality test: gauging actions from words

President Corazon Aquino came to power after the dictator Ferdinand Marcos was ousted in 1986. The new so-called "Freedom Constitution" enshrined policy reforms whereby the state recognized that; *"the rights of Indigenous Cultural Communities/Indigenous Peoples are universal, indivisible, interdependent and interrelated"*.

Despite this declaration, deliberations on the Ancestral Domain Bill submitted by Congressmen William Claver and Gregorio Andolana in 1988 were not successful. Instead, the Department of Environment and Natural Resources (DENR) issued Administrative Order No. 02, Series 1993 defining steps towards the recognition of indigenous land "claims" – the so-called Certificate of Ancestral Land Claim and Certificate of Ancestral Domain Claim. This failed to recognize ownership over indigenous peoples' ancestral lands and territories by granting only partial rights in the context of mere "claims". In the midst of increasing land conflicts, however, various indigenous communities made use of the opportunity, in spite of the limited rights it entailed. By June 1998, 181 Certificate of Ancestral Domain Claims had been issued by the Department of Environment and Natural Resources.

During the administration of the former President Fidel Ramos, the Indigenous Peoples' Rights Act was finally passed on 27 October 1997. It attempts to provide an enabling process to the Constitutional provision, declaring that the state recognizes and promotes the rights of indigenous peoples in general, more specifically undertaking:

- to protect the rights to their ancestral domains,
- to recognize customary laws governing property rights or relations,
- to recognize, protect and promote their rights to preserve and develop their cultures, traditions and institutions,
- to guarantee enjoyment of human rights and freedoms without distinction or discrimination,
- to ensure that indigenous peoples benefit equally from the rights and opportunities granted by national laws and regulations, and
- to assure participation in determining the direction of education and health, as well as other government services

Furthermore, the Indigenous Peoples' Rights Act underlines its mandate of Social Justice and Human Rights (Chapter V) with reference to existing international legal instruments, such as the Charter of the United Nations, the Universal Declaration of Human Rights, including the Convention on the Elimination of Discrimination Against Women and International Human Rights Law (Section 21), and the Fourth Geneva Convention of 1949 (Section 22).

With caution and uncertainty, many indigenous peoples and communities pursued applications for the title to ancestral lands and ancestral domains – the Certificate for Ancestral Domain Title or CADT and Certificate for Ancestral Land Title or CALT. The process requires, among other things, the following procedure:



- **Petition for Delineation and Delineation Proper.** Involves the process of delineating a specific perimeter, either initiated by the National Commission on Indigenous Peoples (NCIP) with the consent of the indigenous communities or peoples concerned, or through a Petition for Delineation filed with the National Commission on Indigenous Peoples by a majority of the members of the people.
- **Submission of Supporting Documents.** Includes at all times the testimony of the elders of the community, under oath, and a document that directly or indirectly attests to the time immemorial possession or occupation of the area by the concerned indigenous communities or peoples under the concept of ownership. These include, among other things, written accounts of customs and traditions, political structure and institution, pictures and historical accounts showing long-term occupation, including pacts and agreements concerning boundaries entered into, anthropological data, genealogical surveys etc.
- **Notice and Publication** in a medium of general circulation – newspaper, radio broadcast or posting, requiring a prescriptive period of 15 days to allow a space for resolution of boundary conflicts for adverse claims. Moreover, areas certified by the Chairperson of the National Commission on Indigenous Peoples as Ancestral Domains will in effect terminate, upon notification, the legal basis of jurisdiction previously claimed by other government agencies – such as the Department of Agrarian Reform, the Department of Environment and Natural Resources, the Department of Interior and Local Government, the Commissioner of National Development Corporation and others. Jurisdiction over areas identified shall be turned over to the National Commission on Indigenous Peoples for proper disposal.
- **Issuance of Certificate of Ancestral Domain Title or Certificate of Ancestral Land Title – CADT or CALT.** After the Ancestral Domains Office of the National Commission on Indigenous Peoples or NCIP has ascertained the sufficiency of supporting documents, including the official delineation of the ancestral land and domain, a Certificate of Ancestral Domain Title or a Certificate of Ancestral Land Title is issued in the name of the people/community or family/clan concerned, including the list of all those identified in the census. The registration is supposed to include the area in the development planning of the concerned Local Government Unit.

The indigenous peoples and communities who applied for a Certificate of Ancestral Domain Title (CADT) hoped that, this time, the government would genuinely be dedicated to realizing just recognition of ownership over their land and territories and, ultimately, of the right of the indigenous peoples to freely determine the direction of development of the resources within their ancestral lands and domains.

What has happened so far: the issues and consequences

The National Commission on Indigenous Peoples estimates a total land area of 6.400 million hectares as being covered by Ancestral Domains. This amounts to 21.04% of the land area of the Philippine archipelago excluding the lands and domains of indigenous communities who opted not to apply for a Certificates of Ancestral Domain Title, and the 99 areas that remain unsurveyed.

Over the past six years, 670 applications have been submitted for the issuance of Certificate of Ancestral Domain Title. So far, 27 Certificate of Ancestral Domain Titles have been issued by the National Commission on Indigenous Peoples; most of these are areas previously awarded Certificates of Ancestral Domain Claims. This amounts to an average of 4.5 titles issued per year, which is far too little in light of the large number of new applications and conversions already filed. These figures reveal the modest gains achieved so far by the National Commission on Indigenous Peoples in securing titles over ancestral lands and domains and, with the current rate of approval of applications, it is estimated that it will take almost 25 years to issue titles over the existing applications.

Obviously, the sluggish approval of titles to ancestral lands and domains reveals the government's reluctance to fully recognize the indigenous peoples' land and resource rights. Two main reasons are behind this reluctance:

1. Conflict of interest over resources and overlapping policies

The Philippines has a total land area of 30.425 million hectares, officially categorized into 1) agricultural lands, 12.508 M (41.7%), 2) timber lands, 10.015 M (33.39%), 3) protected areas, 3.366 M (11.8%), 4) residential areas, 3.372 M (10.9%), 5) mineral lands, 0.801 M (2.67%), 6) government reservations, 0.296 M (0.98%), and 7) fishpond development, 0.067 M (0.25%). Indigenous territories are glaringly absent as a separate category in this list of land use categories since it was established prior to the passage of the Indigenous Peoples' Rights Act, and no amendment has been made to rectify



Using three-dimensional map in community self-delineation. Photo: IPEX-ANTROWATCH

fy the omission. Thus, most of the ancestral domain areas are covered with or overlap with applications and existing mining leases, agro-forest farm leases, logging concessions, pastureland leases or export processing zones. Many ancestral land and domain areas are officially classified by the government as mineral lands, protected areas, watershed areas, timber lands or government reservations. Ancestral waters may fall under the category of fishpond development, protected areas or municipal waters and still others under the category of agricultural lands and residential areas.

Furthermore, overlapping laws and policies significantly undermine the provisions of the Indigenous Peoples' Rights Act and hinder the recognition of the ancestral land and domain rights. Laws and policies implemented prior to the enactment of the law "vests" rights in various stakeholders that impinge upon the "prior" rights of indigenous peoples. This was raised as a concern by the indigenous representatives during the drafting of Section 56 of the Indigenous Peoples' Rights Act, which recognizes "existing property rights" within ancestral lands and domains.

As a consequence, the rights of indigenous peoples to freely determine development over the resources within their ancestral lands and domains is in constant conflict with so-called "existing property rights" – such

as leases, mining claims, concessions, reservations, national parks, special zones and the like, granted by laws and policies prior to enactment of the Indigenous Peoples' Rights Act.

On the ground, the concrete scenarios open to indigenous communities depend on the outcomes of negotiations between them and other stakeholders. In the case of the Quezon-Manobos of Bukidnon in Mindanao, for example, the Rang-ay and Silangan Farms possessed vested rights through Agro-Forest Farm Lease Agreements for 25 years, renewable for another 25 years, issued by the Department of Environment and Natural Resources (DENR). These companies operate sugarcane plantations on a portion of the Quezon-Manobo's ancestral domain where, according to the outcomes of the negotiations with the Manobo communities, the companies were allowed to continue operations on the condition that the contested area be returned to the community upon expiry of the agreement. Renewal of the term will be subject to the free and prior informed consent (FPIC) of the Quezon-Manobos. Should no such agreement be reached, the area under dispute would have to be excluded from the ancestral domain.

Free and prior informed consent is yet another emerging and crucial issue. In ancestral areas with

pending applications on the part of extractive industries – predominantly mining, hydro-electric dams and large-scale logging concessions – the process of acquiring consent is often conducted in a deceptive and manipulative manner, dividing the community and violating the basic principles of freedom from manipulation and coercion.

2. Lack of political will and insincerity towards full recognition of rights

Resolving policy conflicts is a measure of the state's sincerity and political will to justly implement its declarations and legislations. Strengthening the government's structures and mechanisms is a significant step towards ensuring that political will. With the enactment of the Indigenous Peoples' Rights Act, the National Commission on Indigenous Peoples was established under the Office of the President as the primary government agency responsible for the formulation and implementation of policies, plans and programs aimed at recognizing, protecting and promoting the rights of indigenous peoples.

The Commission, however, having been created by the mere merger of its predecessors, the Office of the Northern and the Office of the Southern Cultural Communities, possesses a weak political will and commitment towards fully implementing its mandate. The majority of its employees hold the "traditional political mindset" that results in a lack of perseverance and, to an extent, a refusal to implement the full spirit and genuine intent of the law. This is further worsened by the apparent corruption of some key employees and the political bickering within the structure of the Commission.

In the midst of this bleak situation, the recently issued Executive Order 364 signed by President Gloria Macapagal-Arroyo on 27 September 2004 placed the National Commission on Indigenous Peoples "under the control and supervision" of the Department of Land Reform. This wantonly waters down the independent adjudication mandate of the Commission to a mere service provider. It not only reflects the government's weak political will to implement the Constitutional mandate recognizing indigenous peoples' rights but also violates the provisions of the Indigenous Peoples' Rights Act.

In a bid to correct the dissenting effect of the President's Order, the National Commission on Indigenous Peoples initiated a national consultation among indigenous representatives, non-governmental organizations and civil society. The outcome presented a massive opposition to the latest Order leading to the issuance of a new Executive Order 397 signed on 24 October 2004. The Order declared the Commission an attached agency and retained its independent adjudication function. The specific mechanism and working relations of

both agencies will be defined through implementing regulations, which will be yet another conflictual issue.

Responding to the challenges and prospects of moving forward

The indigenous peoples are wary of the government's tepid commitment to implementing the Indigenous Peoples' Rights Act. The law, envisioned to serve as an empowering tool towards recognizing indigenous peoples' rights to self-determination and self-governance, is still far from realizing its full potential. The indigenous peoples have responded to the challenges in local, national and international processes.

As in many parts of Asia and the world, the indigenous peoples of the Philippines remain steadfast in their struggle for government recognition of self-determination and rights to land and resources. Various indigenous organizations and communities at the local, national and international levels have been responding to the critical issues by means of different strategies. Policy advocacy and engagement has been one of the many strategies taken by indigenous groups to this end. Indigenous leaders critically participated in lobbying for the passage of the Indigenous Peoples' Rights Act in 1996-1997 and the formulation of its Implementing Rules and Regulations in 1998. From then on, efforts were undertaken to endorse capable indigenous leaders and representatives to various lobby avenues and actual appointment into strategic positions of the Commission. Presently, the leaders are engaged in the process of creating the advisory Consultative Body of the Commission.¹

Similar endeavors were undertaken in the community and local levels towards implementing the provisions of the law. Applications for titling and delineation of ancestral lands and domains were initiated by the indigenous communities and peoples with the financial and technical assistance of NGOs such as the Philippine Association for Intercultural Development (PAFID), Inter Peoples Exchange (IPEX) and Anthrowatch, or the church. Boundary conflicts between adjacent and neighboring groups are settled by consensus in order to make recognition and titling of ancestral lands and domains possible. The people continue to assert their right to self-determination through mandatory free and prior informed consent and the inclusion of areas covered by "existing property and use rights" within ancestral lands and ancestral domains. In the course of resolving these issues, the government more often than not supports

corporate interests against the rights of the indigenous peoples.

The Subanen people in Canatuan, Siocon, Zamboanga del Sur, for example, continue to assert their right to free and prior informed consent over the mining claim of Toronto Ventures Incorporated. The company was given a permit to operate in spite of a Certificate of Ancestral Domain Claim being issued by the Department of Environment and Natural Resources (DENR) in 1995 and converted to a Certificate of Ancestral Domain Title in 2003. This included presenting their case to the United Nations Commission on Human Rights. In Lantapan, Bukidnon, the Talaandig people pursue recognition of their right to free and prior informed consent by virtue of the "Native Title".² Mt. Kitanglad Agri-ventures Inc. (MKAVI) and Dole Skyland, operating a banana plantation over a portion of their ancestral domain, initially showed interest in gaining the consent of the Talaandig but later lost interest and ignored a draft memorandum of agreement (MOA). The Regional and Provincial Offices of the National Commission on Indigenous Peoples were requested to assist them in the current negotiations but progress has been very slow.

As these examples show, the impact of existing laws and policies ultimately depends very much on whether

or not, and how, indigenous peoples at the local level are able to strengthen their ranks and assert their rights. □

Notes

- 1 This critical initiative, mandated by the Indigenous Peoples' Rights Act, is supported by IWGIA with funding from the European Commission and the Danish Foreign Ministry.
- 2 This refers to pre-conquest rights of the people to ancestral lands and domains that have been held under a claim of private ownership by them, have never been public lands and are indisputably presumed to have been held that way since before the Spanish conquest.

Lourdes Amos is a Kankana-ey from Mountain Province in the Cordilleras of the Northern Philippines. She used to be Coordinator of the secretariat of KASAPI, one of the national indigenous peoples' networks in the Philippines. She currently works as Project Manager at the secretariat of the regional indigenous peoples' network, Asia Indigenous Peoples Pact (AIPP) Foundation in Chiang Mai, Thailand.

IWGIA's support to land titling in the Philippines

IWGIA is supporting the titling of indigenous territories in the Philippines through a project being implemented by our partners Inter-Peoples' Exchange (IPEX) and Anthropology Watch (Anthrowatch). This project is currently supporting 10 indigenous communities to delineate their ancestral domains, and provides technical assistance in the process of applying for a title – the Certificate of Ancestral Domain Title (CADT). Alongside this, the project aims to empower the communities by teaching them more about their rights as indigenous peoples, and by enabling them to gain a greater awareness of and pride in their distinct cultural identities. This is all seen as an important basis for claiming land rights and preparing for the future defence of the titles thus obtained.

IWGIA's support to land titling in Cambodia

By means of a project being implemented by the NGO Forum on Cambodia, IWGIA is supporting activities aimed at increasing the knowledge and understanding of communal land rights issues among indigenous communities and government decision-makers at different levels. A consultant from the Philippines, who has in-depth experience of indigenous titling processes at home, has visited Cambodia twice in the context of this project. He has provided input into the ongoing development of implementing rules for the titling of communal land in Cambodia, now used by activists in their dialogue with the authorities. Another important activity has been a high-level visit by Cambodian government officials to the Philippines. The visit gave these key decision-makers a chance to see for themselves how communal land titling can take place in practice, and what potential effects it can have on indigenous communities.

STRENGTHENING INDIGENOUS PEOPLES' INFLUENCE: 'CLAIMS BOARDS' IN NORTHERN CANADA

Graham White



In the struggle to protect and promote the interests of indigenous peoples, it is crucial to develop political institutions assuring them voice and influence. This article examines a set of recently created institutions designed to do just that – the co-management and regulatory boards established under Canada's 'comprehensive land claims'. These boards formalize indigenous peoples' participation in government decision-making; they also attempt to incorporate indigenous approaches and culture into their operations. Though rooted in specific Canadian circumstances, these boards hold lessons applicable beyond Canada's borders.

This article draws on the author's ongoing research into claims boards in Canada's three northern territories – Nunavut, the Northwest Territories and the Yukon. Similar institutions established under comprehensive claims settled in the provinces of Quebec and British Columbia are not included in this analysis.

Canada's 'Comprehensive Claims'

Since the mid-1970s, the Canadian government has been negotiating and slowly settling a series of 'comprehensive land claims' with its indigenous peoples. These land claims are nothing less than – and are officially described by government as – 'modern-day treaties'. Comprehensive claims cover parts of Canada where indigenous peoples never signed treaties with the Canadian government (or, in colonial times, with the British government) or, less often, where the fulfilment of existing treaties has been fundamentally flawed.

Once ratified by vote of the indigenous peoples and by passage of confirming legislation in the Canadian Parliament and in the appropriate provincial or territorial legislature, comprehensive claims become entrenched in the Canadian Constitution. This gives them a strong legal status,

including priority over routine government legislation and policy, though indigenous groups often complain that governments frequently ignore the special authority that settled claims carry.

All of the settled comprehensive claims cover lands on or close to the northern periphery of Canada; most are situated within one of the three northern territories. These regions are sparsely populated and indigenous peoples form at least a very large minority, if not an outright majority of the population. With one exception, the comprehensive claims encompass vast swathes of territory; the Nunavut Land Claims Agreement (1993), perhaps the best known of the claims, covers over two million square kilometres in the Eastern Arctic.

Specific provisions vary a good deal but, broadly speaking, in all comprehensive claims the indigenous people relinquish 'Aboriginal title' to their lands in return for certain benefits. These include financial compensation, legal title to often substantial parcels of land within their traditional territory, government commitments to negotiate new political accommodations with the indigenous peoples, and a range of specific entitlements such as natural resource royalties and preferential hiring in government jobs. In addition, the claims establish a series of regulatory and co-management boards to involve indigenous peoples formally in various governmental functions relating to wildlife, natural resources and the environment.

Claims boards: mandates, structures, composition

These boards represent a compromise between, on the one hand, the desire of indigenous peoples to maximize their control over vital land and wildlife issues and, on the other hand, the insistence of government that the public interest in these issues across the vast areas covered by the claims



Joseph Niptanatiak, Peter Kamingoak and Aimee Ahagona of Kugluktuk at a mapping workshop in Cambridge Bay, 2003. Photo: Peter Wilson



Young boy hiding under a caribou skin while watching caribou cross a river. Photo: Jack Hicks

required a ‘public government’ presence. Thus the boards are constituted as ‘institutions of public government’ (IPGs); this term is only explicitly used in Nunavut but it applies to all claims boards. While the wildlife, land and environmental issues over which the claims boards have jurisdiction carry profound social and cultural implications for Aboriginal peoples, there are no boards whose mandates extend more than marginally into more conventionally defined social and cultural policy such as education, health and social welfare.

Claims boards fall into four broad categories. *One group* deals with wildlife management; their activities include setting general policy as well as specific harvest levels for various species, directing wildlife research and supporting local hunters’ and trappers’ organizations. The Yukon Fish and Wildlife Management Board is an example. *A second major set of boards* is responsible for land use planning; such bodies as the Gwich’in Land Use Planning Board set the frameworks that govern economic development projects, location of transportation facilities and the like. *A third group*, which is involved in licensing projects that might disturb or damage the environment, has two subsets. One subset, illustrated by the Mackenzie Valley Land and Water Board, issues licences and permits to projects ranging from small gravel pits to oil and gas pipelines. The other subset conducts environmental impact assessments on proposed projects – usually the larger ones – as part of the licensing process; their work is closely related to, though nonetheless separate from, the boards that issue permits and licences. One example would be the Mackenzie Valley Environmental Impact Review Board. *A final group*, represented by the Nunavut Arbitration Board, serve as dispute resolution bodies for claims-related issues. This last group has thus far been of little significance; some have yet to have any cases referred to them.

Most boards have between 7 and 10 members; a few are somewhat larger. Save the under-utilized arbitration panels, the boards have permanent professional staff, some

numbering only three or four, others a dozen or more working out of well-equipped offices. A number of boards make extensive use of modern communications technology, for example maintaining on-line registries containing the full-text of submissions and technical reports pertaining to projects under review.

The oldest boards, those established under the 1984 Inuvialuit Final Agreement, have been in operation for nearly twenty years. Most, however, are of more recent provenance, having been set up in the mid and late 1990s. Accordingly, they continue to evolve as do their relations with public governments and with indigenous peoples’ organizations.

In most cases board members are formally appointed by the federal – i.e. national – government but appointments are made only on the nomination of one of the three parties to the claim (the indigenous organization, the territorial government and the federal government). Only in the rarest cases will the federal government refuse to approve a nominee and then only in situations such as a candidate failing a security or criminal background check. Typically each party nominates one-third of the members, though on some boards half the members are nominees of the indigenous organization. Some board members nominated by government are also government employees, though on some boards this is prohibited. Indigenous organizations almost always put forward indigenous persons as their nominees; territorial governments frequently nominate indigenous persons as, on occasion, does the federal government. The net result is that, on many boards, indigenous members constitute a clear majority.

This strong numerical representation of Aboriginal people is unquestionably important but it is by no means equivalent to direct control by Aboriginal people or their organizations. The compromises underlying the boards’ creation are reflected in the nature of the boards’ decision-making processes, the constraints on their mem-

bers and their relationship with the territorial and federal governments.

Claims boards' influence and relations with government

Key to understanding the nature and role of the claims boards is the fundamental principle that they and their members are to act independently of the governments and organizations that nominated or appointed them. The legal frameworks establishing some boards explicitly state that members are to act "in the public interest" and not take direction from the parties that nominated them. Like judges, members are expected to use their best judgement and to reach decisions on the basis of the evidence before them. In this sense, the claims boards are not true 'co-management' bodies entailing negotiation and compromise between official representatives of various interests.

And yet this emphasis on the independence of boards and board members tells only part of the story. While they do not issue directions to 'their' members, governments and indigenous organizations take care to nominate board members whose views and approaches are known and agreeable. Moreover, it is clear that some board members do take cues from 'their' parties; this is the case both for government-nominated and indigenous-nominated board members. It would be a mistake to assume that the positions adopted in board deliberations by members who are government employees necessarily follow government policy but, at the same time, the constraints they face are very real.

Funding for claims boards – for large, active boards, several million dollars a year – comes almost entirely from the federal government (the territorial governments provide some funding but by and large this is redirected federal money). Does this mean that the 'golden rule' of politics holds sway: 'He who has the gold rules'? Not at all. To be sure, disputes have arisen as to the adequacy of federal funding for the boards – a federal responsibility under the claims, which Aboriginal groups often complain is not properly fulfilled. Questions of the overall adequacy of funding aside, the federal government has not attempted to use its 'power of the purse' to influence individual board decisions or the general direction of board policy.

Nor, as indicated above, has it abused its ultimate power to appoint and remove board members. In a few instances the federal government has refused to reappoint board members it viewed as incompetent or under-performing; for the most part these actions have not occasioned serious objections from the parties that nominated the members. A notable recent episode saw the federal minister exercising

his authority to remove an outspoken member of the Mackenzie Valley Environmental Review Board who had stood up against what he maintained were improper board activities and unwarranted government interference. This controversial action so far stands as an isolated occurrence, though concern remains in some circles that it represents an objectionable precedent presaging further heavy-handed federal intrusions into board activities.

Where the relationship between boards and government becomes most crucial is in the weight and influence of the decisions they reach. This question goes to the heart of the boards' effectiveness. In a limited number of cases, boards possess the legal capacity to make final, binding decisions on permits, harvest quotas and the like. In most cases, however, and certainly in all matters with far-reaching implications, the boards have only advisory powers. They make recommendations to government, which need not take heed of the boards' advice. Put this way, the boards appear to wield little real clout, since governments seem completely free to ignore their recommendations. Again, though, appearances are deceiving; the reality is quite different.

To some extent, the government's frequent acceptance of board recommendations reflects the quality of the boards' work as well as good faith on governments' part. Rather less noble political considerations are also at play, to the boards' great advantage. Most board recommendations, while formally only 'advice' to the responsible federal or territorial minister, take the form of what might be termed a 'negative option'. Boards forward recommendations to government about granting or withholding approval of gas wells, roads, water usage, harvest quotas or about placing specific conditions on their approval. Typically – specifics vary a good deal – the responsible minister has a limited time, most often 60 or 90 days to formally reject or, in some cases, amend the recommendation. If the minister does not take the initiative in this way the recommendation automatically takes effect. Thus, boards do not have to devote time, energy and political capital attempting to convince government to adopt their decisions. Rather, the onus is on governments to expend their political capital overturning board decisions (and, in most instances, to provide written reasons) within a very short period. Not surprisingly then, very few board decisions have been rejected or substantially amended by government. Doubtless governments have been comfortable with many board recommendations and would have accepted them on their merits, 'negative option' or not. At the same time, boards have also come forward with recommendations that governments would have preferred to ignore or overturn but which were allowed to stand.

A good example of this process at work – and an indication of the significance of board decisions for indigenous peoples – was the 1995 recommendation of the Nunavut Wildlife Management Board that Inuit be permitted to harvest one bowhead whale. The federal government, which issues permits for such hunts, had not approved a bowhead hunt for nearly two decades and the board's recommendation proved highly controversial, generating substantial international pressure on the Canadian government to withhold approval. In the end the government accepted the board's recommendation and the hunt went ahead. With the board's approval, and the federal government's acceptance, subsequent bowhead hunts have taken place in the waters of Nunavut.

In short, governments can and do reject board decisions, but only rarely. Otherwise put, claims boards wield real power. Without their approval, major development projects such as pipelines or mines are unlikely to go ahead. Where wildlife is concerned, to all intents and purposes, the wildlife management boards have the final say on most issues that come before them.

Incorporating indigenous norms and approaches into claims boards

Claims boards are by no means all-powerful but they unquestionably wield substantial authority and, in so doing, significantly enhance indigenous influence over vital land, wildlife and resource questions. Yet *how* decisions are made can often be as important as the decisions themselves. Thus for claims boards, the capacity to incorporate indigenous approaches and modes of thought into their methods and procedures is critical. Decisions made following Western, 'Euro-Canadian' norms and traditions lack legitimacy for many indigenous peoples and are arguably less likely to take their concerns fully into consideration. How then do claims boards stack up in terms of bringing indigenous governance approaches to bear?

This is a difficult question to answer, not least because it is no simple matter specifying just how indigenous norms and approaches might be incorporated into formally constituted boards rooted in Western notions of hierarchical, rules-based, neutral administration. Two sets of criteria suggest themselves: first, the extent to which boards' operations follow rigid, legalistic, frequently adversarial procedures quite foreign and alienating to indigenous people; second, the capacity of boards to infuse 'traditional knowledge' into their decision-making processes.

On the first point, the wildlife boards operate fairly informally. When they hold public consultations, hunters,

elders and anyone else who wishes to speak can have their say in informal settings where few restrictions inhibit them. In sharp contrast, the licensing and environmental assessment boards are subject to enormously complex legal requirements, often entailing highly adversarial, technical processes, carried out in formal hearings attended by battalions of lawyers, consultants and other 'experts' – baffling and intimidating to anyone, let alone an Aboriginal hunter or elder with little formal education and perhaps a limited facility in English, the language in which boards operate.

Northern Canadian Aboriginal culture prizes and unquestioningly accepts the wisdom of elders, whereas the canons of Euro-Canadian administrative law emphasize adversarial, evidence-testing processes. This takes the form of often confrontational challenges to the testimony of persons appearing before a board, be they consultant, government official or revered elder. In quite fundamental ways, some of the most powerful claims boards – whether or not their membership is predominantly indigenous – go about their business in ways antithetical, if not offensive, to many indigenous peoples' notions of how deliberations should unfold and decisions should be made. Boards do attempt to make their processes and meetings as straightforward and non-threatening as possible but, given the legal frameworks that govern them, have only limited scope for dealing with this problem.

The second point asks whether boards pay serious attention to what has come to be called 'traditional knowledge' (TK). By its very nature, no concise definition of just what TK entails is possible – it includes indigenous peoples' knowledge and understanding of the land, the animals and the environment together with the ways in which humans interact with them. Some elements of TK are straightforward and easily comprehended by non-indigenous people – familiarity with caribou migration routes or use of certain herbs in healing. Others, however, are more spiritual, rooted in indigenous peoples' relationships with the land and the animals, and may be difficult to articulate in ways non-indigenous people understand. Moreover, for some indigenous people, sharing certain aspects of TK with outsiders is simply wrong.

The wildlife management boards make extensive efforts to incorporate TK into their activities. The work they do – setting harvest quotas based on estimates of animal populations, facilitating wildlife research, and so on – naturally inclines them towards using TK. Some critics maintain that such efforts do not make up for the strong Euro-Canadian orientation of the wildlife boards, symbolized by the very word "management", a concept indigenous people of the Canadian north would never apply to wildlife. Within the confines of their mandates and legal frame-

works, however, the wildlife boards generally have a good record of respecting and utilizing TK.

Other boards face significant barriers to incorporating TK into their processes. A fundamental incompatibility may exist between TK and the legal frameworks that dictate how boards operate. To be sure, the enabling legislation establishing some boards explicitly requires them to take into account aspects of TK. Particular boards have also shown real commitment to this issue: the Mackenzie Valley Environmental Impact Review Board, for example, held a multi-day workshop on incorporating TK into environmental assessment and related processes, with several dozen participants. Nonetheless, boards necessarily emphasize evidence and submissions received through written documents – documents often highly technical and imbued with the methods and biases of Western science. Moreover, the formal and adversarial character of board hearings is hardly conducive to TK approaches: an elder talking about the land and the animals at a board hearing may encounter not respectful acceptance of his wisdom but a challenge by an aggressive lawyer to ‘prove’ his words.

Conclusion: claims boards’ mixed record

Not surprisingly, the record of the claims boards reveals both successes and failures. Some boards have worked effectively, winning support among both governments and indigenous peoples and their organizations. Other boards have been dysfunctional or have generated controversy and conflict among those with whom they deal. Overall, though, the boards have unquestionably enhanced indigenous peoples’ influence over land and wildlife issues critical to them. This is true not only by virtue of the large numbers of indigenous people who serve on the boards but also in terms of the extensive and meaningful consultation the boards routinely conduct with indigenous communities and organizations. Decision-making on issues of great concern to indigenous peoples is far more transparent and consultative than it was prior to the boards’ creation. Indigenous peoples are by no means fully in control of such decisions but the boards clearly enhance their voice and their influence. □

Graham White is Professor of Political Science at the University of Toronto. He is the author of many books and articles about Canadian government and politics and has served as consultant to various indigenous governmental and non-governmental organizations in Canada and abroad. He has been travelling to the Canadian North and writing about it since the 1980s.

Grand Chief Herb Norwegian and Petr Cizek



USING LAND USE AND OCCUPANCY MAPPING TO ESTABLISH A PROTECTED AREA NETWORK IN THE DEH CHO TERRITORY, CANADA

The Deh Cho territory covers 208,385 km² of the sub-Arctic taiga plains and taiga cordillera ecozones in the south-western corner of the Northwest Territories, Canada.¹ In 2003, the total population of the ten communities in the territory was estimated at 7,083 persons, of whom 4,393 (62%) identified themselves as aboriginal.² Traditional land use (hunting, fishing, trapping and plant gathering) continues to be culturally and economically significant for Dene and Metis.³ For example, wild foods provide between 22% and 36% of total dietary protein in the Deh Cho territory.⁴ The ecosystems that support traditional land use are



Traditional camp in the Edéhzhíe candidate protected area. Photo: Petr Cizek



Petr Cizek



Herb Norwegian

vulnerable to industrial resource extraction, but relatively little petroleum extraction, mining or logging has taken place in the territory to date.

Deh Cho First Nations are a tribal council representing ten Dene First Nations and three Metis community governments. Since 1999, the Deh Cho First Nations have been engaged in negotiations with the governments of Canada and the Northwest Territories regarding self-government and ownership of lands and natural resources.

In the past, two other major land use and occupancy mapping projects have been carried out in the Deh Cho territory. Between 1974 and 1983, the Dene Mapping Project was undertaken by the Dene Nation. The project produced trail maps for all Dene communities in the Northwest Territories based on a sample of about one-third of all trappers and hunters.⁵ Unfortunately, the research methods were not thoroughly documented.

In 1990-91, land use and occupancy mapping was funded through the Northern Land Use Planning Program using research methods developed by the Department of Indian Affairs and Northern Development.⁶ In 1996, the Deh Cho First Nations contracted Terry Tobias,

an internationally recognized expert in traditional land use mapping, to review 513 maps at a scale of 1:250,000 from nine (9) communities. These maps were created by small working groups in each community using very large polygons (areas) to show land use and occupancy as well as animal habitat. Tobias concluded that the results from this project did not meet standards of data integrity, representativeness and validity, and thus were not legally defensible.⁷ Anticipating the adversarial environment of negotiations, Deh Cho First Nations set out to document land use and occupancy data in a way that could be submitted as evidence to a court of law.

Between 1996 and 2002, the traditional land use and occupancy by harvesters and elders was documented and mapped in eight Deh Cho First Nations member communities, which include three-quarters of the Deh Cho aboriginal people.

The purpose of the land use and occupancy mapping studies was to develop a rigorous and legally defensible database to support:

1. Lands and Resource Negotiations
2. Land Use Planning/Protected Area Design

3. Environmental Impact Assessment
4. Natural Resource Management

The maps were important for lands and resource negotiations because they document continued use and occupancy to support the assertion of aboriginal title and rights. By incorporating the mapped data into land use planning, the Deh Cho First Nations were able to make better decisions about trade-offs between conservation and development. The Deh Cho First Nations viewed protected areas as an opportunity to prohibit resource extraction in key areas while establishing exclusive traditional harvesting rights. Traditional land use data is now being used in the environmental impact assessment of large industrial projects such as the Mackenzie Gas Pipeline to negotiate routing and compensation for interference with traditional harvesting. Traditional land use data also has many uses in natural resource management such as augmenting wildlife surveys by documenting where specific species were harvested.

This article reviews the methods and results from these land use and occupancy studies. Three techniques of density analysis are compared with the objective of identifying the most important lands for protection from industrial resource extraction. The practical application of these data collection and analysis techniques to interim land withdrawals, protected area design and developing a regional land use plan is also discussed.

Methods

Collection of land use and occupancy data was based on techniques developed by Terry Tobias.⁸ In each community, target lists of active harvesters or elders were prepared by community members and project staff using Indian Band and Metis Local membership lists, in conjunction with personal familiarity about who were the active or knowledgeable harvesters and elders living in the community. In all communities except Fort Providence,⁹ Petr Cizek and Herb Norwegian collected data in collaboration with local community researchers.

Using a standardized interview guide, each land user was interviewed about some places where he or she had personally harvested animals or plants, and where they had occupied the land within living memory (i.e. within their lifetime). Interviews were tape recorded to provide a documentary record but have not yet been transcribed.

Using permanent felt-tipped markers, land use and occupancy information was marked as points, lines or polygons, usually on transparent acetate sheets geo-

referenced to 1:250,000 National Topographic Series maps. Transparent acetate sheets were used to avoid marking directly on expensive printed maps. Geo-referencing involves placing four tick marks on the acetate sheet corresponding to the four corners of the original map. This allows data from the acetate to be accurately entered into a computerized mapping system (Geographic Information System) using a digitizing tablet. Each land user produced a unique map, which was coded according to their name, date of birth, location of birth and mother's maiden name.

The interview guide consisted of a set of common questions that were modified to suit each community's unique complement of species, harvesting practices, land uses and Dene dialect.

General Questions in the Interview Guide

1. Can you show me some *lines* where you set traps or snares and killed fur-bearer animals?
2. Can you show me some *places (points)* where you used or saw traditional traps such as deadfalls, big game snares, spring sticks etc.?
3. Can you show me some *places (points)* where you spent the night on the land in a cabin, lean-to, tent-frame, tent?
4. Can you show me some *places (points or polygons)* where Dene were born, died, or are buried on the land?
5. Can you show me some cultural sites (*points or polygons*) such as a gathering place, healing place, flint quarry etc.
6. Can you show me some *places (points)* where you shot and killed big game (moose, woodland caribou etc.)?
7. Can you show me some *places (points)* where you shot and killed small game (beaver, muskrat, rabbit etc.)?
8. Can you show me some *places (points)* where you shot and killed birds (ptarmigan, ducks etc.)?
9. Can you show me some *places (points)* where you caught and killed fish using a rod, net, ice fishing (jigging) or a night line?
10. Can you show me some *places (points)* where you used or saw a traditional fishing method such as spear, fish trap, willow bark net, gaff, or fish snare?
11. Can you show me some *areas (polygons)* where you gathered berries, medicine plants, other food plants, special wood, or bird eggs?

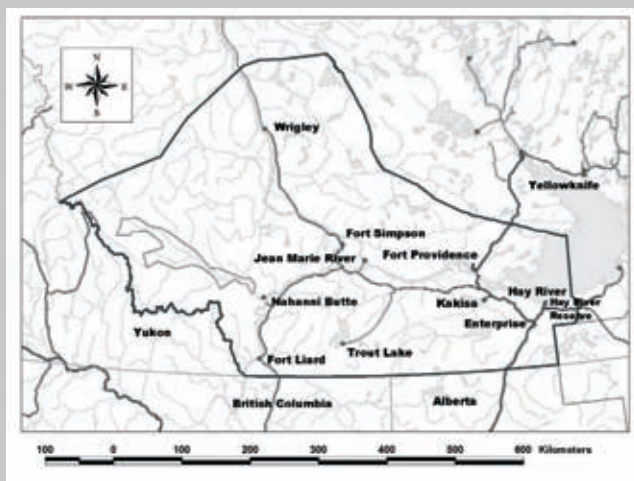
The questions were designed to identify clearly defined land uses that could be mapped with as much precision as possible, within the usual constraints (e.g. scale) of using maps as a data capture tool. With regard to hunt-

ing and fishing, this meant that only actual kill sites were documented and that each was mapped as a point. All fish, bird and mammal categories were mapped as points, not polygons.¹⁰ It was anticipated that having each participant map some of his actual kill sites for each category (e.g. moose) would, for the purposes of analysis and negotiation, be more effective than having the participant indicate the entire area (e.g., for moose hunting) as a polygon. It was thought that government negotiators would be more likely to be sceptical about a final set of land use maps that were constructed on the basis of hastily marked, large and often roundish polygons.

Trapping involves many different fur-bearer species and occurs repeatedly over the years along the same routes or traplines. Each individual's trapline was mapped as a series of connected lines. Plant and wood resources (e.g., medicinal plants, special woods) tend to be harvested from areas that are much more circumscribed than areas from which hunters and fishers obtain their animals, and for this reason they were mapped as either points or polygons, depending on the size of the area harvested.

To reduce response burden, no attempt was made to map animal and plant habitat, travel routes or aboriginal place names. Response burden occurs if the study participants experience the interview as burdensome. Many land use and occupancy mapping endeavors fail to meet their objectives because they ignore the role of response burden, and design overly ambitious projects. For the same reason, no attempt was made to document the years or seasons when specific land uses took place. In addition, the number of land use categories was kept to a minimum, especially regarding plants and animals. For example, berries were treated as a generic group. Ducks were mapped as a single category, instead of by species. Instead of mapping the many kinds of fish, harvest sites by fishing method were documented. These methods were successful in keeping response burden within acceptable limits. Most interviews lasted just over an hour, and some involving very experienced harvesters and elders lasted several hours.

The hard-copy (paper) map data was digitized into a computerized Geographic Information System (GIS). All data was feature-coded according to land user



Communities in the Deh Cho territory. Source: Deh Cho First Nations

name, land use type and community. A set of draft maps was printed and reviewed with community members for inaccuracies and glaring gaps in the data. Changes were made and a final set of large-format maps was printed for each community.

In total, 386 land users were interviewed out of a target list of 531 individuals for an overall study participation rate of 72.7%. The total dataset consists of 54,769 data elements, of which the overwhelming majority (85.0%) are land use points.

Analysis

The computerized Geographic Information System was used to calculate the density of traditional land use activities per square kilometre. A grid covering the Deh Cho territory with cells of one square kilometre (1 km x 1 km) each was created. Then another grid with cells of one hundred square kilometres (10 km x 10 km) each was also created.

Computerized density analysis was then carried out using quadrat and kernel methods.¹¹ The quadrat method simply counts the number of data elements within each grid cell. The kernel method counts the number of data elements in a radius surrounding each grid cell and then applies a probability function to smooth the differences between adjacent grid cells. Both methods end up producing a density value of number of land use activities per square kilometre. Two variations of the quadrat method were applied. In total then, three analyses of the data were undertaken.

Discussion

The land use and occupancy data and preliminary density analyses, combined with existing natural resource data,¹² were used to negotiate a series of interim land withdrawals in the Deh Cho territory legally prohibiting any new land sales, land leases, mineral staking, oil/gas exploration or timber cutting. Lands were withdrawn through a federal Cabinet Order-in-Council under the *Territorial Lands Act* for a period of five years.

This allows time for a land use plan to be developed and protected areas to be established.

In November 2002, an area of 25,233 km² was withdrawn for the Edehzhie candidate protected area through the North West Territories Protected Area Strategy. In August 2003, an area of 70,718 km² was withdrawn through the Deh Cho Process lands and self-government negotiations. Coupled with the existing Nahanni National Park Reserve of 4,828 km², the land withdrawals represent an inter-connected protected area network covering 48.4% of the Deh Cho territory. The World Wildlife Fund recognised this as a globally significant conservation achievement through its international "Gift to the Earth Award". Discussions are still underway to withdraw lands for the proposed Pehdzeh Ki Deh candidate protected area near Wrigley.

The quality of the land use and occupancy data was crucial to Deh Cho First Nations success at the land withdrawal negotiations. These adversarial and often acrimonious negotiations lasted almost two years with sessions on a monthly basis. Deh Cho negotiators assumed control of the agenda by using a laptop computer and digital projector to display GIS maps at each session. By displaying the raw land use and occupancy data overlaid on the density analyses, Deh Cho negotiators quickly convinced their federal counterparts to consider all the areas ranked as "high" and "very high" density in the 10,000 metre (100 km²) quadrat analysis as a minimum starting point for negotiating the area of the land withdrawal.¹³ Although many people admired the aesthetics of the kernel density analysis, it was not relied upon in the negotiations as the actual number of land use activities in a particular cell could not be counted using simple arithmetic.

Deh Cho First Nations voluntarily provided the Deh Cho Atlas, containing natural resource data such as geology, topography, vegetation, mines, petroleum wells and other human activities to the federal negotiators but they apparently did not have the technical capacity to use it because they did not have any staff who could use computerized mapping software. The actual land use and occupancy data and density analysis remained confidential and were used only for display during negotiations.

While it was relatively easy to convince the federal negotiators to withdraw areas with high densities of land use and occupancy, it was more difficult to convince them to expand the land withdrawals to include sensitive watersheds, ecologically significant areas and critical wildlife areas. Fortunately, as part of the compiling of the Deh Cho Atlas, associated scientific reports dating as far back as the 1960s had been collected. Due

to the loss of scientific capacity at government agencies and the closure of libraries, most of these reports had been neglected and forgotten. Copies were provided to the federal negotiating team with the request that the reports be reviewed by federal scientific staff at the Department of the Environment and the Department of Fisheries and Oceans. In the end, all documented ecologically significant areas and critical wildlife habitats were withdrawn, including the whole Trout Lake watershed and the majority of the South Nahanni watershed containing Nahanni National Park Reserve, a UNESCO World Heritage Site.

The density analyses of traditional land use and occupancy, combined with more thorough analyses of natural resource data, now provide a basis for the development of a detailed land use plan, whereby the current land withdrawals may be revised or modified. More thorough technical analyses of wildlife habitat as well as petroleum, mineral and forestry potential have been conducted through the land use planning process by sectoral specialists, and these provide a stronger scientific foundation to decisions about conservation and development. Finally, mapping of traditional ecological knowledge of wildlife habitat, which has recently been completed, will be combined with the traditional land use data to provide a more complete picture of wildlife ranges and critical habitat areas.

Conclusions

These results demonstrate how rigorous land use and occupancy mapping combined with the analytical power of GIS can assist First Nations in their struggle for self-determination regarding lands and resources. Achieving these results required sustained effort, financial support and political commitment over eight (8) years. When the first mapping projects were initiated in 1996, community members and political leaders were somewhat sceptical, especially since past projects had produced such limited benefits. People became more enthusiastic as draft maps were reviewed, density analysis was demonstrated and final maps were delivered to each community. Also, as maps were presented at regional meetings, neighbouring communities became more interested and a snowball effect was created.

It was significant to have a well-known Dene harvester and a fluent South Slavey speaker as an integral team member and advocate. While working as Assistant Negotiator for the Deh Cho First Nations, Herb Norwegian conducted much of the data collection and served as lead contact with communities. Extensive

community meetings were required to initiate research projects, review draft map products and discuss approaches to land withdrawals. Between 1999 and 2003, the team held at least 116 public meetings in eleven (11) communities related to lands and resource issues.

Through short training courses with regionally relevant and pre-formatted data, GIS technology is quickly being adopted by Deh Cho First Nations members. All Deh Cho communities have been provided with Geographic Information Systems software (ArcView 3.x), the Deh Cho Atlas and their own land use and occupancy data on CD-Rom. Deh Cho community members have used land use and occupancy data for diverse and unanticipated applications such as boundary negotiations with neighbouring communities, forest fire management and search-rescue. In some communities, research projects on place names, travel routes and historic sites have been initiated as a follow-up to the land use and occupancy mapping. This could lead to many interesting explorations in multi-media mapping (linking digital sound, images and video to GIS maps) and landscape visualization (viewing three-dimensional topographies).

With the power of desktop computers continuing to increase exponentially, with GIS software becoming easier to use and with the recent mass distribution of free digital elevation models and satellite imagery on the Internet, especially the Global Land Cover Facility, the many exciting opportunities for grass-roots empowerment in lands and resource management will continue to multiply. □

© Deh Cho First Nations, 2004

Notes

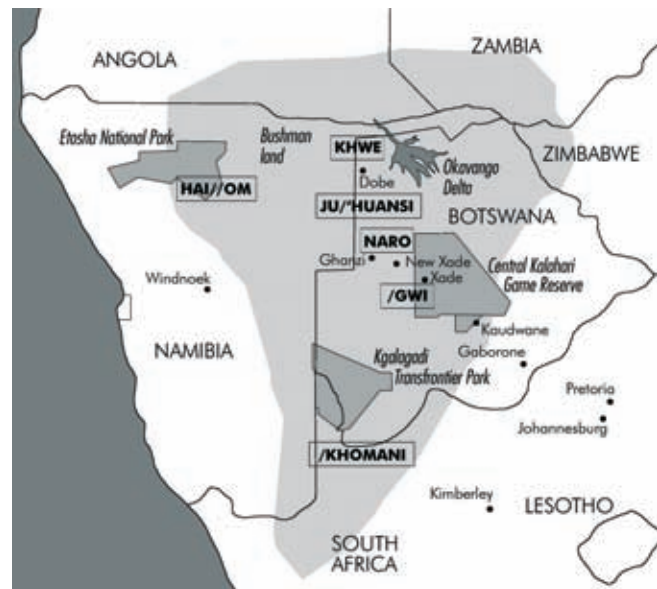
- 1 The size of the Deh Cho Territory is roughly the same as Great Britain or the State of Utah.
- 2 <http://www.stats.gov.nt.ca/Statinfo/Demographics/population/popest.html>. Statistics for ethnicity in communities with a population under 100 (Trout Lake, Nahanni Butte, Jean Marie River, and Enterprise) have been suppressed but Trout Lake, Nahanni Butte, and Jean Marie are known to be virtually all aboriginal so they are included in the aboriginal total.
- 3 The Dene are Athapaskan Indians registered under the Canadian Indian Act while Metis are aboriginal people of mixed descent.
- 4 O.Receveur et al. 1996. Variation in Food Use in Dene/Metis Communities. Montreal: McGill University, Centre for Indigenous People's Nutrition and Environment.
- 5 P. Nahanni. 1977. The Mapping Project in M. Watkins (ed.). Dene Nation: The Colony Within. Toronto, University of Toronto Press. pp. 21-27; M. Asch and G. Tychon. 1993. The Dene Mapping Project: Past and Present. GIS '93 Symposium Proceedings. Vancouver, B.C. pp. 731-734. Available at: <http://home.istar.ca/~tychon/denep5.htm>; Spatial Data

- Systems Consulting. 1996. Dene Mapping Project Data Conversion Micro-Computer Implementation. Unpublished, prepared for the Dene National Office, Yellowknife.
- 6 A. Webster. 1991. Deh Cho Land Use Mapping Project: Final Report. Unpublished, prepared for the Deh Cho Tribal Council; GIS and Special Projects Division. 1993. Community Resource Mapping. Unpublished, prepared for the Department of Indian Affairs and Northern Development, Yellowknife.
- 7 T. Tobias. 1996. Organization, Quality, and Potential Utility of the Deh Cho First Nation's Maps, 1991 Northern Land Use Mapping Project. Unpublished, prepared for Deh Cho First Nations, Fort Simpson.
- 8 T. Tobias. 2000. Chief Kerry's Moose: A Guidebook to Land Use and Occupancy Mapping, Research Design, and Data Collection. Vancouver, Union of BC Indian Chiefs and Ecotrust. Available at: <http://www.nativemaps.org/chief-kerrysmoose/>. Tobias delivered a research design and data collection training to Deh Cho researchers, including Petr Cizek, in early 1997.
- 9 In Fort Providence, the initial data collection was undertaken by Allan Bouvier and Stephen Kilburn in 1996.
- 10 The sole exception to this rule is the Fort Providence data, where fish, bird and mammal harvesting was marked as both points and polygons.
- 11 T.C. Bailey and A.C. Gattrell. 1995. Interactive Spatial Data Analysis. London, Longman. Summarized in: <http://www.spatial.maine.edu/~beard/Lectures/Lecture%206%2003.pdf>.
- 12 The Deh Cho Atlas contains 47 GIS datasets obtained from government agencies and converted into a common data format on CD-ROM. The hard-copy product contains 21 thematic maps describing abiotic, biotic and cultural resources. A. Udell and P. Cizek. 2001. Deh Cho Atlas Version 1.0. Unpublished, prepared for Deh Cho First Nations, Fort Simpson. In 2003, the Deh Cho Land Use Planning Committee updated this to the Deh Cho Atlas Version 2.0b with 39 thematic maps. See: www.dehcholands.org
- 13 The 1,000 metre (1 km²) quadrat analysis was used to identify lands for forestry opportunities that would not conflict with land use and occupancy, in which only the sub-surface would be withdrawn.

Herb Norwegian is the Grand Chief of the Deh Cho First Nations and has been involved with Deh Cho First Nations governance for over 25 years. He was Vice President of the Dene Nation from 1979 to 1993, and Chief of the Liidli Kue First Nation from 1992 to 1997. Herb was the Assistant Negotiator for DCFN from 1999 to 2003. Herb is an active hunter, trapper and ceremonial drummer.

Petr Cizek is an independent environmental consultant based in Yellowknife. Over the past ten years, he has completed several protected area designs and land use plans in the NWT. He specializes in the integration and analysis of traditional knowledge and natural resource data using geographic information systems. He is a graduate of the land use planning programs at the University of Waterloo (BES 1988) and the University of Guelph (MSc. 1992).

TRADITIONAL WATER KNOWLEDGE AND EMANCIPATION OF HUNTER-GATHERERS IN SOUTHERN AFRICA



Cornelis VanderPost, Joram /Useb and Nigel Crawhall

Literature about dispossession of hunter-gatherer communities in southern Africa (usually described as 'Bushmen' or 'San') relates mostly to land resources (Barnard, 1992; Taylor, 2000). San 'ownership' of water resources does not feature much, although most contemporary San groups live in arid regions where water is the essential resource that makes land habitable.

Land rights imply water rights and vice versa. Displacement of the San from their water resources by groups of cattle herders and others during the past 200 years was a significant mechanism through which they lost traditional land rights. Many San lost their land because their water resources were taken from them.

Water and land

Because hunter-gatherers traditionally do not maintain formal institutions or a permanent presence in one locality, their land rights long remained 'invisible', even to anthropologists. Yet, among all San groups land-use arrangements were similar, while entitlement to land was mediated through social relationships, a general principle of communally-based African land management systems (Taylor, 2000). Mem-

bers of African communities have rights to land and resources because they belong to specific social groups. Land is not private property. 'Ownership' of land consists of a collection of overlapping usage rights for purposes including cultivation, grazing and bush-food gathering (Hitchcock & Bertram, 1998).

Among the San, land rights are based on membership of a family band. Within communal areas, band members have rights to exploit resources of wildlife, plant -foods, medicine, thatching-grass and firewood and have control over water resources. These rights are recognized by neighbouring groups. Territories of foragers are often explicitly named areas with boundaries that are respected, and people are supposed to request permission to enter them (Albertson, 2000). For example, the territory of the /Gwi band at Xade in the Central Kalahari had boundaries defined by landmarks well-known to people and visitors would ask permission of the *!u:sa* ('owners') to stay in 'your country' and drink 'your water' (Silberbauer, 1981).

In semi-arid regions, access to water enables access to land and its food resources. Knowledge of exact locations of waterholes, their characteristics of seasonality and quality was essential to the survival of hunter-gatherers, allowing them to circulate through regions



Hand-dug well in Okavango region. Photo: Arthur Albertson

offering food resources in correspondence with patterns of seasonal rainfall and migrations of wildlife.

Access to water (re)sources among contemporary San is still arranged along communal principles. The culture of sharing resources between related groups ensures balanced rights. However, because people circulated between locations within their extensive territories, it was difficult to defend such rights against outsiders. Many took advantage of the San's indigenous knowledge and 'culture of sharing' to gain access to precious water resources and to subsequently settle and assume 'ownership'.

San indigenous water knowledge

The wild tsamma melon is a symbol of indigenous water knowledge in the thirstland of the Kalahari. For the San, the tsamma (*Citrillus lanatus*) is a source of water when surface water is lacking most of the year. Intimate knowledge of these and other water (re)sources was essential for survival. Seasonal streams, large and small pans, water holes, fossil rivers, tree hollows, rock hollows, hand-dug wells and sip-wells were crucial in allowing seasonal movements of family groups within traditional territories. Where all surface water disap-

peared during the dry season, the only remaining sources of water were plants such as tubers, bulbs and melons. Knowledge of exact locations of isolated tree and rock water holes was crucial to people on hunting or foraging expeditions.

In the drier central Kalahari in Botswana, Tanaka (1998) reported that at Xade pan standing water was extremely scarce, while permanent waterholes did not exist there. Detailed knowledge about the occurrence of plants such as tsamma melon and herero cucumber within their large territories was critical to group survival.

The sip-well, where water can be sucked from the sand, is another old source of water in the sandy Kalahari. They are usually located on the edge of a salt-pan that has dunes on one side. One of the authors of this paper is a member of the Hai//om community near the Etosha National Park. He was made aware of the time and energy consuming technique of sucking water from sip-wells. This is what his elders told him:

"First the loose white sand was removed. The people then prepared an approximately 60 cm deep hole with the digging stick and inserted a straw cut from the Kalanchoe plant with a grass filter attached to the lower and upper end. The sand around the straw was then compacted and

left for about half an hour to accumulate moisture. By using the mouth to create a vacuum, the San then sucked the water out of the sand."

Due to lack of permanent surface water, the San in the region of the trans-frontier Kgalagadi (formerly Gemsbok) Park of South Africa and Botswana also developed ways of surviving on water derived from bush foods such as melons, roots and tubers as well as from hunted animals. Melon groves and the land supporting these were extremely important water sources.

Water and access to water were key variables in the defence, conquest and colonisation of the southern Kalahari. The oldest members of the !Khomani community (e.g. Elsie Vaalbooi, Petrus Vaalbooi, /Guna Rooi, Khais Brow and /Gabaka Koper) remember the time when there were no boreholes. There was also usually no surface water except shortly after rains. The people lived off plants that absorbed water, especially the juicy tsamma melon.

During the 19th century, settlers could not penetrate the southern Kalahari without using the knowledge of the San about water holes and locations of tsamma melon groves.

In the Okavango region of north-western Botswana, the 'Trust for Cultural and Development Initiatives' is implementing a programme among the !Anikhwe and Bugakhwe San aimed at recording oral histories. A booklet (Vanderpost, 2003) of interviews with residents, highlights water issues along with many others, as illustrated in the following quotes (with interviewee's name in brackets).

"Water from the tree hollow was known as yica; it was the Khwe storage place of water in the past. Grass known as =ami that formed a tube was used to suck water from the hollow" (Oana Djami).

"Today there is no water in our water holes. In the past when you arrived at Guxa you would hear frogs singing in the pools" (Tanaxu Khoakx'oxo).

"Today we find Hambukushu people also living there, taking our land and voting their chief to rule over us on our lands. The other tribes even refuse to supply us with water because we are only Khwe people", (Peter Goro).

These observations show that extensive traditional water knowledge exists but also resentment at the loss of water sources of the past.

Dispossession

In recent historical times, the San of southern Africa lost their traditional hunting and foraging lands and

their subsistence resources of water, bush-foods and game meat.

In the Dobe area of the Ju/'hoansi people in Botswana, cattle herders simply took over the water sources (Marshall-Thomas, 1989). In other areas, ranches were demarcated for white farmers. They fenced the land and took the water sources away from the people (Barnard, 1980). In yet other areas, grazing reduced the supply of water-bearing tubers and depleted the melons. Even in the land remaining for the San, water became problematic because boreholes drilled for cattle lowered the water table, causing many of the shallow water holes and sip-wells to dry up.

Loss of traditional water sources occurred where the San lost their ancestral lands. This happened near Ghanzi in Botswana. In the 1890s, the land of the Naro-speaking San was allocated by the colonial government to South African settlers as part of Cecil Rhodes' scheme to stop German expansion from South-West Africa (Barnard, 1980). The first settlers were compelled to depend upon the indigenous knowledge of the San. Some families maintain memories about the generosity of the sharing culture of the Naro people to this day (Russell & Russell, 1979). However, the ranches were eventually fenced and the San became farm workers or were reduced to the status of squatters on their former territory (Barnard, 1980).

Many were forced to flock to the 'Ghanzi Commons', communal land set aside by the authorities where water (but not much else) was provided:

"When the rest of the people reached the farm (...) they found a new farmer in residence. The new farmer wouldn't let them stay, so they, too, were forced to the Ghanzi Commons. There, Kutera and Dasina died of starvation." (Marshall-Thomas, 1989, p.267).

In Namibia at Nyae-Nyae, a region with three permanent waterholes, the resident Ju/'hoan population of about 1200 lost most of their ancestral land in 1970 when the (then) government divided Nyae-Nyae into three parts. The southern permanent water hole at Gam was allocated to Herero cattle herders, the northern waterhole at Tsho/ana was given to Kavangoland, while only the middle waterhole at Gautscha remained for the San as 'Bushmanland' (Marshall-Thomas, 1989). The government further decided to resettle San from other regions to Bushmanland against the wishes of residents, resulting in overcrowding.

Elsewhere, San people lost water and land due to the proclamation of Reserves or Parks such as Etosha National Park in Namibia, the ancestral land of the Hai//om



The New Xade resettlement site, Botswana. Photo: Christian Erni

people, Kgalagadi Transfrontier Park, where the ǀKhomani lived and the Central Kalahari Game Reserve in Botswana, still the home of small San communities. The resident San were evicted from these areas or were subjected to concerted efforts by government officials persuading them to “voluntarily” resettle elsewhere.

In the southern Kalahari in South Africa, during the early 1920s the government sponsored white farmers to sink boreholes and establish farms along the Auob, Nosob, Molopo and Kuruman rivers, where subterranean water was easily accessible. Over time, several farms were acquired to form the national park.

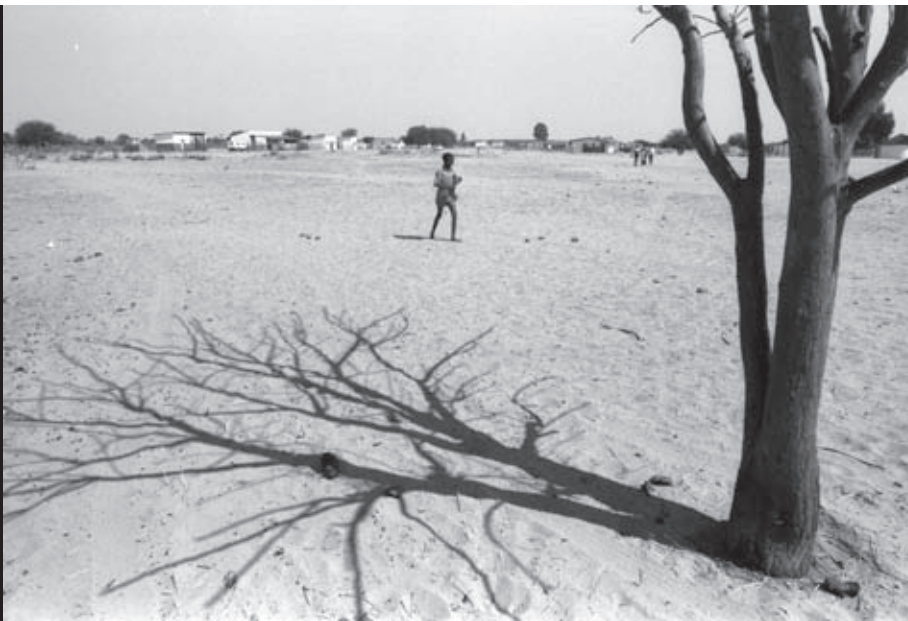
The sinking of boreholes had drastic effects. Firstly, the resident ǀKhomani San lost almost all of their territory within a few years. Fences were put up and the San were no longer permitted to move freely. Secondly, the settlers with their fire-arms decimated the wildlife and by 1927 there was famine among the San throughout the area.

The culture and identity of the ǀKhomani was also severely suppressed. They were not allowed to practice their trance dance, used for physical and social healing and an important part of their beliefs, and they were subjected to humiliating scientific measurements of people’s heads, noses and genitalia.

Most San were forced to leave the Gemsbok park area in South Africa in 1936, others in the late 1940s with the beginning of *Apartheid*, and the last remaining San were removed in the 1970s. During the recent post-*apartheid* land claim procedures of the ǀKhomani, the officials argued that there was no potable water in the Gemsbok park. A mapping and oral history project demonstrated that not only is water available through plant life (tsammas) but that there are also sites where water exists just below the surface. These were pointed out over seventy years ago to the settlers and the park warden and are still known to the older ǀKhomani people.

International concern over the plight of the San in Botswana led to the so-called “Bushman Survey” (Silberbauer, 1964). One result was the Central Kalahari Game Reserve, created in 1961 to protect wildlife resources and reserve sufficient land for traditional use by hunter-gatherer communities (DWNP, 1998).

In 1986, the government felt that there was conflict between these dual purposes and created settlements outside the Reserve for the residents, who were to be encouraged –but not forced– to relocate. Amid controversy about the details of this encouragement (which included cash payments regarded by some as bribes), by mid-1997 all residents of Xade, the largest settlement in



East Hanahai settlement, Botswana. Photo: Christian Erni

the Reserve, had moved to “New-Xade”. Others had moved to Kaudwane. Some remained in the Reserve at Molapo, Metsiamaonong and Kikao (DWNP, 1998). In early 1999, about 1000 people, mostly /Gwi, //Gana and BaKgalagadi, remained in the Reserve. Later that year the government persuaded another 700 inhabitants to leave their traditional lands (Wimsa, 1999). Some residents claim that destruction of water storage devices by government officials was part of this process. The controversy over the rights of the San in their last remaining territories in the central Kalahari continues today in court and has become an international political issue.

Indigenous knowledge and cultural identity

While outsiders learned about survival in the Kalahari from the San, they lost not only their land but also their most valued water assets. Even water resources in the form of tamma melon groves were taken from them and turned into water/food for cattle. Deprived of land, bush-foods and their water, the San ended up dispossessed and demoralised, living in extreme poverty.

Resettlement in villages where people could not look after themselves, making them dependent on government hand-outs, compounded social problems of alcoholism, crime and disease such as tuberculosis and HIV/AIDS (Cassidy, 2001). Resulting demoralisation contributed to loss of cultural identity as manifested in loss of language, marriage and burial customs and loss of traditional knowledge (Le Roux, 1999). Repeated resettlement, the separation of children from parents for

schooling and recruiting of men for mine labour further contributed to the erosion of social structures and socio-cultural identity (Cassidy, 2001).

Land restitution programmes in South Africa and the Remote Area Dwellers Programme in Botswana but especially programmes initiated by non-governmental organisations endeavour to assist marginalized San communities in their painful cultural and economic transition, aiming to improve their chances in contemporary society through projects of cultural revival, income generation and education. Organisations such as the Working Group of Indigenous Minorities in Southern Africa, the Southern Africa San

Institute, First People of the Kalahari, the Nyae Nyae Conservancy and the Kuru Family of Organisations support programmes aimed at the recording of oral histories and indigenous knowledge. Their underlying purpose is to promote cultural identity and the upliftment of the San people generally.

Significant examples are the Cultural Resource Auditing Project in the southern Kalahari, which also includes a language programme (Crawhall, 2001), the Khwe oral testimony and resource mapping programme in the Okavango region (VanderPost, 2003) and the land resource mapping programme in the Central Kalahari (Albertson, 2000). Important also are the Khwe and Naro language and bible translation programmes (Kuru, 2001) and regional cultural activities such as the annual traditional dance festival in D’Kar, which attracts San cultural groups from across southern Africa (Cassidy, 2001).

The emancipation process among the San is promoted by documenting and publicizing indigenous knowledge, instilling among the San a sense that they also ‘have knowledge’. It was significant that in 2000 the southern African San participated in the World Water Forum in The Hague together with indigenous peoples from Australia, America and elsewhere.

Scientists and development practitioners have realised the relevance of documenting traditional knowledge of plants, land and also water resources in the context of efforts aimed at acquiring land rights under contemporary land allocation systems (Albertson, 2000). Recording oral traditions about the land, its resources and specifically its water resources plays a role

in enhancing this process (Kuru, 2001). This also contributes to the restoration of a socio-cultural identity that may equip San people to find a better place for themselves in modern society.

In Australia, Canada and Scandinavia (Brody, 1981), where people were also displaced from their ancestral lands, prospects are brightening for water, land and resource rights restitution. Although so far progress is limited with respect to restitution of rights to San in southern Africa, there are, nevertheless, some achievements.

In 1999, the South African government awarded the southern Kalahari San about 40,000 hectares outside and 25,000 hectares inside the Kgalagadi Transfrontier Park as restitution and redress for their historic losses (Saturday Telegraph, 20 March 1999). San who were resettled from Botswana's Central Kalahari Game Reserve and Namibia's Etosha National Park hope for similar restitutions. Cultural audits and resource mapping are currently conducted to provide support for the rights of the San in these areas.

Lack of access to water and land remain root causes of the dispossessed status of the San. In many parts of southern Africa, the San are still without secure rights to land and its resources of wildlife and veld-foods as well as its water sources (Cassidy, 2001). It remains a challenge to southern Africa's democratic societies to ensure that even small indigenous minority groups are not denied their rights to water and land resources. □

References

- Albertson, A.** 2000. *Territoriality and Land-use in surveyed traditional territories of the Central Kalahari Game Reserve*. Report for First People of the Kalahari. Ghanzi.
- Barnard, A.** 1980. Basarwa settlement patterns in the Ghanzi Ranching area. *Botswana Notes and Records*, Volume 12:137-149, Gaborone.
- Barnard, A.** 1992. *Hunters and Herders of Southern Africa. A Comparative Ethnography of the Khoi Bushmen People*. Cambridge University Press, Cambridge.
- Brody, H.** 1981. *Maps and Dreams. Indians and the British Columbia Frontier*. Waveland Press, Inc. Illinois.
- Cassidy, L., K. Good, I. Mazonde, R. Rivers.** 2001. "An assessment of the status of the San/Basarwa in Botswana. Regional Assessment of the status of the San". In: *Southern Africa Report Series, Report No. 3*. Legal Assistance Centre, Windhoek.
- Crawhall, N.** 2001. *Written in the Sand. Auditing and Managing Cultural Resources with Displaced Indigenous Peoples, A South African Case Study*. South African San Institute/ UNESCO. Paris/Cape Town.
- DWNP (Department of Wildlife and National Parks).** 1998. *Second Draft Management Plan Central Kalahari Game Reserve and Khutse Game Reserve*. Gaborone.
- Hitchcock, R.K. and L.E. Bertram.** 1998. "Social Boundaries, Technical Systems and the Use of Space and Technology in the Kalahari". In: Stark, M.T. (Ed), 1998: *The Archaeology of Social Boundaries*. Smithsonian Institution Press, Washington.
- Kuru.** 2001. *Kuru Family of Organisations Annual Report 2001*. D'Kar, 2001.
- Lee, Richard B.** 1984. *The Dobe !Kung*. Holt, Rinehart and Winston, New York.
- Lee, Richard B. and Irven DeVore (Ed.)** 1998. *Kalahari Hunter-Gatherers. Studies of the !Kung San and Their Neighbors*. Harvard University Press, Cambridge.
- Marshall-Thomas, E.** 1989. *The Harmless People. (Revised Edition)*, Vintage Books, New York.
- Russell, M., and M. Russell.** 1979. *Afrikaners of the Kalahari. White minority in a black state*. Cambridge University Press, Cambridge.
- Le Roux, W.** 1999. *Torn Apart. San children as change agents in a process of acculturation*. A Report on the Educational Situation of San Children in southern Africa. Kuru Development Trust and Working Group of Indigenous Minorities in Southern Africa, Windhoek.
- Silberbauer, G.B.** 1964. *Bushman Survey Report. An official report to the Bechuanaland Government*. Bechuanaland Press, Mafekeng.
- Silberbauer, G.B.** 1981. *Hunter and Habitat in the Central Kalahari Desert*. Cambridge University Press, Cambridge.
- Tanaka, J.** 1998. "Subsistence Ecology of Central Kalahari San". In: Lee (1998).
- Taylor, M.** 2000. *Life, Land and Power. Contesting development in northern Botswana*. Unpublished PhD thesis, University of Edinburgh, Edinburgh.
- VanderPost, C. (Ed.)** 2003. *Community Natural Resources of Bugakhwe and //Anikhwe in the Okavango Panhandle in Botswana*. CBNRM Support Programme Occasional Paper No. 12 (ISBN 99912-986-4-9), SNV/IUCN, Gaborone.
- WIMSA.** 1999. *Working Group of Indigenous Minorities in Southern Africa, Report on Activities, April 1998 – March 1999*. Windhoek.

Cornelis VanderPost worked for several years for the Kuru Development Trust among the Naro San people near Ghanzi, Botswana. He is currently a Senior Research Fellow at the Harry Oppenheimer Okavango Research Centre in Maun, Botswana, Pr Bag 285, Maun, Botswana.
E-mail: cvanderpost@orc.ub.bw

Joram /Useb is assistant coordinator at the regional office of WIMSA (Working Group of Indigenous Minorities in Southern Africa) in Windhoek, Namibia and is a member of the Hai//om community from near the Etosha National Park, Namibia. Working Group of Indigenous Minorities in Southern Africa (WIMSA), P.O. Box 80733, Windhoek, Namibia.
E-mail: wimsareg@iafrica.com.na

Nigel Crawhall is a socio-linguist and used to be coordinator of the Cultural Resources Auditing programme among the ǀKhomani San of the Gemsbok Park area in South Africa, in association with the Southern Africa San Institute (SASI), P.O. Box 790, Rondebosch 7700, South Africa.
E-mail: sasi@iafrica.com

THE CENTURY-LONG DISPLACEMENT AND DISPOSSESSION OF THE MAASAI IN KENYA

Joseph Ole Simel

The colonization of Kenya by the British towards the end of the 19th century had a profoundly negative impact on land relations in the country as a whole, and even more so within the Maasai community, which presently numbers around 600,000 people.

Maasai traditional systems, which had developed and stabilized via centuries of evolution, were suddenly disrupted through the expropriation of large tracts of Maasai land. At independence, the new government adopted the foreign colonial legal systems (English property laws) and expropriation of Maasai lands was legitimized in the 1963 post-colonial Constitution, which is still the governing constitution in Kenya today.

Generally, land evokes emotions. Land means different things to different people and different communities. To pastoralists and indigenous peoples (and this article specifically refers to the Maasai of East Africa) land is a heritage, a source of livelihood, the main natural resource and a vital asset. It is a common resource for the present generation, to be preserved for generations to come.

For those in the past colonial administration and the post-independence regimes in Kenya, who have been

ruling Kenya from 1962 to this day, land is a marketable commodity to be grabbed, hoarded and sold. It is a security for collateral reasons and has been used to rob the national economy and bring it to its knees. Land is seen as 'private property', which in this context means land held under certificates of ownership issued by corrupt government officers. Thus, with a stroke of a pen, the Maasai and many pastoralist communities and/or indigenous peoples who practice collective rights, collective responsibilities and usage, have been disinherited.

The 1904/1911 Anglo-Maasai Treaties

Throughout history the Maasai have been marginalized, manipulated and exploited to the extent that they have hardly been able to exercise their basic human rights. They have been described as primitive, backward, anti-development and resistant to change, and national laws and policies have exacerbated this unjust and inhuman treatment.



The marginalization and exploitation of the Maasai began in 1904 and 1911, through the infamous Anglo-Maasai treaties, when the Maasai people were dispossessed of their land and other natural resources. They were driven into areas with very harsh conditions in the southern reserves of the country. Many of them died or lost their animals and, since then, the community has remained impoverished. During this displacement from areas of high potential to the dry and less fertile areas, the Maasai lost $\frac{3}{4}$ of their land to the colonial government. The displacement took place through the Anglo-Maasai treaties, which were full of irregularities, and these treaties have been used time and time again as justification for the notion that the Maasai voluntarily gave up their land to the colonial administration. However, the Maasai have been, and are still, challenging these so-called treaties.

During colonization, Maasai land was divided into two parts: the land grabbed/fraudulently taken by the British Colonial administration through the treaties, which came to be known as the *white highlands* and the part reserved for the Maasai people, the *Maasai reserves*. Initially, the community's land comprised the Northern and Southern Reserves.

The British appointed a chief medicine man to the post of paramount chief of all the Maasai sections or clans. However, clans/sections are traditionally selected in terms of power and are independent of each other and there cannot be an all-embracing ruler of all the sections, just as there cannot be a universal chief medicine man. Therefore, the agreements or treaties did not have the force or blessing of Maasai customary law. Under Maasai customary law, land is a common property, owned, managed and controlled on a collective rights basis in accordance with the rules, norms and practices of the Maasai people. No single individual or group of people – including a paramount chief – is mandated to give away communal land to anyone. Land is deemed to belong to the community as a whole, with the members being life tenants to it.

The 1904/1911 Agreements thus marked the beginning of the disunity, impoverishment and disintegration of the Maasai community in Kenya.



The Maasai struggle

The Maasai, sensing the irregularity of the said agreements and/or treaties, challenged them by suing the British colonial administration and those of its own who were party to the agreements, in the case of *OL OLE NJOGO AND OTHERS VS. THE ATTORNEY GENERAL AND 20 OTHERS*, CIVIL CASE NO. 91 OF 1912, (E.A.P.1914), 5 E.A.L.R.70. However, the Maasai community lost this case all the way to the Court of Appeal on points of technicality. In spite of

this, the Maasai were not deterred by the court's decision and the struggle to challenge the massive dispossession of their land continued.

In 1923 and 1933, the Maasai community raised their land issues before the East Africa Royal Commission. During the Lancaster House Conference in 1962, when the Kenyan independence constitution was under debate, the Maasai delegation declined to endorse the new constitution. The Maasai delegation sought specific constitutional protection from dominant tribes in the country and the delegation raised a number of questions relating to the 1904/1911 agreements, stressing that the lands the Maasai had had to vacate in accordance with the agreement rightly belonged to the Maasai and that the Maasai therefore wanted their ownership recognized in the Constitution. They further stressed that the Maasai community should be granted a first claim to these lands when the European settlers vacated them.

The Maasai delegation pointed out that the colonial government had never recognized the Maasai people's legitimate claim to the land that they (the Maasai) had had to vacate because of the agreements. The Maasai delegation stressed that they did not accept that they should have lost their claim over these lands and they emphasized that, according to Maasai customary law, anything stolen or fraudulently taken should be reclaimed. These arguments are in line with the present day provisions of ILO Convention No. 169, which states that procedures shall be established within national legal systems to resolve land claims of indigenous and tribal peoples. The Maasai wanted constitutional procedures established to resolve their land dispossession so that the people affected would have a real possibility of obtaining restitution of their lands or compensation.

The post-independence displacement of the Maasai

Immediately following independence, laws were passed and implemented. It can be seen very clearly that the objective of these laws was to whittle away the safeguards that had, to a certain extent, secured the rights of the indigenous communities during colonialism. Land in the Rift Valley Province was subsequently distributed without regard for the rights of the original owners – the Maasai. The independent government thus maintained the colonial legacy of displacing the Maasai, resulting in the further dismantling of their customary institutions and the sheer devastation of the community. These sad developments confirmed the fears of the Maasai delegation to the Lancaster House conference.

The current agitation for land rights by the Maasai and the debate in the country over land ownership manifests the lack of a clear land policy in the country. Contrary to the expectations of many Kenyans, the post-independence government wasted a grand opportunity to establish a clear and fair land policy and this watered down the very essence of the struggle for independence. Today, many Kenyans are horrified and disillusioned by the inequalities in the ownership, use and management of land in Kenya.

Many Kenyans had expected the postcolonial government to embark on a genuine policy to redress colonial or historical injustices and ensure that all the land taken during colonialism would be transferred back to the dispossessed indigenous communities. Instead, the post-independence government allowed a number of settlers and a certain political elite not only to retain but also to acquire vast tracks of land at the expense of the majority of poor local communities. Land was used as a political tool to buy loyalty and support. This marked the second phase of displacement of the Maasai people.

The Maasai have further been displaced through the process of 'registration', which has harbored many land scandals. Senior government officials have used corrupt means, abusing their positions to fraudulently acquire Maasai land for the purposes of collateral. The Illoodoariak, Mosi and Ilkesumeti are good examples of cases in the Kajiado District where those in key government positions have given themselves land belonging to the Maasai in the guise of the land adjudication processes. This has left the affected Maasai in the position of squatters on their own lands.

The present situation

40 years after independence, Kenyans have realized that the policy and legal framework governing land in Kenya

is inadequate to say the least, and that little or no effort has been made to correct the situation. The scandals involving the allocation of communal land to individuals in government and/or political elites and the frustrations suffered by those who have tried to intervene in these scandals, whether through court processes or other mass action initiatives, clearly show that genuine will was and still is lacking on the part of the government.

Policies on individual land ownership have been the key agenda and priority of both the pre-independence and post-independence regimes. The justification for this has been economic development and political expediency. However, these policies have deprived the Maasai of essential pastureland, which has been allocated to other uses. And yet the economic development goals have not been achieved as desired. Instead of taking a critical look at the suitability of these policies, the response of the government has been to accuse the Maasai people of being anti-development and resistant to change and to accuse them of holding tracts of 'idle' land.

The Maasai customary land tenure systems, whereby land is communally owned and the whole community is guaranteed equal access to resources, have remained insecure, lacking proper legal protection. Land policies and laws have promoted the subdivision of land into small portions that are not viable for pastoralism, and this has been fatal for the Maasai pastoralist communities as they can no longer viably sustain their pastoralist way of life. Many have been left with no option but to sell their land and the massive and still ongoing sale of land is yet another major cause of the present landlessness of the Maasai.

The Maasai community's political elite, though a minority, must bear part of the blame. Their lack of a keen interest in the fight for the de-marginalization of the Maasai community has contributed greatly to the sorry state of affairs of the Maasai in terms of their standard of living since independence. The political structures of the Maasai community are disunited through selfish personal political interests among the politicians as well as among the citizenry, thus further diminishing the political voice of the Maasai and their ability to influence national decision-making processes.

The Maasai have also lost land through the creation of national parks and game reserves, which sustain the country's tourism sector but provide little benefit for the Maasai.

The impact of dispossession

Due to the dispossession and/or displacement and dismantling of the Maasai customary land tenure system, most traditional practices are no longer applicable. The

sale of land within the Maasai community has forced many community members into a minority status on their own land, threatening the very continuity of the Maa language and, more alarmingly, the existence of the Maasai race.

Landlessness has contributed to abject poverty among the Maasai. Many are unable to continue a normal traditional way of life - pastoralism and nomadism - any longer, and many families are breaking up. Landlessness and impoverishment has led to rural urban migration by the Maasai people. This movement is two-fold: one in search of pasture for their livestock and the other in search of employment. None of the two groups have succeeded in their venture. Those in search of employment are employed as night guards, but without any regard for labor laws. They are paid an average monthly salary of Ksh. 5,000, which is equal to approximately 60 US dollars, with no other benefits whatsoever. They are exposed to all kinds of risks and harsh working conditions and still remain targets for armed thugs who have already outsmarted the police force. The police and the municipal councils harass the second group, who are in search of pasture. They are arrested and exposed to all sorts of intimidation, and despised by the urban population.

People from the dominant tribes have settled on Maasai land where they now more often than not constitute a majority in both numbers and political representation and the plunder of the Maasai resources thus continues.

The role of civil society

The Maa (Maasai) civil society organizations, i.e. non-governmental organizations (NGOs), community-based organizations (CBOs), and individuals have taken centre stage in the efforts to highlight the plight of the Maa community with regard to their historical land problems. Awareness raising campaigns have been intensified within Maa-speaking communities. As a result, grass roots community members now participate actively in the struggle through countrywide peaceful demonstrations, press conferences and prayer gatherings organized and conducted by religious organizations.

The Maa civil society organizations have supported and facilitated the development of a strong grassroots based social movement among the Maasai people and other pastoralist communities in Kenya. The main objectives of the emergent Maasai social movement are:

- To critically analyze the historical injustices faced by the Maa community;
- To claim the restitution of lands traditionally belonging to and occupied and used by the Maa-speaking community;

- To make specific claims for compensation from the Kenyan and British governments for lost land;
- To establish management and consultation mechanisms for implementing these objectives;
- To promote advocacy and community empowerment around social and political issues.

The recent awareness raising campaign around the Maasai land issue has been met with a positive reaction from the media, both local and international, and has been given keen attention by both print and electronic media. The media has interviewed the public on this issue and, generally, the opinion polls have shown that the public greatly supports the Maasai quest for restitution of their land and compensation for land lost.

The government, however, has been very negative and dismissive of the issue. This has led to serious harassment and intimidation of Maa speakers in Kenya. The government's reaction to the peaceful demands of the Maasai community has been the use of excessive force. A community member from Laikipia District was shot dead by the police and three others have been seriously injured. At least three hundred community members have been arrested and charged countrywide, Maasai homesteads have been broken into, women raped, livestock confiscated and slaughtered and household goods confiscated. Peaceful demonstrations by community members have also been violently dispersed by the police. A Human Rights CBO based in Laikipia, was de-registered and its Chairman arrested and prosecuted.

Despite this brutality, civil society, with the Mainyoto Pastoralist Integrated Development Organization (MPIDO) at the forefront, has taken the moral and social responsibility of showing the Maasai community visionary and alternative paths for the community's future. Since the emergence of strong civil society organizations among the Maasai people, the importance of recognizing and protecting human rights as a cornerstone of addressing poverty, marginalization, exclusion and socio-economic development injustices has been highlighted.

Lack of a proper land policy

Maa civil society has set out to introduce and explore many of the issues and challenges surrounding the community's land dispossession. It does so in the conviction that a deeper understanding of the crisis and the causes may lead to clear and well-focused strategies for addressing these problems.

The lack of a defined land policy in the country has been identified as one of the major causes of this may-

hem. Civil society has thus embarked on an agenda to influence its formulation. The process of formulating a national land policy began in December 2003 between the government and its donors, to the exclusion of primary stakeholders, the Maasai pastoralists included. This therefore required the intervention of MPIDO and like-minded development partners (The Kenya Land Alliance - KLA and other pastoralist organizations). The demand being made to the government is to have a distinct thematic group established to facilitate the active participation of marginalized pastoralist communities in this vital process, which is one that will determine the course of their century-long land problems.

The other avenues that were expected to bring positive change to the pastoralist Maasai community have been marked by a mysterious lack of transparency. The Presidential Commission of Inquiry into the Land Laws and Systems in Kenya (The Njonjo Commission) was dissolved prematurely before completing its work.

The Presidential Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (The Ndung'u Commission) submitted its report to the president in June 2004. This long awaited report was withheld from public release for five months. This caused great concern within civil society and, after intensive lobbying and advocacy work, the said report was released to the public on 10 December 2004. This delay reveals the government's reluctance to expose the fraudsters who have, over the years, been exploiting the land resources of marginalized groups. For the report implicates senior government officials, among them cabinet ministers, in the land allocation irregularities. The government's action was thus aimed at protecting a corrupt political elite. There are legitimate fears therefore that the delay could have created time for the report to be doctored or tampered with.

The report has, however, outlined recommendations favorable to, among others, the Maasai of Mosiro and

Iloodoariak of Kajiado District. This follows the presentation of a memorandum to the Ndung'u Commission by MPIDO during the commission's tenure. The memorandum outlined details of the atrocities suffered by these communities, occasioned by fraud and irregularities of land adjudication processes pioneered by, among others, powerful government officials. The recommendations effectively recognise these atrocities and states that they should be addressed as a matter of urgency. This gives credence to the community's claims and further strengthens the pending court cases on the same issue. This will further strengthen the Land Adjudication (amendment) Bill of 1999, which has been shelved by parliament.

The Constitution of Kenya Review process, which brought great hope to the marginalized communities through the elaborate provision for the need to recognize and protect these communities' rights in the Draft Constitution, has hit a snag. Despite this, civil societies' efforts in lobbying for the implementation of effective policy and/or law reforms remain unfettered.

The spirit and struggle of the community continues and much support has been received from local human rights groups in an effort to exert pressure on the government to adopt a proactive approach in responding to the needs of the marginalized communities in Kenya, as opposed to the often oppressive and dismissive approach that has been used up to now. □

Joseph Ole Simel is the founder and current National Coordinator of Mainyoito Pastoralist Integrated Organization (MPIDO). He is the president of the World Alliance of Mobile Indigenous Peoples and the chair of the Pastoralists Technical Committee on National Land Policy Formulation Process. He is a board member of the International Institute for Environment and Development (IIED)/Reconcile East Africa Programme and a board member of Land is Life (U.S.A).

IWGIA's support to land rights programmes in Kenya

IWGIA supports a number of land rights projects in Kenya for the Maasai and Ogiek people. This includes support for a land rights advocacy programme being implemented by the organization "Mainyoito Pastoralist Integrated Development Organization" (MPIDO). This programme creates awareness of land issues among Maasai communities, assists with land related court cases and litigation and engages in policy reform processes relating to land issues. IWGIA further supports the organization "Simba Maasai Outreach Organization" (SIMOO) with a land rights project aimed at creating awareness of land rights issues among the Maasai community using methods such as radio programmes and theatre groups. IWGIA also supports a land rights programme of the Ogiek organization "The Ogiek Welfare Council" (OWC) aimed at securing the Ogiek people's rights to their ancestral land, improving leadership capacity within the community and raising public awareness around the serious issue of land dispossession of the Ogiek people in Kenya.

THE ENDOROIS AND THEIR LOST HERITAGE

Bill Rutto and Korir Sing'oeie

Ever since the alienation of their land to make way for the creation of a wildlife sanctuary in 1973, the Endorois people of Kenya have lived a life of misery, deprivation and frustration. The creation of the Lake Hannington Game Reserve on 29 November 1973¹—now an exquisite tourist gem situated deep in the Kenyan Rift Valley— and the expulsion of the Endorois from the vicinity of the lake, has been the greatest disruption to the community of their distinctive way of life ever. Lake Bogoria is a long, slender soda lake located at the foot of the Laikipia Escarpment some 300 kilometres northwest of Nairobi. With a magnificent physical beauty, the Endorois country, or what used to be, is a tourist attraction, and due to the volcanic activity in the region, a series of geysers, boiling pools and hot springs are found on the edges of the lake. These natural features, part of the 107 square-kilometre nature reserve around the lake, make this area and its environs unique. Described once upon a time by J. W. Gregory, an English geologist who travelled the region in 1892 thus: “the most beautiful view in Africa”. The game reserve hosts some of Kenya’s remaining herds of greater kudu while the lake itself boasts thousands of flamingos and pelicans. In the early days the lake was known as Lake Hannington.



The expropriation of the Endorois land to create a wildlife sanctuary has, more or less, forced this indigenous community to abandon both their traditional culture and religious lifestyle. This is because they have increasingly had to embrace what their new environment has to offer, a situation that poses a real threat to their survival as a people. Today the Endorois, a people at a crossroads, are fighting for their right to land ownership and access to Lake Bogoria and the surrounding wetlands home to some of the community’s important sacred sites, rare medicinal plant species, pasture and saltlicks for their animals. In other words, the lake basin served as the all-important life-sustaining asset for the overall well-being of the community.

The Endorois, considered to be a sub-tribe of the larger Kalenjin-speaking Tugen (this identity is, however, discounted by the Endorois themselves, asserting instead that they are assimilated descendants of an entirely different ancestry), have lived for centuries around Lake Bogoria. According to tradition, the community settled in this area when their legendary leader, Doroi, drowned in the lake while attempting to lead his people to land further on.

Since the mid-1970s, the Endorois have mounted a vigorous struggle for their land rights but, if what has

Endoris community - Photo: CEMIRIDE

already transpired is anything to go by, this effort promises to be a bruising battle and an apparently insuperable one at that. For one, the Kenyan High Court threw out their case against the government of Kenya in which the community had sought redress following their eviction from their ancestral land around the lake and the failure of the authorities to resettle or compensate them. The suit brought before the court in August 2000 had sought a declaration that the land around Lake Bogoria was the property of the community held in trust for their benefit by the local county council as per the law. They had further sought a declaration that the Endorois were entitled to all the benefits generated through the game reserve and, should that fail, the game reserve should revert to them as their property.

The judge ruled, however, that under section 117 of Kenya's Constitution, which empowers the county councils to set apart land in accordance with an Act of Parliament (in this case the Trust Lands Act Cap 288 and the Wildlife Conservation and Management Act), a direct right was not given to individuals to manage what is considered a national resource². Said the judge in his ruling, "It goes without saying therefore that no individual or individuals have a direct right to the management of the game reserve or revenue collected there from...The law does not allow individuals to benefit from such a natural resource simply because they happen to be born close to the natural resource".

It is clear from this ruling and indeed from the Constitution itself, whose provisions the judge relied on, that individual interests are subordinate to those of the nation. That may be so, but is it not imperative that the government, having initiated and executed the removal of a people from their land, has ultimate responsibility for the consequences of such a removal even if the Constitution is silent on this? Should the judge not have taken into account this critical flaw or deficiency in the Constitution to arrive at a balanced ruling? He seems to have simply relied strictly on what section 117 of the Constitution says, no more no less. While the community has sought to appeal against this ruling, no action has resulted as the proceedings of their earlier application, which form a necessary record for purposes of the appeal, are yet to be availed over two years after the ruling, a classic case of justice delayed indeed. The community seem to have convinced themselves that they were battling the Kenyan government in vain.

And this is perhaps why, through the wisdom and ingenuity of the community's leadership, this weighty matter of displacement and injustice has found its way to the African Union's Commission on Human and Peoples' Rights, thanks to the Centre for Minority

Rights Development (CEMIRIDE) and Minority Rights Group International (MRG). The community is convinced that their case can only be redressed through the intervention or arbitration of a "third party". Indeed, their case finds even greater relevance within the African Union now that the Commission has adopted (in 2003) the Resolution on the Rights of Indigenous Population/Communities in Africa. The Resolution provides the basis upon which indigenous peoples' collective rights may be addressed. The significance of this development means that the aggrieved parties could now find an alternative route by which their grievances can be addressed by the selfsame states' governments, under the influence of the African Union.

Historical perspective

The Endorois now number about 61,000, with 43,000 of them living around the game reserve (since their eviction 32 years ago) in the two districts of Baringo and Koibatek, whose common boundary cuts through the middle of the reserve. The rest of the Endorois are found in the neighbouring districts of Nakuru and Laikipia, where they live under equally miserable conditions. According to tradition, the Endorois are the indigenous inhabitants of the Bogoria lake basin. The Endorois are said to have immigrated to the area centuries ago but, due to constant skirmishes and even full-scale wars with communities that arrived in the area in later years, the community's population was reduced to the extent that it was assimilated by the dominant Tugen perhaps in the mid 1700s AD. Among the wars that the Endorois fought with their neighbours, the Endorois-Maasai conflict was probably the longest and most devastating to the Endorois. In their last battle with the Maasai, the Endorois were completely routed and driven out of their territory to the Naivasha hills where they remained for many years. It should be noted that the Maasai were at that particular time the fiercest community in Kenya and the Endorois, like any other community then, were no match for the enemy.

It was not until the Endorois had made peace with the Maasai and subsequently with the Tugen, the Samburu and the Ilchamus³ that they were able to reclaim their land around Lake Bogoria.

During the colonial period, which started circa 1890⁴ when the British laid claim until their departure in 1963 to what was to later become the land of Kenya, there was little interference with the community's indigenous ways of life. As a livelihood, the Endorois practised pastoralism, as did the dominant Tugen, grazing their

livestock in the fertile lake basin area administratively known as the Endorois Location. This location extended to the southern parts of the present-day Laikipia district, which lies to the north of Lake Bogoria. The arrival of the British in this area and the subsequent creation of the White Highlands did adversely affect, albeit marginally, the Endorois in Laikipia. This small section of the community was moved into el Arabel, deep in the Mochongoi forest on the Laikipia plateau.

Within the first decade following Kenya's Independence, the government of Kenya, perhaps as a prelude to what was yet to come, undertook the first eviction of the Endorois from their land in postcolonial Kenya. The affected section of the community was the one that had earlier been pushed into el Arabel in Mochongoi forest to pave the way for the establishment of parts of the White Highlands in the 1930s. These evictions, which took place between 1970 and 1971, were violent with the government resorting to the burning of Endorois houses.

Evicted from the Lake Bogoria area

The systematic eviction of the main section of the Endorois community from their land around Lake Bogoria was the culmination of developments that had been building up since the minister in charge of tourism declared their land a game reserve under the Wild Animals Protection Act (now repealed) in November 1973. This was when the minister issued the first declaration to create Lake Hannington Game Reserve out of the Endorois land – later to be renamed the Lake Bogoria Game Reserve in 1974.

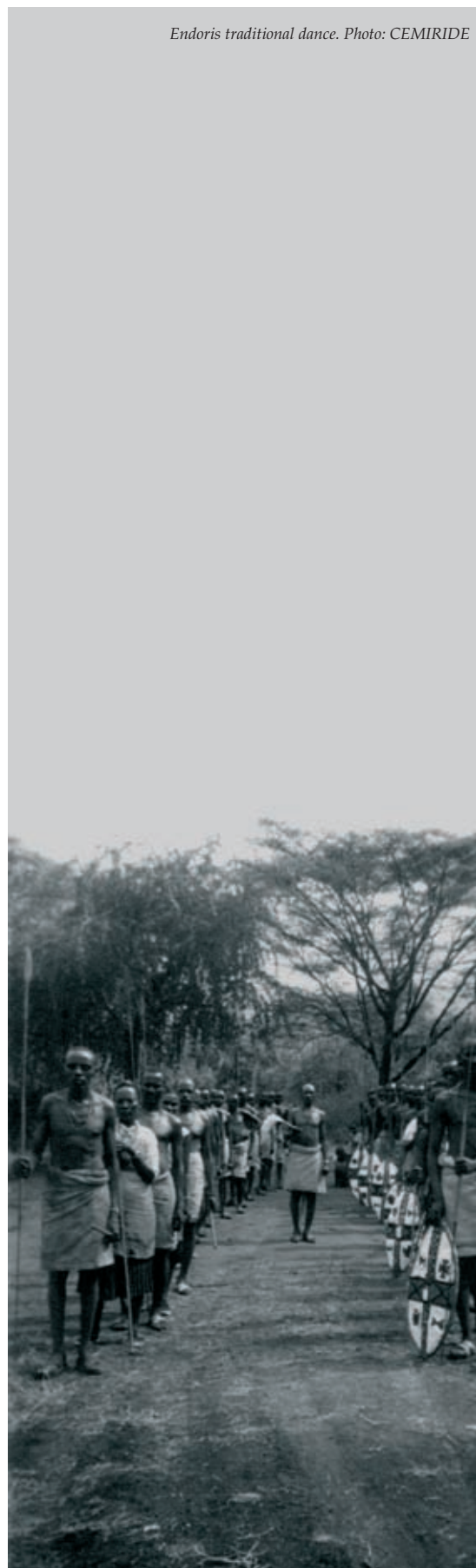
It is noteworthy that the community was not consulted on these crucial developments affecting them. For close to ten years, the community witnessed, with a considerable amount of anxiety, the destruction of their land as the government mobilised machinery to construct roads around the lake. Finally the community was evicted from their fertile land and moved to the semi-arid and rocky terrain further away from the lake, a location that could not provide sufficient pasture for their animals. As a result, a good number of animals were lost, thereby adversely affecting the community's means of livelihood.

Legal action

As has been mentioned above, following the eviction of the Endorois and the failure to provide them with a proper resettlement, the community felt sufficiently aggrieved that they resorted to legal action through a constitutional reference⁵ to compel the government to restore their rights over the Lake Bogoria land.

As already mentioned, having little faith in the Kenyan judicial system and its operations, the Endorois have sought

Endoris traditional dance. Photo: CEMIRIDE



the intervention of the African Union. Under the provisions of the African Charter on Human and Peoples' Rights (ACHPR), the Endorois hope to eventually obtain satisfactory redress of their rights.

Conclusion

While it is hoped that the case of the Endorois, now awaiting a decision of the African Commission on Human and Peoples' Rights (ACHPR) on its admissibility, may eventually bear fruit, the new draft constitution of Kenya seems to offer another promising prospect for the community and other indigenous communities in Kenya. Article 25 (b) of the draft constitution on culture states in part "...the State shall respect, preserve, promote the heritage of Kenya, and in particular, its cultural, historical, religious, sacred, archaeological and other significant sites..." If indeed historical, religious and sacred claims of indigenous people were respected and a legal recourse mechanism put in place through a National Commission on Culture, as envisioned in Article 26 (1) of the draft constitution, then the Endorois would have every reason to entertain genuine hopes for the restoration of their spiritual and cultural rights in the future. This means that the very core of the Endorois spiritual and transcendental symbol, the Lake Bogoria cultural sites, would be accessible to them even as the community seeks other remedies.

As regards land rights, the draft constitution provides a sounder basis upon which lost rights may be redeemed, if indeed a retrospective legal accommodation is contemplated in this new legal framework. For example, unlike at present whereby community lands are held by the local councils⁶ as trust lands, the draft constitution vests such lands in devolved regional and district governments. This will have the effect of actualizing the philosophy of grassroots participation in decision-making processes, which in turn will ensure a governance system of fairness and justice.

Recent developments in the meantime indicate that the Endorois, through CEMIRIDE and its partner, Minority Rights Group International (MRG), have secured the ACHPR's Provisional Measures (temporary injunction of sorts), which would oblige the Kenyan government to suspend any actions that might cause further damage to the community and its rights.

Fears specifically expressed by the community in their prayers relate to the expected mining activities already sanctioned by the government on lands surrounding Lake Bogoria. Mining and use of heavy machinery not only damages land but can also result in

further eviction of the community and the degradation of the environment.

Despite this ACHPR move, however, a disturbing picture of the government's defiance and determination to continue to erode Endorois land rights has emerged. A local newspaper⁷ recently reported, for instance, an ugly confrontation between members of the Endorois community and a multinational mining company, Corby Limited, which has been licensed to start exploiting the mineral deposits in the area. But as hopes remain generally high that a solution to the Endorois problem may be within reach in the not too distant future, more concerted efforts need to be maintained at all times, all the more so in the face of the slow constitutional process. □

Notes

- 1 The sanctuary was later renamed the Lake Bogoria Game Reserve under Legal Notice no 270 of 12.10.74.
- 2 Both sections 115 and 117 of the Constitution of Kenya have a proviso to the effect that no right, interest or other benefit under African Customary Law shall be enjoyed if the same contradicts the provisions of a written law.
- 3 The Ilchamus and the Samburu speak Maasai dialects and practice cultural practices similar to those of the Maasai.
- 4 In 1902 Kenya was declared East African Protectorate and subsequently between 1920 and 1963 was designated Kenya Colony.
- 5 The Kenyan High Court regards a constitutional reference case as a suit like any other.
- 6 These councils lack adequate independence from the central government.
- 7 See Kenyan daily, *The Standard*, 19 November 2004

Bill Rutto is CEMIRIDE's Standards Officer. He is a published author of fiction. His non-fiction work "The Plight of the Talai: a Case of Historical Injustice and Internal Displacement" focuses on an indigenous minority community (Talai) evicted from their ancestral lands by the British colonial authorities in Kenya of the 1930s.

Korir Sing'oeie is a human rights lawyer and the Executive Director of CEMIRIDE. Korir researches and writes extensively on human rights issues. Korir and Bill are currently working on the history of the Endorois and the community's economic, social, cultural and political development with a view to writing a book (advocacy) on the same.

IWGIA - INTERNATIONAL WORK GROUP FOR INDIGENOUS AFFAIRS

IWGIA's aims and activities

The International Work Group for Indigenous Affairs - IWGIA - is a non-profit making, politically independent, international membership organization.

IWGIA co-operates with indigenous peoples all over the world and supports their struggle for human rights and self-determination, their right to control land and resources, their cultural integrity, and their right to development.

The aim of IWGIA is to defend and endorse the rights of indigenous peoples in concurrence with their own efforts and desires. An important goal is to give indigenous peoples the possibility of organising themselves and to open up channels for indigenous peoples' own organizations to claim their rights.

IWGIA works at local, regional and international levels to further the understanding and knowledge of, and the involvement in, the cause of indigenous peoples.

The activities of IWGIA include: publications, international human rights work, networking, conferences, campaigns and projects.

For more information about IWGIA's activities, please check our website at: www.iwgia.org

Publications

IWGIA publishes a yearbook, *The Indigenous World/El Mundo Indígena*, and a quarterly journal *Indigenous Affairs/Asuntos Indígenas*. Furthermore, a number of books thematically focussing on indigenous issues are published each year.

IWGIA's publications can be ordered through our website:
www.iwgia.org
by e-mail: iwgia@iwgia.org
or by fax: +45 35 27 05 07

BOARD OF IWGIA

Georg Henriksen (Chair), Espen Wæhle, Jenneke Arens, Søren Hvalkof, Mark Nuttall, María Teresa Quispe and Marianne Wiben Jensen.

INTERNATIONAL SECRETARIAT OF IWGIA

Director: Jens Dahl

Administrator: Anni Hammerlund

Deputy-director: Lola García-Alix

Coordinators of programmes:

- *South and Central America:* Alejandro Parellada & Diana Vinding
- *Africa:* Marianne Wiben Jensen
- *Asia:* Christian Erni & Sille Stidsen
- *Arctic:* Kathrin Wessendorf & Thomas Kehler
- *Human Rights:* Lola García-Alix

Administration: Inger Dühring & Zoya Shahbazian

Secretarial staff: Annette Kjærgaard & Kåthe Jepsen

EU project administration: Cæcilie Mikkelsen

Website: Sille Stidsen & Miguel Vega

Photo archive: Berit Lund

Student assistance: Leonardo Passadore Munkø

Publications

Coordination of documents: Alejandro Parellada

Editors:

The Indigenous World/El Mundo Indígena:
Diana Vinding & Sille Stidsen
Indigenous Affairs: Marianne Wiben Jensen
Asuntos Indígenas: Alejandro Parellada

Graphics, layout and typesetting: Jorge Monrás

ADVISORY BOARD OF IWGIA

Alberto Chirif	Kim Carstensen
Albert Barume	Kuupik Kleist
Ana Cecilia Betancourt	Morita Carrasco
B.R. Shyamala Devi	Paul Oldham
Benedict Ole Nangoro	Pedro García Hierro
Birgitte Feiring	Peter Jull
Carlos Romero	René Fürst
C.R. Bijoy	Robert K. Hitchcock
Chandra Roy-Henriksen	Sarah Pritchard
Dalee Sambo Dorough	Sharon Venne
Efraín Jaramillo	Sidney L. Harring
Geoff Nettleton	Suhas Chakma
Inger Sjørslev	Terence Turner
Jannie Lasimbang	



Beatriz Huertas Castillo

INDIGENOUS PEOPLES IN ISOLATION IN THE PERUVIAN AMAZON

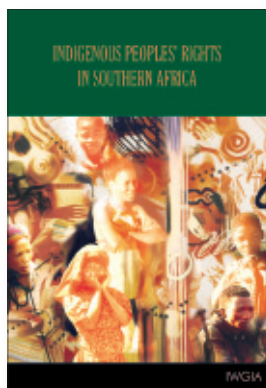
This book provides historical and anthropological perspectives with which to understand the fragility of the indigenous peoples in isolation in the face of contact with the wider society. It helps us appreciate the importance, in terms of both cultural diversity and biological diversity, of safeguarding their territories, for their future and for the future of humanity.

IWGIA – 2004

IWGIA Document No.100

ISBN 87 907 30 77

247 pages. Illus., maps.



Robert K. Hitchcock &
Diana Vinding (Eds.)

INDIGENOUS PEOPLES' RIGHTS IN SOUTHERN AFRICA

This book is concerned with the civil and political rights of indigenous peoples living in Namibia, South Africa, Botswana, Angola, Zambia and Zimbabwe. The rights to land and to natural resources – or the lack of them – are an important focus of exploration and the book gives several examples of what the loss of these rights has meant to the indigenous men and women of southern Africa. Other themes addressed in the book are community-based natural resource management, education and the efforts being made in general by indigenous groups and their supporters to defend and promote indigenous rights.

IWGIA – 2004

IWGIA Document No. 110

ISBN 87 91563 08 9

270 pages. Illus., maps.



Sita Venkateswar

DEVELOPMENT AND ETHNOCIDE: COLONIAL PRACTICES IN THE ANDAMAN ISLANDS

This book examines the links between colonialism and development in the Andaman Islands under British and Indian administrations and analyses how the various indigenous groups have responded and been impacted in different ways by the everyday dynamics of colonial administrative practices. It particularly emphasizes the dynamics of power and gender. In concluding, it looks at the current situation of the *Jarawa*, a people known to avoid contact.

IWGIA – 2004

IWGIA Document No. 111

ISBN 87 91563 04 6

262 pages. Illus., maps.



INTERNATIONAL WORK GROUP
FOR INDIGENOUS AFFAIRS