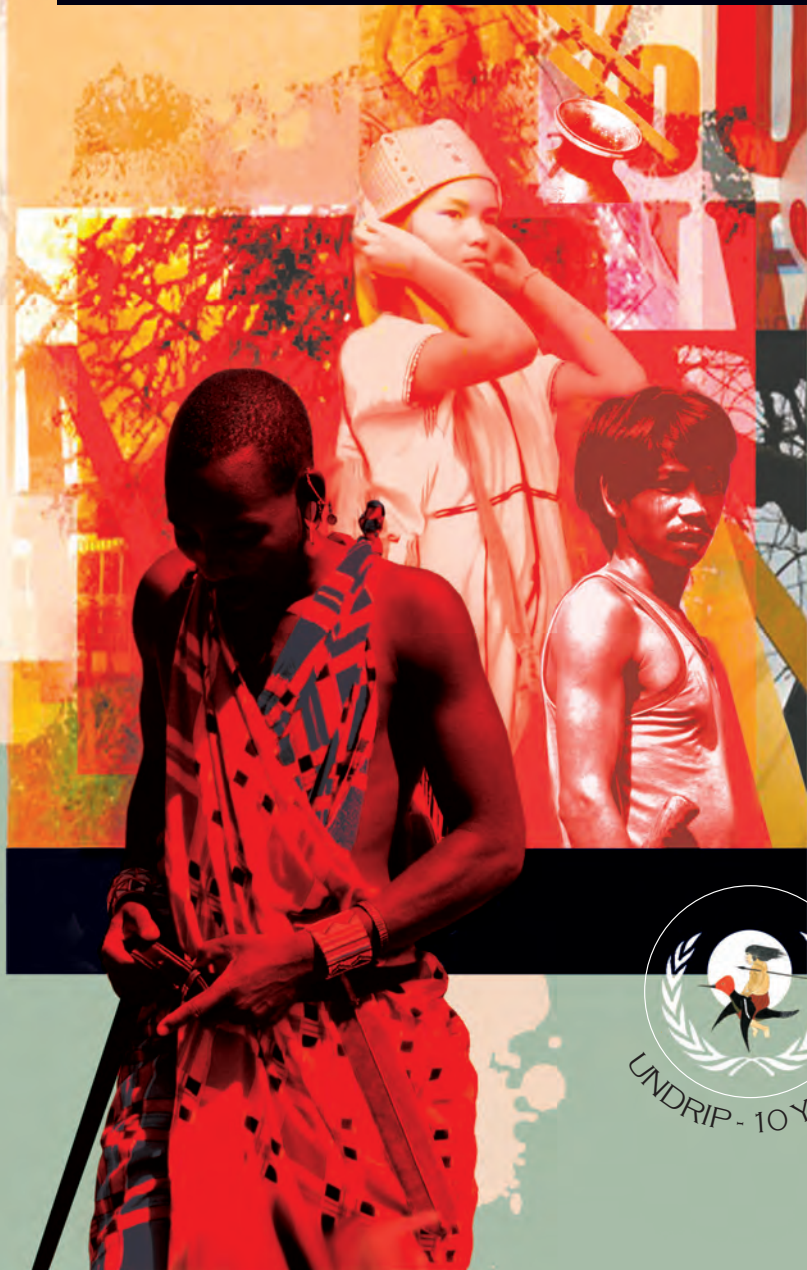


THE INDIGENOUS WORLD 2017



THE INDIGENOUS WORLD 2017

Copenhagen

THE INDIGENOUS WORLD 2017

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EDITORIAL

EDITORIAL

As the world gears up for the 10th anniversary of the UNDRIP, indigenous peoples' right to fully participate in the decision-making processes that affect their lives and futures continues to be at the heart of their struggles worldwide. The events unfolding over the last few years clearly demonstrate that, without the full and effective participation of indigenous peoples in decision making at all levels, implementation of the UNDRIP will not be possible.

At national level, the effective implementation of the rights of indigenous peoples requires states to develop ambitious reform programs, including legal and political reforms, and specific measures to ensure that indigenous peoples' rights are protected, respected and fulfilled. As stated by the UN Special Rapporteur on the rights of indigenous peoples, *"Implementation of UNDRIP should be measured against these requirements and not based on rhetorical claims of compliance or isolated measures"*.

Despite some encouraging national achievements, the reports in this year's edition continue to illustrate the great pressures facing indigenous communities at the local level. If national policies are even available they are often not properly implemented, while in some countries national policies are in direct contradiction with international human rights obligations, including the UNDRIP and ILO Convention No. 169. The country reports reiterate that the main challenges faced by indigenous peoples continue to be related to the recognition and implementation of their collective rights to lands, territories and resources, their access to justice, lack of consultation and consent, and the gross violations of their fundamental human rights. In addition, the failure of states to consult and cooperate in good faith with indigenous peoples before adopting and implementing legislative or administrative measures that may affect their lives and futures continues unabated throughout the indigenous world.

Gaining ground at the international level

Implementation of the commitments adopted by UN member states at the World Conference on Indigenous Peoples (WCIP) continued at a slow but

steady pace during 2016. Three developments are particularly relevant in this regard. *The first* was the consultation process led by the President of the UN General Assembly (PGA) on the possible measures necessary, including procedural and institutional steps and selection criteria, to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them. The PGA's appointment of four advisers in February 2016, including two representatives of indigenous peoples on an equal footing with the two representatives of member states, to assist in conducting an inclusive consultation process, is undoubtedly an important step forward in the recognition of the right of indigenous peoples to participate in UN decision-making processes. *The second* was the official launch of the System-wide Action Plan on the Rights of Indigenous Peoples (SWAP) at the 15th session of the Permanent Forum in May 2016. The aim of the SWAP is to address the persistent lack of coherence within the UN system with regard to the rights of indigenous peoples, including in its action at the country level, where the UN system has to play a much more proactive role in the promotion of UNDRIP. *The third* was the amendment of the mandate of the EMRIP by the Human Rights Council in September 2016. The new mandate, reinforcing the EMRIP's operational capacities and extending its mandate to country-level work, has the potential to fill some of the gaps that continue to hinder implementation of the UNDRIP. However, and as expressed by EMRIP's Chairperson in the article included in this book "... *having a new and strong mandate is not enough by itself. The new mandate will now have to be implemented, interpreted and operationalized, taking into account emerging opportunities, diverse national and regional contexts and resilient challenges...* "

2016 also marked the first year of implementation of the 2030 Agenda for Sustainable Development and, here, indigenous peoples continued their engagement. They participated actively at national, regional and global levels to ensure that the voice and rights of indigenous peoples are respected and promoted as the 2030 Agenda is being operationalized and implemented across the world. Through their consistent advocacy work, indigenous peoples have highlighted three main priorities in the implementation of the 2030 Agenda: a) data disaggregation according to indigenous or ethnic identifiers; b) full participation of indigenous peoples in developing national action plans; and c) participation of indigenous peoples in follow-up and review at all levels.

Within the area of climate change, the Paris Agreement, adopted in 2015, entered into force in November 2016, which was much earlier than anticipated by most and is seen as a great success with regard to states' commitments to combating climate change. The Paris Agreement includes in its preamble a paragraph recognizing the role of human rights, including indigenous peoples' rights. It is important that these principles become part of the modalities and rules of implementation of the Paris Agreement. Another key outcome from Paris for indigenous peoples was a COP-decision to establish a knowledge-sharing platform for indigenous peoples and local communities. Indigenous peoples and states embarked on an informal dialogue on the scope of such a platform under the leadership of the Moroccan presidency of COP22.

With regard to issues related to recognition and respect of indigenous peoples rights in the context of the implementation of UNESCO's World Heritage Convention, it is important to note the explicit reference made this year by the World Heritage Committee (WHC) to the principle of free, prior and informed consent (FPIC) when considering the nomination of the Kaeng Krachan National Park (Thailand) and the involvement of Karen communities living in the park. This is the first time ever that the WHC has called for the FPIC of indigenous peoples in a decision on a specific World Heritage nomination.

Some encouraging developments at national level

Whether in terms of formal legislation or more politically symbolic gestures, there have indeed been some noteworthy national developments in all regions.

In Peru, encouraging news came in the form of the consolidation of the Autonomous Territorial Government of the Wampis Nation (GTANW), resulting in the Wampis nation achieving jurisdictional sovereignty over their territory of 1,300,000 hectares of land in the Loreto and Amazonas regions. This case formed a milestone for indigenous sovereignty as the constitution of this autonomous government forces the Peruvian state to recognize their right to govern themselves, within their own territorial boundaries. Similarly, in Bolivia, the first autonomous local government took office in the province of Charagua, in January 2017. The autonomous government is the first of its kind in the country's nearly 200 years of existence.

In Myanmar, a National Land Use Policy (NLUP) was adopted by parliament in 2016, which includes a chapter on "*Land Use Rights of Ethnic Nationalities*", referring to customary land tenure and land-use mapping. The document also mentions Free, Prior and Informed Consent (FPIC) as a means of addressing "*land monopolization and speculation*". The NLUP is a landmark in Myanmar's reforms as it has undergone extensive public consultation. After many years of debate and consultations, a Community Land Act was finally adopted in Kenya. The Community Land Act came into effect on 21 September 2016, thereby legally recognizing community tenure and officially marking the transition from Trust Land and Group Ranch tenures. The Community Land Act is potentially a very important piece of legislation for indigenous peoples in Kenya due to the fact that most communities under the community land regime are pastoralists and hunter-gatherers. In Bangladesh, the World Bank decided not to move forward with the construction of a 123-kilometre road in Rangamati, Chittagong Hill Tracts. A broad range of stakeholders, including indigenous peoples, had raised serious concerns about the lack of meaningful engagement of indigenous peoples in the project, including insufficient feasibility studies. After years of the High Court Division challenging the Chittagong Hill Tracts Regulation 1900 as "a dead law", the Supreme Court of Bangladesh finally, in November 2016, reaffirmed the significance of the CHT Regulation, which provides safeguards for indigenous peoples through the special legal and administrative status of the CHT region.

Formal apologies were also issued to indigenous peoples during 2016. In Taiwan, President Tsai Ing-wen issued a formal apology on behalf of the government to all Taiwanese indigenous groups for the discrimination and mistreatment they had suffered over the past four centuries. A formal apology was also given in Namibia in mid-2016, as the German government resolved to recognize and formally apologize for the genocide of Herero, Nama and other groups between 1904 and 1908. Negotiations for reparations from Germany, led by Herero and Nama chiefs, are still in the process of being resolved. In Canada, Prime Minister Justin Trudeau has signalled a renewed relationship with indigenous peoples based on recognition, rights, respect, cooperation and partnership. In December 2015, Trudeau announced that his government would partner with indigenous communities, provinces and territories to implement the Truth and Reconciliation Commission's 94 Calls to Action as a key step in advancing reconciliation. In May 2016, the federal government announced that as

part of this commitment it was now a full supporter of the UN Declaration on the Rights of Indigenous Peoples “without qualification” and intended to adopt and implement it in accordance with the Canadian Constitution.

In Uganda, the Iuk people managed to secure election of their own Member of Parliament (MoP) for the first time, enhancing their voices in decision-making fora. Much hope is therefore placed on this new MoP in terms of lobbying for the development of the Iuk people.

The establishment of the cross-border Nordic Sámi Convention is also noteworthy, as it includes 46 articles on safeguarding and strengthening Sámi rights. The convention has, nonetheless, been met with criticism from Sámi legal experts and Sámi organizations and is, as of writing, being considered by the three Sámi parliaments and the governments of Finland, Norway and Sweden. All three countries' Sámi parliaments and national parliaments will have to give their consent to the convention before it can enter into force.

Shrinking space for indigenous activists

The year 2016 witnessed an alarming rate of violence and discrimination of indigenous peoples and human rights defenders around the world. These disturbing trends are also reflected in the more than 20 press releases issued by the Special Rapporteur on the rights of indigenous peoples. Her concerns cover issues ranging from violence and discrimination against indigenous women in Canada to the human rights impacts of lead contamination in the water supply in Flint, USA and the murder of Berta Cáceres and a call to end impunity in Honduras (see article in this book). The different reports in this year's edition of *The Indigenous World* accordingly illustrate the fact that gross human rights violations persist around the world and, in every region, we are witnessing forcible evictions and displacements of indigenous communities. Several indigenous leaders and activists involved in the defence of territorial rights were arrested, harassed, threatened and even murdered during 2016. Repression by military and paramilitary forces, in conjunction with these forcible evictions of people from their lands, has also taken a deadly toll.

The human rights situation of pastoralists in the Morogoro Region of Tanzania, for example, turned from bad to worse towards the end of 2016 when

indigenous peoples were evicted in several districts, as the government pushes for the area to become a Game Controlled Area. The African Commission on Human and Peoples' Rights' Working Group on Indigenous Populations sent an urgent appeal to the President of Tanzania regarding the alleged arbitrary arrest and detention without trial of pastoralist rights defenders and lawyers who had been actively lobbying against the land grab in the Loliondo region.

Eritrea is suffering from gross human rights violations. A UN Commission of Inquiry published a landmark report in June 2016 which stated that the human rights situation in Eritrea amounted to crimes against humanity. The UN Commission of Inquiry on Human Rights and the UN Special Rapporteur on the Situation of Human Rights in Eritrea have made several observations on the rights of indigenous peoples and emphasize the abuses committed against two minority ethnic groups, the Afar and Kunama. Eritrea does not have any form of independent civil society organizations let alone organizations advocating for the rights of indigenous peoples. Claims of indigeneity or other claims to group identity have never been officially acknowledged by the Eritrean government. In Ethiopia, a further deterioration in the human rights situation took place in 2016, exacerbated by the imposition of a six-month-long state of emergency as of October of that year. In 2016, under its Urgent Action Early Warning procedure, the CERD considered the case of Ethiopia with regard to arrests, mass killings and enforced disappearances in Oromia and Amhara.

The situation of the indigenous Palestinian Bedouin, refugees since 1948, deteriorated in 2016 and can be considered a humanitarian issue as some 27,000 pastoral herders live under full Israeli military control. For the Bedouin, and an environment in which they are increasingly impoverished and vulnerable, with a culture that is deliberately being eroded, the future is bleak and their situation tragic.

In Russia, organizations working for indigenous peoples' rights are experiencing increased criminalization and stigmatization. Most independent indigenous organizations, together with 150 other civil society organizations, are now listed as "foreign agents", and this particular law has led to harassment, persecution and interrogation of activists as well as the disappearance of many independent NGOs.

Threats posed by business enterprises

Mega infrastructure projects, investments in extractive industries and large-scale agriculture are increasingly posing a threat to the everyday life of indigenous peoples and their ability to maintain their land, livelihood and culture. The issue of extractive industries is once again a recurrent and overarching theme of this year's articles in *The Indigenous World*.

During the Fifth Annual UN Forum on Business and Human Rights in November 2016, Pavel Sulyandziga, the Chairperson of the UN Working Group on Business and HR, stated in his opening remarks that since the UN had unanimously endorsed the Guiding Principle on Business and Human Rights in 2011 they had become “the authoritative blueprint for State and business action to prevent, mitigate and redress business-related harm [...] Rather than being ‘voluntary’ in nature, they provide authoritative guidance as to the application of existing international human rights standards to business-related harm”.¹ However, while progress has been made, and some businesses and governments are making real efforts to respect those at risk, cases of adverse impacts on human rights are widespread and there is still a long road ahead in ensuring a human-rights based approach to business and development. As an indigenous representative himself, Pavel Sulyandziga stressed that indigenous peoples are not against development and not against economic progress as such but believe that this development should and must include indigenous peoples’ “direct participation and informed consent”.²

The Inter-American Commission on Human Rights (IACHR) and the African Commission on Human and Peoples’ Rights both published reports during 2016 on the impact of extractive industries on indigenous peoples in Latin America and Africa respectively. Besides these two reports, the articles throughout this book show the importance of the issue as well as its magnitude across the regions, ranging from hydroelectric projects (Muskrat Falls in Inuit Nunangat, Lom Pangar Hydroelectricity Dam in Cameroon), mining projects (zinc mining and uranium extraction in Greenland, the Orinoco Mining Arc in Venezuela, the Pankri-Barwadih coal mine in India, as well as the San Carlos Panantza mining project in Ecuador), wind power projects (Björkhöjden and Ögonfågna in Sweden) and oil and gas projects (Yamal Liquid Natural Gas (LNG) project in Russia, Africa Oil and Tullow Oil exploration in the East African Rift Basin, the Dakota Pipeline

Project in the US) through to mega infrastructure projects such as the Grand In-ter-oceanic Canal across communal lands in Nicaragua not to mention plans to enlarge Kilimanjaro Airport on Maasai lands in Tanzania.

In Latin America, Africa, Asia, but also in Europe, North America and Russia, resource extraction is having a disastrous impact on indigenous peoples' rights to lands and resources, a healthy environment and culture. Across the regions, these various forms of resource extraction and exploration have led to conflict, protests and serious allegations of gross violations of human rights.

In India, tribals who have lost their lands due to mining, industrialization and non-agricultural projects have been denied proper compensation, rehabilitation and other facilities, and those who oppose land acquisition or demand proper rehabilitation have been met with force. In August, two tribal farmers were killed and over 40 others injured when police opened fire on a crowd protesting against a thermal plant in Gola in Jharkhand. The protestors claimed that their crops were being damaged because of excessive use of river water by the power plant run by Inland Power Limited and because of the pollution it was causing. In October, four tribals were killed when police opened fire during a protest in Hazaribagh district, Jharkhand, against land acquisition by the National Thermal Power Corporation (NTPC). The protestors were demanding higher compensation, employment and rehabilitation.

In Ethiopia, the ongoing situation of "land grabbing", where companies lease large tracts of land from the Ethiopian government in return for significant levels of foreign investment, has ignited conflict in the fragile region of Gambela. The deteriorating political situation in South Sudan has resulted in an influx of Nuer refugees, further marginalizing the Anuak and fundamentally altering the region's demography, as well as causing increased pressure on land and other resources. Violence in the region increased significantly in 2016.

Indigenous peoples use different strategies to protect their land rights. Many are trying to map their territories. In Panama, indigenous peoples now have a satellite system for monitoring land use in their territories. This technology has been used to produce a base map of forest cover, including the indigenous territories that are recognized or in the process of recognition, for use as a reference in support of territorial defence initiatives. In Burkina Faso, pastoralists who have suffered badly from theft of their livestock, with no recourse to justice, have formed local self-defence groups known as Koglweogo, aimed at helping to ensure the security of the nomadic pastoralists. As a result, the pastoralists have

enjoyed greater security in the province of Mossi Plateau. In the Philippines, community members and plantation workers from Palawan reported how their rights were being violated by several companies that were continuing to expand their palm oil plantations on community lands without their Free, Prior and Informed Consent (FPIC). As the result of an audit that is currently being carried out by the Secretary of the Department of Environment and Natural Resources, 10 mining operations have already been suspended for violating environmental laws, and another 20 mines have been recommended for suspension. In Eritrea, the Canadian Nevsun Resources Ltd., which is exploiting natural resources on land belonging to potential indigenous groups of the Afar and Kunama, are involved in a pending court case on corporate social responsibility at the Supreme Court of British Columbia in Canada, aimed at challenging the alleged complicity of this company in the perpetration of human rights violations committed at the company's mining site in Eritrea.

Indigenous women

The Special Rapporteur is mandated to pay particular attention to the rights of indigenous women in her work. In this sense, in January 2016 she was invited to the symposium *Planning for Change: Towards a National Inquiry and an Effective National Action Plan*, organized by the Canadian Feminist Alliance for International Action and the Native Women's Association of Canada on missing and murdered indigenous women in order to discuss the National Inquiry into the issue. A commission is to recommend actions aimed at removing the systemic causes of violence and increasing the safety of indigenous women and girls. Indigenous communities and political organizations have welcomed the inquiry but have also indicated their concern at the slow start and as well as issues with regard to transparency. Under its Urgent Action Early Warning procedure, the CERD considered a number of serious indigenous rights-related cases which specifically address indigenous women, including cases of rape and attempted forcible eviction of indigenous women in Lote Ocho by staff from a Canadian mining company, the land claims of the Lubikon Lake Nation, the threat of extinguishment of the land rights of the Secwepemc and the St'at'imc nations, and the Sepur Zarco case from Guatemala.

The complainants in the Sepur Zarco case, a group of 15 women of the Maya Q'eqchi people who were victims of rape and sexual slavery committed by members of the army in the *Sepur Zarco* military base during the internal armed conflict, have denounced those acts and called for justice. After a long process, two of the principal culprits were arrested. Finally, 34 years after the acts were committed, in February 2016, the army officers were sentenced to 120 and 240 years of imprisonment respectively. This case clearly sets a precedent worldwide since it is the first time a crime of sexual abuse during an armed conflict has been tried in the same country in which it was committed.

Under the framework of the Fifth National Indigenous Congress (CNI) held in Mexico from 9 to 14 October, the EZLN and the CNI commemorated the 20th anniversary of the National Indigenous Congress and the living resistance of the native peoples, nations and tribes of Mexico. At the close of the Congress, they released a press release headed: *And May the Earth Tremble at its Core* in which they report that they will run an indigenous woman as an independent candidate for the 2018 elections. This is remarkable as this will be the first indigenous woman ever to run for the Presidency in Mexico.

10 years of paving the way with the UNDRIP

The most significant cornerstone of indigenous peoples' rights, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) celebrates its 10th anniversary in 2017. Looking back over the last decade, it is clear that indigenous communities across the world have been able to use this important declaration as a beacon to advance their rights and improve their situation.

With the adoption of the Declaration on 13 September 2007, a milestone was reached in the history of indigenous peoples' struggles for their rights and recognition at international level. Prior to its adoption, the Declaration had been discussed for more than 20 years within the former Commission on Human Rights and then in the General Assembly, where it was passed with 144 votes in favour, 11 abstentions and 4 votes against. The text recognizes a wide range of basic human rights and fundamental freedoms to indigenous peoples. Among these are the right to self-determination, an inalienable collective right to the ownership, use and control of lands, territories and other natural resources, rights in terms of maintaining and developing their own political, religious,

cultural and educational institutions, and protection of their cultural and intellectual property. The Declaration highlights the requirement for prior and informed consultation, participation and consent in activities of any kind that impact on indigenous peoples, their property or territories. It also establishes the requirement for fair and adequate compensation for violation of the rights recognized in the Declaration and establishes measures to prevent ethnocide and genocide.

Ten years down the line, the Declaration is still the central benchmark for indigenous peoples' rights across the world. One of the important principles of the Declaration that was further reaffirmed in the WCIP Outcome Document, and one that is repeatedly mentioned in many of the articles in prior editions and in this edition particularly, is the obligation of states to obtain the free, prior and informed consent (FPIC) of indigenous peoples before adopting and implementing legislative or administrative measures that may affect them. The various country reports demonstrate that full respect and implementation of this principle is more central than ever to indigenous peoples' rights and well-being. Throughout the world, numerous examples show that both states and industries are repeatedly ignoring the principle of FPIC and, indeed, proceed with development projects on indigenous lands through dubious processes of consultation or without consulting the people living on and from the land that the projects will affect. Exploration and exploitation of natural resources is intensively expanding and indigenous peoples across the world, who live on lands rich in minerals and natural resources, are thus being affected by mining, hydroelectric dams, fossil fuel development, logging and agro-plantations, as well – increasingly - as renewable energy projects and tourism. The impact of natural resource development on indigenous peoples' lands, lives and well-being is illustrated in every article of this book.

While the articles in this volume address events, specific cases and highlight the general situation of indigenous peoples in 2016, this year's volume also extraordinarily includes an introductory section that focuses on and celebrates the 10th anniversary of the UNDRIP, which coincides with the publication of this year's *Indigenous World*. In the following section, the impact of the UNDRIP over the last 10 years will thus unfold, with brief regional chapters explaining and illustrating the different achievements and challenges that the UNDRIP has engendered for the respective regions since its adoption in 2007.

About this book

IWGIA would like to thank all those who have contributed to this 2017 edition of *The Indigenous World* and shared their valuable information and insights on the situation of indigenous peoples in their respective countries and in relation to processes at the international and regional levels.

The purpose of *The Indigenous World 2017* is to give as comprehensive an overview as possible of the developments indigenous peoples have experienced during 2016. It is our hope that indigenous peoples themselves and their organizations will find it useful in their advocacy work of improving indigenous peoples' human rights situation. They may also, in this regard, find it inspiring for their work to read about the experiences of indigenous peoples in other countries and parts of the world. It is also IWGIA's wish and hope that the Yearbook will be useful to a wider audience interested in indigenous issues and that it can be used as a reference book and a basis for obtaining further information on the situation of indigenous peoples worldwide.

This year's edition includes 59 country reports and 12 reports on international processes. As usual, the authors of this volume are indigenous and non-indigenous activists and scholars who have worked with the indigenous movement for many years and are part of IWGIA's network. They are identified by IWGIA's regional coordinators on the basis of their knowledge and network in the regions. All the contributions to this volume are offered on a voluntary basis—this we consider a strength but it also means that we cannot guarantee to include all countries or all aspects of importance to indigenous peoples every year.

We would like to stress that any omissions of specific country reports should not be interpreted as “no news is good news”. In fact, sometimes, it is the precarious human rights situation that makes it difficult to obtain articles from specific countries. In other cases, we have simply not been able to get an author to cover a specific country. If you would like to contribute to this book, please contact the IWGIA team. The articles in this book express the views and visions of the authors, and IWGIA cannot be held responsible for the opinions stated herein. We therefore encourage those who are interested in obtaining more information about a specific country to contact the authors directly. It is, nonetheless, our policy to allow those authors who wish to remain anonymous to do so due to the political sensitivity of some of the issues raised in their articles.

The respective country maps are, however, compiled by IWGIA and the content therein is the responsibility of IWGIA and not the author. We wish to stress that some of the articles presented take their point of departure in ethnographic regions rather than following strict state boundaries. This is in accordance with indigenous peoples' worldview and cultural identification which, in many cases, cuts across state borders. ○

Katrine Broch Hansen

Co-editor

Lola García-Alix and Kathrin Wessendorf

Interim Directors

Copenhagen, April 2017

Notes

- 1 Pavel Sulyandziga, Chairperson of the UN Working Group on Business and Human Rights, 2016 UN Forum on Business and Human Rights, "Opening remarks" 14 November 2016, Geneva. Available here: <http://www.ohchr.org/Documents/Issues/Business/ForumSession5/Statements/PavelSulyandziga14Nov2016.pdf>
- 2 Ibid, p. 3.

UNDRIP IMPACT ON ASIA: 10 YEARS ON

This paper gives a brief overview of the implementation of the UNDRIP, focusing on Free, Prior and Informed Consent (FPIC) in Asia. Examples are included that highlight positive practices and also give a picture of the challenges and ways forward in promoting Article 42 of the UNDRIP. The paper is divided into three parts; substantive, procedural and recommendations. The substantive part is related to *de jure* and *de facto* recognition of the identity and rights of indigenous peoples in accordance with international human rights instruments, including the UNDRIP and ILO Convention No. 169. The procedural part focuses on the implementation of substantive rights, and the third part on challenges and recommendations.

Importantly, all Asian governments supported the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) during the UN General Assembly (GA) vote in 2007. Even though some of the Asian countries expressed their different understanding during the GA, indigenous peoples are recognized or at least identified as distinct peoples in Asia through constitutions (India, Nepal, Philippines, and China), laws (Cambodia and Taiwan), policies (Thailand etc.) and, finally, under an Agreement/Treaty (Bangladesh).¹

Indigenous peoples in Asia were recognized or identified prior to the adoption of the UNDRIP but this does not necessarily result in respect for the equal dignity and rights of indigenous peoples as prescribed by the international human rights instruments, including ILO Convention N° 169 and the UNDRIP. The adoption of the UNDRIP certainly provided an instrumental basis on which to treat, at least to some extent, indigenous peoples as a distinct legal entity.

I. Substantive part

Recognition of indigenous peoples

Institutional recognition is an essential factor for exercising the rights of indigenous peoples, including Free, Prior and Informed Consent (FPIC). There is no uniform practice in terms of recognizing the customary and representative institu-

tions of indigenous peoples in Asia. In the Philippines, section 2(c) of the IPRA of 1997 states that the customary institution is recognized, protected and respected by the state. In Indonesia, the Constitution, and more recent legislation, implicitly recognizes some rights of the peoples referred to as *Masyarakat adat* or *Masyarakat Adat*, including in the Agrarian Reform Act No. 27/2007 and Act No. 32/2010 on the environment, both of which also use the working definition of AMAN.² In Sabah and Sarawak in Malaysia, the Native Court is recognized with the jurisdiction to handle cases in breach of customary law and customs, if all parties are natives. Principally, the Native Court deals with marriage, divorce and judicial separation, adoption, guardianship or custody of infants, maintenance of dependents and legitimacy, gifts of succession, testate or interstate and other cases conferred by written law.

In some countries, indigenous organizations are recognized indirectly under a specific legal provision. In the context of Nepal, the Nepal Federation of Indigenous Nationalities (NEFIN) is part of the Council of the National Foundation for the Development of Indigenous Nationalities (NFDIN). This Council recommends the Vice-chair and members of the Executive Council.³ The NFDIN is a semi-governmental organization with a mandate of the overall development of indigenous nationalities. The Indigenous Tribal Council is constitutionally recognized in India. In many countries, such as the Philippines, Nepal and India, specific state institutions have been established to deal with issues related to the rights and development of indigenous peoples.

Freedom of association, organization and expression are guaranteed under the respective constitutions, such as article 19 of the Indian Constitution; articles 16 and 17 of the Constitution of Pakistan; article 14 of the Constitution of the Democratic Socialist Republic of Sri Lanka; article 9 of the Malaysian Constitution, etc. In order to exercise these rights, indigenous peoples have formed organizations to protect, promote and, to some extent, defend their rights, including culture, identity, land territories and natural resources.

National Human Rights Institutions (NHRIs)

Besides recognizing the customary institutions, the NHRIs are using the UNDRIP as the primary legal framework with which to monitor the human rights situation of indigenous peoples. In 2013, the Human Rights Commission of Malaysia (SU-

HAKAM) commissioned a national inquiry into the land rights of the Orang Asli and published a comprehensive report.⁴ The Commission made significant recommendations based on the UNDRIP, including FPIC. However, sufficient implementation of these recommendations is still lacking. In 2014, the National Human Rights Commission of Indonesia conducted its first national inquiry into violation of indigenous peoples' land rights. The Commission made various recommendations, including improving the licensing system for natural resource exploitation based on principles of transparency, participation and accountability, including the principle of FPIC.⁵ Similarly, the NHRI in Nepal has established the Collective Rights Division and the Gender and Social Inclusion Division. The Commission has made recommendations to implement the UNDRIP and ILO Convention No. 169 and is working to adopt a National Action Plan on the implementation of ILO Convention N° 169 *vis-à-vis* the UNDRIP.

Recognition of culture and customary law

Recognition of customary law and culture is an indispensable element in exercising the right to FPIC. Customary land tenure is safeguarded under various provisions of ILO Convention No. 169 and the UNDRIP. In Malaysia, we can see recognition of customary rights in the constitution and law but this is rarely seen in practice. As much as 20% of state land in Sarawak is classified as Native Customary Rights Land but only 2% of this land is surveyed and titled.⁶ In the context of Nepal, no national law recognizes the collective land title of indigenous peoples but this does not prevent private entities from recognizing ancestral domain in relation to carrying out hydroprojects, e.g. the Tanahu Hydro Power, which is located in the ancestral land of Marghar, or recognizing the land rights of indigenous peoples even if they do not have title to their lands, which are owned by individuals.

Recognition of lands, territories and natural resources

Recognition of lands, territories and natural resources (LTR) determines the exercise of other rights, including the rights to life, security and liberty. There are few countries that have laws (constitutional or statutory) recognizing indigenous peoples' rights to LTR. The Fifth Schedule of the Indian Constitution deals with the

administration and control of *Scheduled Areas* and *Scheduled Tribes*. It restricts the entry and ownership of land and resources in Adivasi areas on the part of non-adviasis and outsiders.⁷ In the Philippines the Republic Act 8371 (The Indigenous Peoples' Rights Act) of 1997 supports IPs cultural integrity, their right to lands and to the self-directed development of these lands.

II. Procedural part

Right to information

Prior and full disclosure of information is another key element of FPIC. The right to information is a constitutionally guaranteed fundamental right in many countries, including India,⁸ Nepal,⁹ and Pakistan.¹⁰ Many countries have specific laws on the right to information, including Pakistan¹¹ and the Philippines.¹² Despite this, indigenous peoples have very limited access to information due to language barriers, administrative complexities and provisions of confidentiality of information. Environmental laws in some Asian countries such India require a public hearing but their implementation mechanisms are not particularly friendly or culturally appropriate to indigenous peoples. In Nepal, very few World Bank-funded hydro-power projects provide information in indigenous languages, and there is a lack of good faith consultations, which often results in conflicts between the project holder and the affected indigenous peoples.

Consultation

Consultation with affected indigenous peoples in relation to project activities is a legal requirement. In some countries, it is a policy requirement. In Nepal, section 8.2.8 (d) of the 2014 National Policy on Land Acquisition, Relocation and Rehabilitation states: "Disadvantaged Indigenous Peoples and Poor Dalit shall be relocated in the area where their people are living in cluster. Particular attention shall be given to avoid impact to their language, religion, culture, way of life and livelihoods", and furthermore underscores in section 8.3.1 "Meaningful consultation will be carried out with affected, people, family and stakeholder in the whole project cycle".

Free, Prior and Informed Consent

In the Philippines, the Indigenous Peoples Rights Act (IPRA) recognizes FPIC as a part and process of exercising the right to self-determination. Section 59 of the 1997 IPRA states “[A]ll department and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the National Commission on Indigenous Peoples (NCIP) that the area affected does not overlap with any ancestral domain. Such certificate shall only be issued after a field-based investigation conducted by the Ancestral Domain Office of the area concerned: Provided, that no certificate shall be issued by the NCIP without the free and prior informed and written consent of the IPs concerned: Provided, further, that no department, government agency or government owned or controlled corporation may issue new concession, license, lease, or production-sharing agreement while there is pending Certificate of Ancestral Domain Title (CADT) application: Provided, finally, That the IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process”.

The IPRA law created the National Commission on Indigenous Peoples (NCIP) under the office of President, and this is an agency with frontline services for indigenous peoples. The NCIP issues guidelines for the implementation of IPRA, some of which are the NCIP Administrative Orders laying down the FPIC Guidelines of 2002 and 2006.¹³ New guidelines have been introduced by NCIP with some updates. Although there have been a number of complaints relating to violations of FPIC, including weak implementation of the guidelines, there are significant improvements in respect of FPIC. The FPIC Guidelines are not mere instructions to respect the FPIC but also a cornerstone in assessing exercise of the right to self-determination. They also form a road map to engage indigenous peoples in decision-making processes.

In the Nepal case of *Dr Bhaikaji Tiwari vs. Chaturbhuj Bhatta*, the Supreme Court interpreted that the state could not exercise the Principle of Eminent Domain without limitation and in an arbitrary manner. Free, Prior and Informed Consent is mandatory prior to appropriating a house in which a person is residing.¹⁴ Article 51(e) and (f) of the Constitution of Nepal set out the policy of FPIC

in relation to protection of the environment. There are a number of interesting examples on how the right to consent was respected in India. The different facets of the UNDRIP are expressed in Indian legislation through the Forest Rights Act (“FRA”), which requires consent for the use of forests for development projects.

There are a few interesting examples of courts/tribunals upholding local communities’ rights to reject the implementation of a project. Notable among these is the Supreme Court of India’s precedent-setting 2013 decision which cited the FRA in upholding the rights of the Dongria Kondh indigenous community to reject mining plans in their traditional territory. To give some context, it had been more than a decade since Adivasi groups began their struggle to save the Niyamgiri Hills from Vedanta’s mining project. In April 2013, the Supreme Court ruled that Vedanta Resources could only mine bauxite from Orissa’s Niyamgiri Hills with the consent of all adult members of the project-affected villages. All 12 villages voted against bauxite mining in the Niyamgiri Hills, effectively vetoing the multi-billion-dollar project.¹⁵

Other FPIC-type examples from India

On 16 March 2016, five Adivasi villages in Raigarh, Chhattisgarh, unanimously vetoed the plans of South Eastern Coalfields Limited (SECL), a subsidiary of India’s public sector coal mining giant, Coal India Limited (CIL), to mine their forests. These villages were Pelma, Jarridih, Sakta, Urba and Maduadumar. On 23 March 2016, the Kamanda gram sabha of Kalta G.P in Koida Tehsil of Sundargarh district in Odisha unanimously decided not to give its land over to Rungta Mines, as proposed by the Industrial Infrastructure Development Corporation of Odisha Limited (IDCO).

On 4 May 2016, the National Green Tribunal ruled that before clearance could be given to the Kashang hydroelectric project (to be built by the state-owned company, Himachal Pradesh Power Corporation Ltd. or HPPCL), the proposal should be placed for approval before the Lippa village gram sabha in Kinnaur district of Himachal Pradesh. The 1,200 residents of Lippa have been waging a seven-year struggle against the project.

III. The role of UN Regional and Country Offices

UN regional and country offices can play a significant role in promoting implementation of the UNDRIP; however, they have very limited programs and activities and these are therefore almost invisible to indigenous peoples and their organizations. Importantly, article 32 of the UNDRIP, the recommendations of the UNPFII, EMRIP, and the Special Rapporteur, as well as the Outcome Document of the WCIP provide a consistent and coherent roadmap for the UN regional and country entities to work on promoting implementation of the UNDRIP. Nevertheless, indigenous peoples continue to be marginalized and excluded from their respective plans and programs. For example, the Governance and Peace-building team at the UNDP Bangkok Regional Hub is working to strengthen the political democratic processes and governance systems, taking into account the voices and rights of all people for equitable and sustainable development. It is also spearheading regional initiatives to address the complex governance challenges in the region, including on sensitive issues such as political participation and access to services for indigenous peoples and marginalized groups, including sexual and gender minorities.¹⁶ However, the program does not specifically focus on implementation of the UNDRIP and FPIC. There is no doubt that the role of the regional UN Hub and Country Offices can have a significant impact on implementation of the UNDRIP, including FPIC. Importantly, the inclusion of and partnership with indigenous peoples can promote sustainable development, justice and peace.

Challenges and opportunities

Having constitutional and legal provisions is not enough. They require due implementation. It is important to create an environment in which the right to FPIC will be implemented or respected without invoking remedial mechanisms or protesting in Asia. Prior consultation, premeditated representation during public hearings and consultations, limited participation or even non-representation at all of indigenous women, youth and person with disabilities are key challenges in Asia in terms of exercising the right to FPIC. The UN Country Offices and Special Agencies, such as the Country Office of the International Labour Organization (ILO) and its pro-

grams, need to increase their efforts to promote implementation of the UNDRIP and ILO Convention. In the context of Nepal, a joint UN Development Assistance Framework (UNDAF) Steering Committee, including the UN Country Team and the Government of Nepal, was formed in June 2011 to lead the overall UNDAF design.¹⁷ However, there is no representation of indigenous peoples in the steering committee and nor were they consulted. As such, there was no linkage between indigenous peoples and the UN Country Offices in the preparation of UNDAF.

There are opportunities for a more effective implementation of the UNDRP. First and foremost would be for all Asian governments to endorse the UNDRP as well as recognize indigenous peoples' identity and rights in their countries' constitutions, laws and policies. The indigenous peoples' movement and their organizations have been consistently demanding implementation of the UNDRIP, and demanding constructive dialogue, collaboration and partnership around developments that affect them. Most Asian governments have mechanisms relating to indigenous peoples' affairs and development. NHRIs are also working on the rights of indigenous peoples and are involved in litigation processes related to violations of indigenous peoples' human rights and fundamental freedoms as stipulated in the UNDRIP, ILO Convention N° 169 and CERD. The existence of UN Country Offices, their development policy, i.e. UNDAF, and the support of donor agencies can play a constructive role in this implementation.

Conclusion and recommendation

Due to the longstanding struggle of the indigenous movement in Asia, there is growing space for recognition of the equal rights and dignity of indigenous peoples in line with the UNDRIP. Gradually, the issues and concerns of indigenous peoples are being recognized on the national political agenda and are now being understood as matter of "just and unjust". However, coherent and systematic efforts at community, national and international level are essential in order to fight injustice. The UNDRIP is frequently referred to by government agencies and non-state actors, including business entities who are working with issues that concern and affect indigenous peoples. The UNDRIP provides a framework for constructive lobbying and advocacy work, and provides a consensus within which to resolve issues relating to aggressive development amicably. IPs do, however, need

to strengthen their strategic efforts to advance in the implementation of the rights enshrined in the UNDRIP at all levels, from local to international level.

The UN mechanisms dealing with IP rights (UNPFII, EMRIP and SRIP) can play a significant role in promoting the UNDRIP, including FPIC, while implementing their mandates. UNPFII and EMRIP could, in this regard, establish a mechanism or at least assign some of their experts to monitor regional developments and UN Country Offices' activities relating to the implementation, monitoring and facilitation of the UNDRIP and FPIC. This mechanism or Expert Member could create a synergy between the regional, national and community levels among rights-holders, duty-bearers and stakeholders for the effective implementation of the UNDRIP.

All UN Country Offices in the region should recognize indigenous peoples (in line with the UNDRIP/ILO Convention N° 169) and ensure their inclusion and participation in the review of UNDAF. Participation of the specific national mechanism and/or institution (i.e. NCIP, NFDIN, Tribal Commission etc.) should create some space for IPs to reflect their voice in the formulation plan, implementation and evaluation.

While carrying out their mandates, UNPFII, EMRIP, SRIP and other relevant international mechanisms should have periodic meetings to jointly review the implementation of recommendations related to UNDRIP with national mechanisms dealing with IP issues and NHRIs. In such meetings, it is important to have the presence of representatives of the UN Country Team or staff members from relevant sectors. The mandate of the aforementioned three UN mechanisms should be extended to conducting an international inquiry into gross violations of the rights enshrined in the Declaration. Awareness/Orientation Programs for policy makers, implementers, judges/court staff, stakeholders and indigenous peoples are important at national and community levels. Policy and tripartite (IPs, governments and stakeholders) dialogues focusing on specific issues and problems will promote a better understanding and help conflict resolution. ○

Notes and references

1 *The Indigenous World 2016*, IWGIA.

2 *Ibid.* p. 262.

3 Sec. 7 (1) C and 7(1)L of NFDIN Act, 2007.

4 Published in Malaysia by the National Human Rights Commission in 2013.

- 5 Summary of the Inquiry, http://www.forestpeoples.org/sites/fpp/files/publication/2016/04/kom-nas-ham-nationalinquiry-summary-apr2016_p.7.pdf
- 6 <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/native-customary-rights-sarawak> visited 18 January 2017.
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- 8 Article 19(1) of the Constitution of India.
- 9 Article 27 of the Constitution of Nepal, 2015.
- 10 Article 19 A of the Constitution of Pakistan (18th Amendment).
- 11 Right to Information Ordinance 2002.
- 12 Executive Order No. 2 on Freedom of Information.
- 13 Policy Brief, Department of Environment and Natural Resources Climate Change Office Philippines, 2013, p.1.
- 14 Decision No. 9508, Volume 57, Chaitra, Series 12, 2072
- 15 For more information, please see: Amnesty International, India: Landmark Supreme Court ruling a great victory for indigenous rights (April 2013).
- 16 http://www.asiapacific.undp.org/content/rbap/en/home/library/democratic_governance/governance-n-peace-building-annual-report-2015.html
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UNDRIP IMPACT ON AFRICA: 10 YEARS ON

The situation of indigenous peoples in Africa has changed following the adoption of the United Nations Declaration on the Rights of the Indigenous Peoples (UNDRIP, hereafter the Declaration) ten years ago in 2007. On the contrary, the Declaration has almost forced African States to move, even though not with the same pace and sometime not in the same direction.

Africa became a critical player in the final phase of Declaration adoption process, following last-minute strong comments, which almost ruined and derailed over twenty years of negotiations between indigenous peoples and States.¹ But the initially feared strong comments of the African Group to the Draft Declaration had one major beneficial effect: it enabled Africa as a continent to have its imprints into the Declaration and thus becoming an irrefutably part of the process and the final document.² African states could no longer argue not being part of the Declaration.

This paper shows that like on other continents, the Declaration as landmark and unprecedented international legal framework, has shaped and continue to influence laws, policies, programmes, courts decisions and recommendations of regional bodies in Africa. At both regional and national level, Africa has achieved a number of milestones on protection, respect and promotion of indigenous peoples' rights. But this paper shows also that there are still major challenges to overcome in order for African indigenous peoples to enjoy all rights enshrined into the Declaration.

Africa at regional level

Conceptualisation of indigenous peoples' rights in Africa

Before the adoption of the Declaration important steps regarding indigenous peoples' rights had already taken place in Africa. In 2000, the regional human rights mechanism, the African Commission on Human and Peoples' Rights (the African Commission), established a Working Group on indigenous peoples. In 2005, the

Working Group issued a first-ever African Union report domesticating or “Africanising” the term “indigenous peoples”, clearly unfolding the concept and criteria of indigenous peoples in the African context. The report clearly states that unlike many other continents, who refer to aboriginality, the principle of *self-identification* is a key criterion for identifying indigenous peoples in Africa.³ The African Commission conceptualizing report has been of critical importance in the development of indigenous peoples’ rights on the continent. It played a key role in involving New York-based African delegates and diplomats in the negotiation process of the Declaration and to understand and support the Draft.⁴ The African Commission also issued an Advisory Opinion on the Draft Declaration,⁵ which is thought to have also played a key role in getting the African Group onboard.

The adoption of Declaration provided political space for indigenous peoples’ issues and thereby galvanized, strengthened and provided impetus to the work of the African Commission on indigenous peoples. The majority of African policy makers became familiar with the indigenous peoples discourse as a result of the intensive negotiations by African diplomat in New York. Over the past ten years following the adoption of the Declaration, the African Commission has established its authoritative status on the issue and has consequently guided or inspired almost all efforts on indigenous peoples in Africa, including at country level.

Endorois decision and Ogiek case before the African Court on Human and Peoples’ Rights

One of the major milestones of indigenous peoples’ rights in Africa, following the adoption of the Declaration, is the African Commission’s decision in the Endorois case. The Endorois indigenous peoples are pastoralist communities of Kenya living around the Lake Bogoria, a globally known tourist attraction mostly because of its flamingo birds and natural resources. The Endorois peoples were dispossessed of the concerned ancestral lands which became a protected area. Following an exhaustion of domestic remedies, the Endorois indigenous peoples brought their complaint to the African Commission, who in 2010 ruled against the Kenyan Government emphasizing that the evictions were in violation of several rights of the concerned indigenous community, including their rights to lands, natural resources and cultural identify. The Decision was the first if its kind in Af-

rica, making explicit reference to the Declaration and confirming the applicability of the concept indigenous peoples in the African regional human rights system.⁶

Over the years, the African Commission has continued to lead by example on litigation of indigenous peoples' rights in Africa. In 2012 it referred a case brought forward by the Ogiek peoples against the Kenyan government to the newly established African Court on Human and Peoples' Rights. The Ogiek peoples, recognized as having lived in the Mau Forest since time immemorial, allege consistent violations and denial of their land rights by the government of Kenya in relation to the transformation of their ancestral lands into a forest reserve, known as the Mau Forest Complex. Since then, the Court has held several hearings on the case. In 2013, the Court issued a provisional measures order requiring the Kenyan Government to stop land transactions in the Mau Forest and refrain from taking any action which would harm the case, until it had reached a decision. A decision is expected any time soon.⁷

African Commission engaging on numerous fronts, including UNESCO World Heritage, UN WCIP and World Bank Safeguard review process.

The African Commission, through its Working Group, has thus become the central interlocutor, relentlessly engaging various stakeholders, interested parties and processes on indigenous peoples' issues. In 2009 for instance, the African Commission adopted a Resolution on climate change and indigenous peoples, calling upon African States to pay attention to the particular vulnerability of indigenous communities to climate change.⁸ It has also engaged UNESCO on a number of cases relating to cultural heritage sites that are either located on indigenous peoples-claimed lands or have a negative impact of the rights of indigenous peoples. At its 50th ordinary session for instance, the African Commission adopted Resolution "N°197 on the Protection of Indigenous Peoples' Rights in the Context of the World Heritage Convention and the Designation of Lake Bogoria as a World Heritage site" calling upon "the World Heritage Committee and UNESCO to review and revise current procedures and Operational Guidelines, in consultation and cooperation with the UN Permanent Forum on Indigenous Issues and indigenous peoples, in order to ensure that the implementation of the World Heritage Convention is consistent with the UN Declaration on the Rights of Indigenous

Peoples and that indigenous peoples' rights, and human rights generally, are respected, protected and fulfilled in World Heritage areas;"⁹

The African Commission also contributed to the effective participation of African member States in the 2014 World Conference on indigenous peoples. The African Commission held numerous closed technical briefing sessions with African diplomats based in New York, providing them with background information on efforts being made on indigenous peoples' rights throughout Africa. The African Commission also actively participated in the negotiations of the Outcome Document as well as its appropriation in Africa. In 2014 for instance, the African Commission held a regional sensitization seminar on the Outcome Document in Yaoundé/Cameroon, with the participation of the UN Special Rapporteur on the rights of indigenous peoples, numerous National Human Rights Commission (NHRIs), African indigenous peoples' representatives and other stakeholders. This regional sensitization seminar on the Outcome Document led to the adoption of a "*Yaoundé Declaration on the Implementation of the Outcome Document of the World Conference on indigenous peoples*", which among others "call for the development of integrated National Action Plans to implement the Outcome Document which will ensure that all national legislations, policies and administrative measures and development programs recognize, promote, fulfill and protect the rights and freedoms of indigenous peoples;"¹⁰

The African Commission led the continent during the review process of the World Bank's safeguards standards, including the one on indigenous peoples O.P.4.10 (now known as Environmental and Social Safeguard 7 (ESS7) on indigenous peoples/Sub-Saharan African historically underserved traditional communities). Following the initial draft of a revised World Bank policy on indigenous peoples that provided for an alternative approach and an opt-out option, the African Commission engaged in dialogue with the World Bank, through various means including formal correspondences, resolutions, meetings in Washington and Ethiopia. In its Resolution *ACHPR/Res.301 (EXT.OS/XVII) 2015: "on the World Bank's draft Environmental and Social Policy (ESP) and associated Environmental and Social Standard (ESS)"*, the African Commission called upon the World Bank to:

"to align its Environmental and Social Safeguards Policy and associated Environmental and Social Standards (ESS) with international and regional legal frameworks for the protection of indigenous peoples;... to undertake the

revision of the safeguards policy by removing the 'opt-out' clause included in Environmental and Social Standard 7 (ESS7) and consult all stakeholders, including the indigenous communities and the African Commission on Human and Peoples' Rights in the entire revision process;”

The African Commission has indeed been leading most of the work and initiatives on indigenous peoples in Africa over the last ten years. And it seems committed to continue the work hereon. In 2016 while celebrating its 50th years of existence, the African Commission organized a set of Panel discussions on major human rights trends and issues featuring the continent, including one on “the rights of indigenous women in Africa”, with the participation of a UNPFII representative.¹¹ The African Commission has also just published an important study report on the impact of extractive industries on indigenous peoples on the continent.

At national level

The continental leadership role of the African Commission on indigenous peoples' issue is trickling down to country-level and renders national initiatives. For instance, the African Commission provided a sustained support, including a country visit to the Republic of Congo during the process of adopting the first-ever African domestic law (Act No. 5-2011 of 25 February 2011) dealing specifically with indigenous peoples. This was after the Central African Republic became the first African country to ratify ILO Convention 169 in 2010.

Over the last years, Africa has indeed seen a number of States taking bold steps regarding indigenous peoples' rights. In 2010, Kenya adopted a new Constitution that identifies communities that have “retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or(d) pastoral persons and communities” as groups whose cultural existence and preservation depend on the protection of their ancestral rights over lands and resources.¹² In DRC, several laws' bylaws on forest make explicit references to indigenous peoples and a specific draft Law on indigenous peoples is currently being debated in Parliament. There is also an International Forum on Indigenous Peoples in Central Africa sub-region, “Forum International sur les Peuples Autochtones en Afrique Centrale (FIPAC)”, established in 2011 by member States of the Economic Community of Central African States (CEAC).¹³ In 2015, following the

San Development Programme of 2005, the Namibian Government established a Deputy-Ministry in charge of a special Division on Marginalised Communities¹⁴ with a mandate to promote indigenous peoples in Namibia and assist in the adoption of the White Paper on the Rights of Indigenous Peoples in Namibia, drafted by the Office of the Namibian Ombudsman in 2014.¹⁵

In several international processes, including on climate change negotiations and biodiversity conservation, African States continue to show willingness to dialogue and reach consensus on indigenous peoples' issues. Under the Human Rights Council-led UPR process for instance, a constantly growing number of African States are recognising the existence of specific ethnic groups that self-identify as indigenous peoples and are in fact taking concrete commitment to address their situations:

- Gabon 2012 State Report to UPR: "Drawing on the United Nations Declaration on the Rights of Indigenous Peoples, Gabon, together with civil society and a number of development partners, is taking steps to protect the rights of indigenous peoples through public debates and the provision of medical, educational and economic assistance."
- Namibia 2011 State Report to UPR: "Regarding the rights of indigenous communities, the Government identified certain communities that were particularly deprived (the San, the Ovatie and the Ovatiimba) and had implemented support programmes to raise their standard of living."
- Uganda 2011 State Report to UPR: "Uganda has indigenous communities who include the Batwa in the West; Benet in the Mt. Elgon region; the Tepeth in Karamoja; and others in other remote locations. While it is acknowledged that their situation is still unsatisfactory, Government is actively seized of the matter and continues to pursue the delicate path of accommodative dialogue with them; with a view to minimizing any disruptive approaches to the lifestyle and traditions of the concerned communities."

A steady number of African States are also taking active part in the annual sessions of the United Nations Permanent Forum on Indigenous Issues (UNPFII) and the Experts Mechanisms on the Rights of Indigenous Peoples (EMRP). Additionally, since the adoption of the Declaration, three African States have formally invited the UN Special Rapporteur on the rights of indigenous peoples to visit their countries, namely Botswana, Republic of Congo and Namibia.

The involvement of National Human Rights Commissions (NHRIs) has been critically important for the steady progress on indigenous peoples' rights in Africa. In recent years, several African National Human Rights Commissions have indeed included indigenous peoples' issue in their agendas. In Kenya, the national human rights commission has a specific programme of action on indigenous peoples and has been actively following up on several cases regarding indigenous peoples. In 2016, the Kenyan NHRI, in collaboration with the UNPFII, held a policy dialogue on indigenous peoples. The Tanzanian national human rights commission, known as the Commission on Human Rights and Good Governance (CHRAGG), also works on indigenous peoples rights. In addition to sensitization seminars, including with government officials and members of parliament, it recently assisted in a policy dialogue on indigenous peoples, in collaboration with International Fund for Agriculture and Development (IFAD) and IWGIA, involving numerous government institutions most notably the minister in charge of foreign affairs who made constructive statements on the issue of indigenous peoples in Tanzania.¹⁶ National human rights commissions from Cameroon and DRC have also started working on indigenous peoples' issues.

Persisting challenges to overcome on indigenous peoples' rights

Despite the above illustrative positive examples, there are still major challenges facing indigenous peoples in Africa. In several African states, indigenous peoples are yet to be recognised as such. Arguments of all Africans being indigenous or that the concept "indigenous peoples" is divisive and unconstitutional are persistently expressed in political statements and continue to shape policies of several African States.

Large-scale dispossessions of indigenous peoples' lands remain a significant challenge in several African States. The global drive for raw materials, agro-business and building of major infrastructures are pushing indigenous peoples in their last boundaries. A recent African Commission report on extractive industries and indigenous peoples reveal the negative impact several mining, agro business and logging projects are having on indigenous peoples' land rights and access to natural resources. In several cases, tensions with indigenous peoples have led to open conflicts, including leading to loss of lives. In this regard, the African Com-

mission has sent several urgent appeals to a number of African Governments on serious human rights violations affecting indigenous peoples.

Conflicts constitute another major challenge affecting indigenous peoples in Africa. At the seminar by the Columbia University's Institute for study of human rights on "indigenous peoples rights and unreported struggles: Conflicts and peace" held in May 2016, the author of this article presented a paper "*Unaccounted for: Indigenous peoples victims of conflicts in Africa*", which revealed the high unreported number of indigenous victims of several armed conflicts that have been affecting Africa. The paper calls for concerted efforts to address the particular vulnerability of indigenous peoples to conflicts in Africa.

Violence against indigenous women and girls continues to feature several indigenous communities in Africa, including harmful cultural practices such as FGM, early or forced marriage and inaccessibility of good standards on reproductive rights.

Overall, one could put African states into three categories as far as the protection of indigenous peoples' rights is concerned. *First*, there are African States that have fully endorsed the concept "indigenous peoples in Africa" and have moved on to adopt legal or policy frameworks aimed at addressing the concerned communities' particular human rights situation. These states are still small in number but their potential impact is immense. *Second*, there are African states which recognize and are willing to redress the historical injustices and marginalization suffered by certain sections of their national populations that self-identify as indigenous peoples, but remain uncomfortable with the term "indigenous peoples" and therefore prefer using alternative concepts in their laws or policies. *Third*, there are African states that continue to contest the existence of indigenous peoples in Africa or the relevance of the concept in Africa. There are numerous reasons for this denial, including a misunderstanding of what the concept "indigenous peoples in Africa" cover.

Conclusion

The Declaration has had a positive impact on the situation of indigenous peoples' rights in Africa. It has created political space for indigenous peoples' issues by exposing African states, political elites and decision-makers to the issue. The efforts by the African Group to differ the adoption of the Declaration and success-

fully negotiated amendments in fact enabled many African diplomats and political decision-makers to properly understand the contours and rationale of the concept “indigenous peoples” and the rights attached hereto. This exposure has undoubtedly contributed a great deal to the recent positive developments on indigenous peoples’ rights in Africa, including legislation, specific programmes, and interests of several national human rights commissions. The African Commission on Human and Peoples Rights has played a leading and guiding role for most of the initiatives on indigenous peoples that are underway on the continent.

Despite persisting challenges, it is believed that the Declaration will continue to shape laws, policies and development programmes in Africa. The protection and promotion of indigenous peoples’ rights will continue to be enhanced on the continent, as many African states seek to achieve development that are peoples-centered and leave no one behind. ○

Notes and references

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UNDRIP IMPACT ON LATIN AMERICA: 10 YEARS ON

With a total of 826 peoples and a population estimated at 45 million indigenous individuals, that is, less than 10% of the region's total population, Latin America is nonetheless the continent with the highest indigenous demography on the planet.¹ As a consequence of the indigenous peoples' growing organizational work and political engagement, statutory and constitutional reform processes have taken place in almost all States of the region, recognizing their existence and rights. All of region's States—with the exception of Colombia, which initially abstained but later acceded to it—voted in favor of adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP or Declaration) in 2007. The UNDRIP has had a significant impact for recognition of indigenous peoples' rights in the region. This is particularly true within the Inter-American Human Rights System, where it has influenced case law, which is often based on indigenous peoples' rights recognized in that Declaration. The UNDRIP also contributed to the Organization of American States' approval in 2016 of the American Declaration on the Rights of Indigenous Peoples (IADRIP). Furthermore, the UNDRIP has had an influence in transformations of constitutions, statutes, and case law applicable to indigenous peoples at the level of States. There are still major shortfalls, however, in the implementation of the rights that the UNDRIP recognizes for indigenous peoples in most of the States. Those shortfalls have often been related to policies fomenting the extraction of resources, which, in the context of insertion by the region's States into global markets, have led to a proliferation of investments by large corporations in indigenous lands and territories, and to criminalization of indigenous protest.

The impact of the UNDRIP in the Inter-American Human Rights System

Up until 2016 the Inter-American Human Rights System did not have a specific norm applicable to indigenous peoples. Nonetheless, its bodies—the Inter-American Court of Human Rights (IACHR Court) and the Inter-American Commission on Human Rights (IACHR Commission)—have developed case law regarding the

rights of indigenous peoples based on an evolving interpretation of the fundamental instruments of the Inter-American Human Rights System.² That interpretation considers what the IACHR Court has called the *corpus juris* of human rights applicable to indigenous peoples. Said *corpus* includes, among other instruments, ILO Convention 169, and, since its approval, the UNDRIP. In fact, based on the provisions of the UNDRIP, the IACHR Court has further developed its prior case law regarding indigenous peoples' communal ownership of their lands, territories, and natural resources on the grounds of traditional occupation. Accordingly, in numerous decisions, the Court has recognized indigenous peoples' right to ownership of their traditional territories, as well as the duty of protection under Article 21 of the American Convention.³ This is both in light of the provisions of ILO Convention 169 and those of the UNDRIP, as well as the rights recognized by the States in their internal laws, which have often been influenced, in turn, by the UNDRIP.

Likewise, the UNDRIP has had a determinant influence in the case law of the IACHR Court over the indigenous peoples' right to consultation and to free, prior, and informed consent when faced with development plans that affect their lands, territories, and resources. Thus, in the case of the community of *Saramaka v. Suriname* (2007), the IACHR Court ordered that for large-scale projects that would have a major impact on that people, the State has an obligation not only to consult, but to obtain their free, prior, and informed consent in accordance with their customs and traditions. Together with that, the Court established that States must ensure that the benefits of said projects are reasonably shared with the Saramaka people. Later, in the case of the *Kichwa People of Sarayaku v. Ecuador* (2012) the IACHR Court established, as part of the indigenous peoples' right to consultation, that such consultation must take place in advance, in good faith, and with the aim of reaching an agreement, which must be adequate, accessible, and informed. The same case law principle in reference to the duty of consultation, also based on the UNDRIP, was repeated later in the cases of the *Garífuna Community of Punta Piedra and its Members v. Honduras*, 2015, and *Garífuna Triunfo de la Cruz Community and its Members v. Honduras*, 2015.⁴

The American Declaration on the Rights of Indigenous Peoples

In June 2016 the General Assembly of the Organization of American States (OAS) approved the IADRIP. Although talks on the IADRIP started 17 years ago, long before approval of the UNDRIP, the debate around its content took place

parallel to that of the UNDRIP and was clearly influenced by it. The approval of the UNDRIP in 2007 led to questioning the need for an IADRIP, in particular considering the risks that the IADRIP would lower the bar set in the UNDRIP. In many aspects the IADRIP, as finally approved, adopts the standards established by the UNDRIP. For instance, it recognizes that indigenous peoples have a set of rights that are collective in nature, including the right to self-determination and autonomy or self-governance in political matters, and rights over the lands, territories, and natural resources they possess by reason of traditional occupation. Despite its valuable aspects, however, as IWGIA and Observatorio Ciudadano noted on an earlier occasion, the IADRIP not only lowers the bar established in the UNDRIP, but also constitutes a setback for the advances achieved through the case law of the above-referenced Inter-American Human Rights System.

Among its most troubling aspects is that after the IADRIP's Article III recognizes indigenous peoples' right to self-determination in the same terms as those of the UNDRIP, its Article IV affirms the principle of territorial integrity and sovereignty of the State. Furthermore, its Article VI on indigenous peoples' collective rights establishes that "States shall promote with the full and effective participation of the indigenous peoples the harmonious coexistence of rights and systems of the different population, groups, and cultures," thus weakening the notion of 'people' and its legal implications for ensuring their autonomous functions. The IADRIP's Article XVIII on the protection of the environment states that indigenous peoples have a right to be protected against the disposal of toxic waste or hazardous substances in their territories, but omits the right of indigenous peoples contained in the UNDRIP (Article 29.2) that such disposal may not occur without the indigenous peoples' free, informed consent. Another omission of the IADRIP refers to the States' obligation to hold consultations "...in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources," contained in Article 32.2 of the UNDRIP. Likewise, Article XXIV of the IADRIP, which regulates indigenous rights over the territories, lands, and natural resources they have traditionally occupied, possessed, or acquired in ownership, remits to the legal system of each State for defining modes of recognition and forms of ownership, possession, or dominion. As a counterweight that article remits to the relevant international instruments. This contrasts with the UNDRIP, which does

not remit to the legal system of the States for defining rights over indigenous territory, lands, and resources.⁵

Statutory and case law developments in the States of the region

The UNDRIP has also had significant influence in the internal legal systems of the region's States. On a constitutional level the UNDRIP is reflected in the political constitutions of Ecuador and of Bolivia, which were drafted, in 2008 and 2009, respectively, after the UNDRIP's approval. Both these constitutions recognize their States as plurinational. Especially in the case of Bolivia, they establish public bodies—both legislative and judicial—that consider the representation of indigenous peoples. Also momentous is the explicit recognition in Bolivia's political constitution of the right of indigenous nations and peoples to self-determination, which consists of their right to autonomy, to self-governance, to their culture, to the recognition of their institutions, and to the consolidation of their territorial entities (Article 2). The constitution of Ecuador recognizes the right of indigenous peoples to develop their own forms of organization and social coexistence, and of generating and exercising authority in their territories, as well as the right to delimit indigenous territorial limits (Article 60). Both constitutions also recognize the indigenous peoples' territorial rights, including rights of possession and ancestral ownership of their lands and territories (Article 57 of the Political Constitution of Ecuador and Articles 2 and 30 of the Political Constitution of Bolivia), and the right to share in the benefits from exploitation of natural resources in their territories (Article 30 of the Political Constitution of Bolivia). Together with that, the constitution of Ecuador recognizes the indigenous peoples' rights to free, prior, and informed consultation over the exploration and exploitation of such resources and to sharing in the benefits of their exploitation (Article 57), while Bolivia's constitution recognizes the right to mandatory, concerted prior consultation conducted by the State in good faith with respect to the exploitation of non-renewable natural resources in the territory they inhabit (Article 30). Finally, the constitution of Ecuador recognizes that the human rights established in international instruments, including not only treaties, but also declarations such as the UNDRIP, are directly applicable and fully enforceable (Article 11.3).

With respect to statutes, worth mention is the case of Bolivia, where in 2007 a Law (3760) was enacted that incorporates the UNDRIP into the country's national legislation. Years later, Bolivia passed several laws to move forward in building the structure of the Plurinational State, among them the Plurinational Constitutional Court Act, the Judiciary Act, the Electoral Regime Act, the Plurinational Electoral Body Act, and the Framework Act for Autonomy and Decentralization. All of these laws were enacted in 2010 and include provisions on the rights of indigenous peoples recognized in the UNDRIP. Along the same lines, Peru enacted a prior consultation act that establishes consultation's aim as that of reaching an agreement or consent between the State and the native peoples on administrative and legislative measures that directly affect those peoples. The final decision on the measures consulted is placed in the hands of the State, which must decide with bases on and considering the consequences its decision would have for the collective rights of indigenous peoples constitutionally recognized in treaties ratified by the Peruvian State. In 2012, however, the regulation was issued on the Consultation Act, and it was questioned by indigenous peoples both on procedural grounds (the regulation was not drawn up with representative indigenous participation) and on substantive grounds (the regulation does not consider consent in the case of megaprojects, deposits of toxic tailings, displacement of the population, or when the survival of indigenous peoples is affected).

With respect to territorial rights, in 2016 Ecuador enacted the Rural Lands and Ancestral Territories Act of Ecuador of 2016, which, among other matters, regulates rights to communal land and to territories of indigenous peoples and nationalities. The act recognizes and ensures ancestral possession by indigenous peoples in keeping with the UNDRIP. It is troublesome, however, that the act does not contain any instrument enabling the recognition and return of indigenous peoples' ancestral territories. Nor does it include provisions allowing communal lands to be returned to indigenous peoples when irregularities are confirmed in their transfer of ownership. With respect to the right to participation, also recognized in the UNDRIP, in Chile during 2016 the government sent the Congress two legislative bills. The first was for the creation of the Ministry of Indigenous Affairs and the other was for creation of a National Indigenous Council, comprised by fifteen council members to be elected by the indigenous peoples, which would take charge of approving national indigenous policy. The second bill furthermore proposes the creation of nine Councils of Indigenous Peoples, one for each people, with a total of 69 representatives elected by the indigenous peoples, which

might constitute bodies representative of their interests vis-à-vis the State. Although these bills are relevant, they have yet to be enacted.⁶

Another area where the UNDRIP has had important influence is that of the case law of the courts of justice and constitutional courts of the States. With respect to territorial rights, in 2007 the Supreme Court of Belize invoked the UNDRIP when interpreting the country's Constitution in order to protect the right of the Mayan indigenous peoples to their traditional lands.⁷ In 2009 the Supreme Court of Chile invoked the indigenous peoples' rights to protection of the environment contained in the UNDRIP in order to grant a petition for protection on the grounds that the wetlands of a Mapuche community were adversely affected by a forestry company.⁸ In addition to these cases, there are numerous judgments from these courts that invoke provisions of ILO Convention 169 or the case law of the IACHR Court—which, as has been indicated, has been nourished by the UNDRIP—to recognize indigenous peoples' rights to ownership of land, territory, and natural resources. This is seen in matters such as the delimitation and titling of territory, the return of lands, indigenous peoples' rights over natural resources, and the right to share in the benefits derived from the exploitation of natural resources in their territories.⁹

Likewise, there is numerous case law from the same courts of justice and constitutional courts of the region regarding the indigenous peoples' right to prior consultation, in particular, with respect to the exploitation of natural resources. This case law, invoking the UNDRIP, or Convention 169 in provisions consistent with the UNDRIP's fundamental content, or the case law of the IACHR Court (which, in turn, refers to the UNDRIP) has protected the rights recognized for indigenous peoples on this fundamental issue.¹⁰ Of special importance is the constitutional case law of Colombia regarding consultation on investment projects in indigenous lands and territories. For example, the Constitutional Court of that country ruled that, for development plans or large-scale investments that have a major impact in indigenous territories, the State must not only consult, but must also obtain the indigenous peoples' free, prior, and informed consent.¹¹ More recently, a judgment of the same Constitutional Court has reaffirmed this case law, ordering that consultation must be carried out in due form to obtain free, prior, and informed consent on three projects that affected the Emberá Katío indigenous people: the construction of a highway, the binational Colombia-Panama electricity interconnection, and a mining concession. The judgment also ordered the halting

of execution of those projects until the corresponding consultations with the affected indigenous peoples are made.¹²

The UNDRIP and public policy: Advances, gaps, and tension

The UNDRIP has also had a significant impact on regional public policies concerning indigenous peoples. One of the areas in which the influence of the UNDRIP has been most relevant is that of the granting of title to indigenous lands and territories. The Declaration has contributed to processes —not exempt of difficulties— that were being promoted in States such as Bolivia, Brazil, and Colombia for the identification, demarcation, disencumbrance, and, in some cases, communal titling in favor of indigenous peoples for their lands of traditional occupation. Despite such progress, the gap in implementation of constitutional provisions regarding indigenous peoples, identified by the former Special Rapporteur on Indigenous Rights, Rodolfo Stavenhagen, (2006), is equally applicable to many of the UNDRIP's provisions. It is clear that many States have not implemented the UNDRIP's Article 42, which provides that the States "shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration." That means that indigenous peoples, as collectives or as individuals in the region, in most cases are still unable to fully enjoy their human rights and fundamental freedoms (Article 1) recognized in the Declaration for persons and peoples pursuant to international law. As the ECLAC report submitted to the 2014 United Nations World Conference on Indigenous Peoples indicates,¹³ despite advances in the recognition of their rights at a regional level, indigenous peoples continue to be subjected to situations of vulnerability and are affected by the persistence of a high degree of inequality in almost all aspects of their lives.

One of the most critical realms for full application of the rights recognized to indigenous peoples in the Declaration is with respect to their lands, territories, and natural resources (Articles 26 et seq.) , and related to these, "...the right to determine and develop priorities and strategies for exercising their right to development" (Article 23) That is not a coincidence, but is closely related to the States' imposition upon indigenous peoples of the States' own vision and development plans. Those plans are generally based on the exploitation of natural resources located in the lands and territories of traditional indigenous occupation and run

counter to the plans of life of the indigenous peoples. As ECLAC indicates in said regard in its recent report:

“Expansion of the primary and export sectors in the region has had serious environmental impacts, involved reclassification of spaces and been detrimental to the rights, interests, territories and resources of indigenous peoples. Disputes associated with control over territories and natural resources easily lend themselves to violent conflict but can be exacerbated in contexts of political exclusion, social discrimination, and economic marginalization.”¹⁴

Related to this, another cause for concern is the growing violence against the indigenous peoples’ human rights defenders in the region and the criminalization of indigenous social protest generated by conflicts over investment projects in indigenous territories. Above all, a 2016 Global Witness report notes that of the 185 environmental rights defenders murdered in the world in 2015, two-thirds correspond to Latin America, many of whom were indigenous defenders.¹⁵ Such is the case of Berta Cáceres, a leader of the Lenca people of Honduras, murdered in 2016 after being incarcerated and threatened over her actions against the Agua Zarca hydroelectric project. The criminal persecution of indigenous rights defenders is reflected in cases such as the prosecution under antiterrorist laws of defenders of rights of the Mapuche people in Chile, for which the State of Chile was held liable by the IACHR Court in 2014 (*Norin Catriman et al v. Chile*), or the case of the recent prosecution by the State of Ecuador of several members of the Shuar people who are defending their ancestral territory against the imposition, without consultation, of the San Carlos-Panantza mining project.

Conclusion

There have been legal and political advances in the rights of indigenous peoples in Latin America since the UNDRIP’s approval, to which, as has been indicated, that Declaration has significantly contributed. Nonetheless, serious challenges persist for the application and full enjoyment of those rights. On the one hand, this includes the rights of indigenous people as individuals, since indigenous individuals are still subject to multiple forms of discrimination, including in their economic, social, and cultural life. On the other, it includes the indigenous peoples’ collective

rights, such as self-determination, autonomy, and political participation, recognized in the Declaration itself. Possibly the realm in which the deficit for the effective enjoyment of these rights is most severe is that of effective protection of lands, territory, and natural resources of the indigenous peoples, which are affected by the imposition of projects for extractive investment or for infrastructure promoted by the States, often without consultation and without benefit sharing. This reality can be seen throughout the region, revealing that the States have failed to fulfill their obligation to promote full application of the Declaration as established in the UNDRIP's Article 42. Under that same article, States have the principal responsibility for adopting legislative measures and public policies to implement the rights recognized in the UNDRIP. And, as Article 42 also establishes, this effort should be contributed to by United Nations bodies such as the Special Rapporteur on Indigenous Peoples, the United Nations Permanent Forum on Indigenous Issue, treaty bodies, and the Human Rights Council. Their work in monitoring and promoting the rights that the UNDRIP recognizes since its approval, though valuable, must be strengthened. These are the challenges that the Declaration poses in the region for the next decade of its application. ○

Notes and references

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PART I

REGION AND
COUNTRY REPORTS
THE ARCTIC

GREENLAND

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

The Government of Greenland

During most of 2016, the government was led by Mr. Kim Kielsen, leader of the largest political party, Siumut (the social democratic party), in coalition with the liberal parties, Atassut and Demokraatit. In late October 2016, however, the coalition split and Siumut formed a new coalition¹ with the left socialist party, Inuit Ataqatigiit (IA), and the newly-founded Partii Naleraq (a centrist party formed by the former chairman of Siumut). The new coalition has several major interests in common, such as achieving autonomy from the Danish Realm and a development that treats all communities equally in terms of the provision of electricity, water and heating, as well as ensuring stable and affordable food prices no matter what the size of the community and regardless of its remoteness.



There are also a number of issues over which they are divided, however, not least the question of uranium mining, which is supported by Siumut but strongly opposed by the other two parties. The new coalition has a solid majority of 24 of

the 31 seats in the Greenlandic Parliament, the Inatsisartut (with Siumut and IA having 11 seats each and Partii Naleraq two).

Resource extraction

There are 44 small-scale mining and oil drilling concessions in Greenland. A new concession has just been awarded to Ironbark for a zinc mining project in the Citronen Fjord.² The project is expected to be of great importance for Greenland. In addition, the approval of this exploitation license could make Greenland potentially more attractive to other projects.

There will be significant Greenlandic involvement in the project. An agreement with Ironbark requires a portion of the necessary goods and services during the construction phase to be provided by Greenlandic companies, as well as an increasing proportion of the labor force over the years to be Greenlandic, reaching 90% after seven years of operation. There have been several hearings in the local community but very few locals showed up to these. This is mainly due to the hearings not being announced properly, the meetings being led by outsiders and the interpretation often being very poor.

Uranium extraction has not yet been cleared and it is hence still in the investigation phase. The exploration of uranium in the south of Greenland started in the 1970s and 1980s. By 2016, the uranium question had split the population in two. The uranium project led by Greenland Minerals and Energy (GME)³ is still under development.

There have been more demonstrations than ever before on uranium mining. The part of the population that is pro-uranium extraction argues that it will create much-needed jobs in Greenland, as well as financial benefits. The other half who are against uranium mining argue that the environmental and health risks for animals and humans are too high and that the community near the uranium mine, Kuannersuit (Greenlandic) / Kvanefjeld (Danish) will have to be relocated because of the danger of contamination. There is also a fear that the tailings from the uranium mining will contaminate the environment for thousands of years. Half of the population want a referendum while the other half do not. A smaller group of the population is arguing that far more hearings are needed throughout Greenland in order to make a decision.

Fishing industry

Fishing is the primary industry of the country and Greenland has legislative power over the fisheries sector. The fishing industry is the largest source of income for Greenland and is hence very important to the national economy and to the local food supply. It is the source of many people's livelihoods right across the country, employing some 6,500 people out of a national population of 56,000.

Volumes and prices of fish have not changed significantly in recent years. Shrimp fishing is the primary industry, representing over 50% of total fishing. Other important species of fish are halibut, cod, lumpfish and crab and these also play an important role in exports. There is coastal and ocean fishing: the coastal fishing supplies land facilities while ocean fishing consists primarily of factory ships with on-board production. Seal hunting still also plays an important role, with an average of 200,000 seals a year being hunted. Ringed and harp seals are the primary seal species caught. Seal skin is the primary income from seals, while the meat is mainly used for subsistence. Greenland has a quota for hunting different species of whales. This is of less financial incentive to the country but still plays an important role in its meat supplies.

Fishing exports from Greenland in the past 20 years have accounted for some 90% of the country's total exports, with international firms finding it a profitable business. Exports go mostly to USA, Japan, Norway, Thailand, Germany, Great Britain, Germany and Denmark. The contribution of the fishing industry to the economy of Greenland as a whole is estimated at more than 50% of the country's gross national income.

In 2016, the Naalakkersuisut (Government of Greenland) approved an additional quota of 5,000 tons of cod for an exploratory offshore Greenlandic fishing company in West Greenland.

Arctic Winter Games

2016 was an eventful year for Greenlandic sports and culture, as the country hosted the biggest Arctic Sport event, the Arctic Winter Games (AWG). The Arctic Winter Games is a high-profile circumpolar sports competition for northern and Arctic athletes. The Games provide an opportunity to strengthen sports develop-

ment in the participants' jurisdictions, to promote the benefits of sport, to build partnerships and to promote culture and values. The Games celebrate sport, social exchange and culture. They provide an opportunity for the athletes to compete in a friendly competition while sharing cultural values from around the Arctic. The following Arctic regions participated: Alaska (USA), Alberta North, Nunavik-Quebec, Nunavut, NWT and Yukon (Canada) and Greenland. The AWG have always been highly valued by the Greenlandic people since they offer an excellent opportunity to meet Inuit from other regions of the Arctic.

Greenland's NGOs

There are an increasing number of suicides occurring in Greenland. There were 47 recorded in 2016, which is ten more than in 2015. It is mainly young people that commit suicide and the victims have become younger over the last decade. Indigenous suicide is a global problem and one that more and more states are addressing. In this regard, Greenland suffers, along with many other indigenous communities, the effects of self-harm and suicide. There are many movements trying to address the issue. Unions and activists that organise life-promoting events are the ones that are really preventing suicide in everyday life. Despite the awareness raising campaigns and different suicide prevention action plans from the organisations and government, however, the number of suicides is still increasing.

One of the main organisations working on children's and youth issues is MIO (Meeqqat Pisinnaatitaaffiinik Sullissivik / National Advocacy for Children's Rights),⁴ an institution set up by an Act of Parliament (Act No. 11 of 22 November 2011) on Children and the Children's Council Spokesman. Led by the appointed Children's Spokesman, MIO also consists of the Children's Council and a Secretariat. The Children Spokesman's overall task is to ensure and assess whether Greenlandic laws and practices comply with the UN Convention on the Rights of the Child. MIO also works in cooperation with NAKUUSA.

The background to NAKUUSA is that the Government of Greenland and UNICEF Denmark entered into a partnership agreement in 2010 aimed at working to implement child rights in Greenland. This cooperation has been nicknamed NAKUUSA (Let us be Strong). This cooperation will be a great asset in terms of strengthening the implementation of children's rights in the coming years. Over a five-year period, NAKUUSA has implemented various projects to promote chil-

dren's rights. The aim is also to raise awareness of children's rights in Greenland, both among children and adults.

Greenland chose to join the UN Convention on the Rights of the Child without reservations on 26 March 1992, and has thus committed to working diligently to comply with its provisions. In recent years, both from the public and the NGO side, there has been an increased focus on children's rights and this is considered very positive.

It is explicitly stated that children have the right to participation. This means, in practice, that we in Greenland must better involve young people in decision-making processes that affect them. The NAKUUSA campaign and agreements have been taken on board by the government, as they were received so positively by the whole of Greenland, and the interest in children's rights is still growing and creating awareness and debate among the population, both children, youth and adults. The agreement was developed in 2016 such that the project is now being integrated into Greenlandic society through the incipient signing of cooperation agreements between NAKUUSA and the municipalities. ○

Notes and reference

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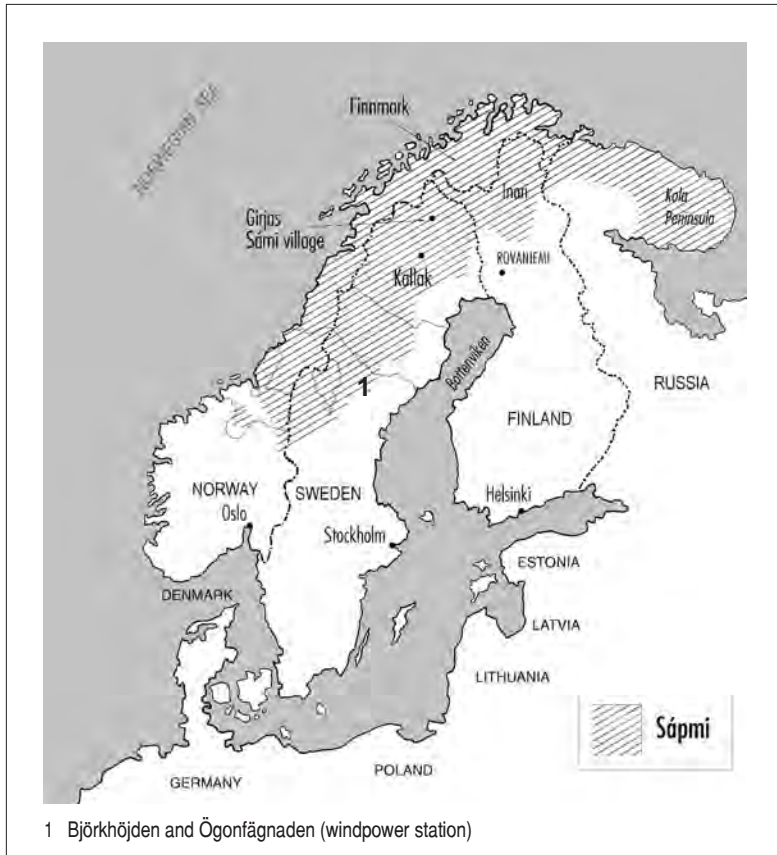
Aili Liimakka Laue was born and raised in Nuuk, the capital of Greenland. She is a student at the Institute of Teaching at Ilinniartissuaq, University of Greenland. Ms Laue is a former president of the Inuit Youth Council of Greenland, Sorslak. She has also been the Chair of the Children's Rights Committee and was chair of the Arctic Youth Committee within Sorslak from 2009-2014. At an international level, Ms Laue was the Arctic Youth Focal Point at the Global Indigenous Youth Caucus at the United Nations Indigenous Youth Caucus from 2013-2015. Ms Laue has been a delegate to ICC Greenland since 2009 and currently sits on the ICC Greenland Board of Directors. She has also been a board member and international coordinator at the National Greenlandic Student Organisation ILI ILI. She has four children aged 6-16, which she is raising alone.

SÁPMI

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

Introduction

This article offers a short overview of some cases that describe the challenges which the indigenous Sámi people are facing under growing pressure from



both the extractive industry and various forms of development projects on the Sámi people's lands and territories. The Sámi people's lack of influence in decision-making processes concerning natural resource exploitation is a common legal challenge for the Nordic states.

Nordic Sámi Convention

One important cross-border initiative of the Sámi people has been the effort to develop a Nordic Sámi Convention with the aim of safeguarding and developing

the Sámi people's self-governing bodies, their livelihoods, culture, languages and way of life with the least possible interference from the imposition of national borders.

The negotiations on the Nordic Sámi Convention were concluded in January 2017.¹ The Convention comes in four official versions: a Finnish, a Swedish, a Norwegian and a northern-Sámi language version. It includes a total of 46 articles, all of which include joint Nordic approaches to safeguarding and strengthening Sámi rights. The convention includes provisions relating to self-determination, non-discrimination, Sámi governance (including the Sámi parliaments and their relationship to the state), rights to lands, water and livelihoods, languages, education and culture. The Sámi Convention also contains several provisions related to its implementation, including the establishment of a complaints mechanism. The convention has been met with criticism from Sámi legal experts and Sámi organizations and is currently being considered by the three Sámi parliaments and the governments of Finland, Norway and Sweden. All three countries' Sámi parliaments and national parliaments will have to give their consent to the convention before it can enter into force.

UN Special Rapporteur's report on the human rights situation of the Sámi people in the Sápmi region of Norway, Sweden and Finland²

The UN Special Rapporteur on the rights of indigenous peoples, Ms Victoria Tauli-Corpuz, examined the human rights situation of the Sámi people in Norway, Sweden and Finland in 2016 on the basis of information received during her visit to the Sápmi region, including during a conference organized by the Sámi Parliamentary Council in Bierke/Hemavan, Sweden, in August 2015. Her report is also based on independent research. The visit was carried out as a follow-up to the 2010 visit of the previous UN Special Rapporteur, Prof. James Anaya. During her visit, the Special Rapporteur met with government officials, the Swedish Minister for Culture and Democracy, government officials from Norway, Sweden and Finland and representatives of the three Sámi parliaments. In addition, the Special Rapporteur spoke with representatives of local Sámi communities and Sámi non-governmental organizations. The Special Rapporteur did not visit the Sámi in Russia and so the report focuses on the situation of the Sámi in Finland, Norway and Sweden.

The report emphasizes that all three states fall short of their stated objectives of ensuring the human rights of the Sámi people. In particular, the report highlights the negative impacts that extractive industry operations are having on Sámi livelihoods and culture. For instance, the Mining Act in Norway and the Minerals Act in Sweden raise serious doubts as to the states' ability to respect, protect and fulfil the human rights of the Sámi in the context of the extractive industry. In her report, Ms Tauli-Corpuz raises doubts as to whether the states are clearly setting out the expectation that all business enterprises must respect human rights throughout their operations. In Finland, the Mining Act shows that the government is responding to concerns raised by the Sámi people. However, in practice, the Act appears to have fallen short of its stated objective of ensuring that mining is adapted so that the rights of the Sámi as an indigenous people are secured. The Special Rapporteur also notes that the 2016 Finnish Forest and Park Enterprise Act will have a significant impact on the Sámi people, and that removing safeguards for the Sámi people is not in line with international human rights obligations with respect to the Sámi people.

Sápmi Sweden

Sweden has still not ratified ILO Convention 169 on the rights of indigenous peoples, even though this has been a wish of the Sámi people since the 1980s and was proposed by a public inquiry in 1999.³ There was no real progress during 2016. The new bilateral convention on reindeer herding between Sweden and Norway, which was signed in 2009 and presented in *The Indigenous World* 2008 and 2009, has not yet come into force.⁴ It came as a suggestion from the Government of Sweden in 2016 but there are still issues regarding the allocation of reindeer pasture lands, as mentioned in 2010. The legal and political developments for the Sámi people in Sweden during 2016 were hence mainly about the same questions as earlier reported on in *The Indigenous World*; we will, however, report on four highlights: the ongoing issues of extractive industries and consultations; the Human Rights Committee's seventh periodic report on the International Covenant on Civil and Political Rights (the IC-CPR); the Girjas court case on Sámi hunting and fishing rights; and the National Human Rights Institutions (NHRI).

Development projects and extractive industries

While there has been little progress in Sámi legislation in the last decade, there have been increased efforts to establish new development projects and extractive industries, such as mines and wind power plants, in the traditional Sámi land areas. See, for example, the Kallak and the Rönnbäcken cases, mentioned in *The Indigenous World 2016*, regarding the establishment of new mines in key Sámi traditional land, important both for reindeer herding and other Sámi cultural land use. Both projects have been highly criticized by the Sámi Parliament and Sámi organizations. During 2016, the government returned the question of assessment of the Kallak mining project to the Inspector of Mines authority for a decision as to whether or not the mining company should be granted a concession. The decision has yet to be made. If the Kallak mining project receives this concession,⁵ the next step will be for it to apply for environmental approval to build and extract the minerals. This is the stage the Rönnbäcken case is at today.

The largest wind power station in Scandinavia, the Björkhöjden and Ögonfåg-nade, was opened in June 2016 even though the project had been opposed and criticized by the Sámi since it would destroy important reindeer grazing lands and migration routes. In some media, the opening was being criticised as contemptuous and mocking of Sámi culture because Sámi tents were used, at the same time as the mourning Sámi people stood on a nearby hill.⁶

The seventh periodic report of Sweden on CCPR

In March 2016, the Human Rights Committee considered the seventh periodic report of Sweden on the International Covenant on Civil and Political Rights (CCPR).⁷ The report considered many themes, and we will consider those which were most meaningful for the Sámi or which directly addressed them. These are: the status of the CCPR in the domestic legal order, the lack of a specific National Human Rights Institution and the situation of the Sámi people. Other committees' recommendations also have significant meaning for the Sámi. For example, the recommendations on the need for action against racism and hate speech, the need to expand the scope of protection against discrimination under domestic law, gender equality and violence against women and children.

The Committee noted that the Covenant had not been incorporated into Sweden's domestic legal order. Some areas of domestic law are thus not fully aligned with the Covenant, and domestic courts rarely apply the Covenant. Furthermore, municipalities and other local governance bodies seem to lack knowledge of the Covenant.⁸ These are important elementary questions for the protection and promotion of Sámi rights. The protection of minorities, given in article 27, has a significant meaning for the protection and development of Sámi language, culture and society, including land rights. Furthermore, articles 1, 2 and 26 form the backbone of the discussions on indigenous peoples' right to self-determination.

In Sweden, the meaning and impact of the Covenant, especially of article 27, on domestic Sámi politics in general, and Sámi land rights specifically, has not been raised in public inquiries since 1986. The meaning of article 27 was, however, discussed in the Swedish public inquiry on the rights of Sámi villages to hunt and fish, although this inquiry was limited to only discussing the rights of these groups and not the various land rights of the Sámi as a whole. Even though the understanding of the Covenant internationally, and in Norway which has a comparable Sámi history, has developed significantly since the 1980s, the meaning of this development for Sámi livelihoods and society has not been evaluated or discussed by the Swedish government or Parliament, the Riksdagen.

Regarding the rights of the Sámi, the Committee welcomed the State Party's support for realising the Sámi people's right to self-determination. However, the Committee remained concerned about four themes: the slow progress in the negotiations for the adoption of the Nordic Sámi Convention; the limited resources allocated to the Sámi Parliament; the scope of the duty to consult with representatives of the Sámi people in connection with extractive and development projects; and the difficulties faced by Sámi claimants in demonstrate land ownership and the inability of Sámi villages to obtain legal aid under the legal aid act, even though they are the only legal entities empowered to act as litigants in land disputes in respect of Sámi land and grazing rights.⁹

The Committee recommended the state take measures to contribute to the adoption of the Nordic Sámi Convention¹⁰ and ensure that the Sámi Parliament is provided with adequate resources to enable it to fulfil its mandate effectively.¹¹ The Committee also recommended that Sweden review existing legislation, policies and practices that regulate activities with a potential impact on the rights and interests of the Sámi people with a view to guaranteeing meaningful consultation with the indigenous communities affected, aimed at attempting to obtain their

free, prior and informed consent. Development projects and extractive industry operations were mentioned as examples of activities with a potential impact on Sámi interests.¹² Given the wording, this recommendation concerns affected indigenous communities, i.e. not only the Sámi Parliament and Sámi villages, but also other Sámi stakeholders that may be affected.

The Committee also reiterated its previous recommendation to grant legal aid to Sámi villages in court disputes over land and grazing rights, and to provide for a suitable burden of proof in these cases.¹³ Finally, the Committee encouraged the state to initiate preparatory works towards ratification of ILO Convention No. 169.¹⁴

The Girjas case and their hunting and fishing rights

As presented in *The Indigenous World 2016*, the Girjas case is a decisive court case between the Girjas Sámi village and the Swedish state on the right to hunt and fish on state-owned land in parts of the traditional living area of the reindeer herders of the Sámi village. The district court trial was held in May 2015 and the judgement handed down in February 2016. The Sámi village won the case.

In 2009, after the Swedish public inquiry into the rights of the Sámi villages and the Swedish state to hunt and fish in the mountain areas, the Girjas Sámi village sued the state and claimed that the Sámi village had an exclusive right, in relation to the state, to hunt and fish on the land in question. As an alternative, the Sámi village claimed that the right to hunt and fish in the area was owned by both the state and the Sámi village. The state opposed the Sámi village's claim, indicating that the state owned the right to hunt and fish, and to deed these rights to others.

The Sámi village pleaded that the Sámi had long used the land area, since before the state was even established in the Sámi area, and that this land use gave them an exclusive – or at least a shared - right to hunt and fish there. Furthermore, the Sámi village claimed that their right came directly from the Reindeer Husbandry Act (*Rennæringslagen*) and that this law acknowledges the Sámi's original right to hunt and fish. The Sámi village's right is based on the fact that Sámi, as indigenous peoples, have used these areas for reindeer herding regardless of whether this land use can be seen as based upon ancient prescriptive rights or on customary law. The Sámi village also claimed that the present regulation of hunting and fishing whereby the state deeds the rights, and the revenue of

those rights goes to the Sámi village and a Sámi foundation, was not in accordance with the protection of property rights, and against the prohibition of discrimination as set out in the Swedish Constitution. The right to deed rights over hunting and fishing should belong to the Sámi village. It was also seen as in conflict with the European Convention on Human Rights.

The State Party pleaded that the state was the owner of the land and, as landowner, it owned the hunting and fishing rights, and the right to deed those rights. The Sámi people have a customary law-based right to reindeer herding, and this right includes a right to hunt and fish, which is exhaustively regulated by the Reindeer Herding Act.

In its judgement, the district court said that the Sámi had been in the area for at least the last thousand years, and that they had used the land for, among other things, hunting and fishing. The state could not be seen as the owner until as late as 1887, when land allocation processes were conducted in the area. The legal rules on ancient and prescriptive right, given in 1734, were still applicable and had to be applied with regard to the climate and land-use traditions of the area. The Sámi living in the area as at 1734 had this right, and it had not changed since. Hence, the Sámi village owned the rights and not the state.¹⁵

The case has been seen as a potential game changer. Welcomed by many Sámi, but also welcomed with scepticism by some that are not members of a Sámi village and hence lack access to ancient prescriptive rights to use land. The state has appealed to the Court of Appeal.

The National Human Rights Institution in Sweden

Within the UN system and domestic legal orders, the National Human Rights Institutions (NHRIs) have a certain independence to protect and promote human rights.¹⁶ The establishment of a NHRI is important not only in the work on human rights for the population in general but also in the work on Sámi human rights. The Committee recommended that Sweden establish an independent National Human Rights Institution. This institution should, according to the Committee, have a broad mandate, adequate financial and human resources, and be in accordance with the Paris Principles.¹⁷ This is interesting also for Sámi affairs since the comparable new NHRI in Norway also has a broad mandate, specifically including indigenous peoples' rights and Sámi human rights.

Sápmi Norway

The right to consultation and free prior and informed consent (FPIC)

In 2005, the Sámediggi-Sámi Parliament and the Norwegian government entered into an agreement on consultation procedures for matters that might affect Sámi interests directly, agreeing that consultations should continue as long as the Sámi Parliament and state authorities considered it possible to achieve agreement.¹⁸ The objective of the procedure for consultations is to, *inter alia*, contribute to the implementation of the state's obligations to consult indigenous peoples under international law. Norway has ratified ILO Convention No. 169 on indigenous peoples' rights (ILO 169), and this agreement is aimed at implementing the right to consultation according to article 6 of this convention. The agreement has undoubtedly strengthened cooperation between the Sámediggi and state authorities; however, there are examples that illustrate that implementation of this agreement remains particularly challenging in relation to energy development projects and legislation regarding cross-boundary issues such as salmon fishing and reindeer husbandry.

The negotiation process on the new agreement regulating salmon fishing in the Deatnu/Tana River in the Northern Sámi area in Finnmark county (Tana Agreement) between Finland and Norway is one example where the Sámi parliaments in Finland and Norway claim that the right to consultation has been breached. The conflict between local fishers and tourists fishing mainly on the Finnish side of the river has been ongoing for decades. The Tana Agreement includes measures for safeguarding the wild salmon through numerous limitations of the rights to fish on the part of both locals and tourists. In September 2016, the Sámediggi in Norway made a unanimous decision that the negotiations on the Tana Agreement did not comply with the right to consultation under ILO 169, did not take into account the traditional knowledge of the Sámi and did not adequately protect Sámi interests and customary fishing rights.¹⁹ Further, the right to free, prior and informed consent of the Sámi rights-holders in the Tana valley, who live on both sides of the river and whose rights are recognized by the Tana Act, had not been obtained before concluding the negotiations. This, in turn, is not in compliance with article 19 of the UN Declaration on the Rights of Indigenous Peoples. Furthermore, the agreement does not include any provisions on how traditional knowledge should be implemented in the future regulation of fishing in the river.

The Sámediggi thus demanded that the agreement be re-negotiated or terminated. Salmon fishing is an important part of the culture and a vital part of the livelihood of the Sámi living in Deatnu/Tana, and the agreement is problematic as it codifies extensive rights to salmon fishing for a new category of persons who own cabins on the Finnish side of the valley and, at the same time, limits the rights to fish for traditional Sámi salmon fishers using traditional fishing methods. The governments of Finland and Norway have recommended ratifying the agreement in the national parliaments of Finland and Norway in 2017.

The procedure for consultations between the Norwegian and Sámi parliaments applies to the whole central government administration. There appears to be a lack of common understanding between the government and the Sámediggi as to how the consultation agreement is to be complied with in practice. One way of finding this kind of common understanding would be through strengthening the rights to consultation by means of a Consultation Act, as proposed by the Second Sámi Rights Committee in 2007. Another concern is the lack of mechanisms in place outside of the ordinary court system with which to recognize and identify Sámi land and resource rights outside Finnmark. The Committee on the Elimination of Racial Discrimination has recommended that Norway follow up on the proposals of the Second Sámi Rights Committee, including by establishing an appropriate mechanism and legal framework, and identify and recognize Sámi land and resource rights outside Finnmark. In Finnmark, the Finnmark Commission and the Finnmark Land Rights Tribunal are currently working to identify individual and collective use and ownership rights in relation to land that was transferred from the state to the Finnmark Estate in 2006. The Second Sámi Rights Committee has also proposed a Consultation Act, which would give stronger legislative protection of the Sámi people's right to consultation under international law. These proposals are still under consideration in the Ministry of Justice and the Ministry of Local Government and Modernization.

Sámi reindeer husbandry and the right to culture

The 2007 Reindeer Husbandry Act imposed a requirement on reindeer herding districts to adapt to so-called ecologically sustainable resource management by developing usage rules, including determination of a maximum number of reindeer for each district. The work on the usage rules started in 2008 and, by the end

of 2011, the National Board for Reindeer Herding (Reindrifststyret) had come up with its decision. Some Sámi reindeer owners are now going through a difficult process of reducing their number of reindeer in line with this decision. In their opinion, their own perception of the sustainable management of reindeer herds based on Sámi traditional knowledge has not been taken into account. Herders consider the process as a violation of their human rights, including a violation of the right to culture according to the article 27 of the ICCPR and of their property rights in accordance with the European Convention on Human Rights, Additional Protocol 1 Article 1, as well as a violation of their right to internal self-governance, which the 2007 Reindeer Herding Act was intended to safeguard.

The Norwegian state's current enforcement of the decisions made by the National Board for Reindeer Herding has been met with strong resistance from the reindeer-herding Sámi. Furthermore, this enforcement process has led to a court case initiated by a young reindeer-herder, Jovsset Ánte Sara (b. 1992). Sara has refused to accept the enforced decimation of his herd from 116 reindeer to 75 as it would deny him his right to culture according to article 27 of the Convention on Civil and Political Rights. Moreover, it would not comply with the right to ownership under the European Convention on Human Rights and the rights that the Sámi people have to autonomy in internal matters according to international law. Sara won the case in Indre Finnmark Tingrett in March 2016. The local court agreed with Sara when he argued that if he had to reduce his herd to 75 reindeers this decision would in fact deny him the right to his culture and way of life. The court also stated that it would not be possible to make a living for himself with only 75 reindeer, and that this would imply that he would be forced to find another livelihood. The Norwegian state has appealed this judgement, and the second hearing will take place in Hålogaland Lagmannsrett in Tromsø in January 2017.

Mining and development projects in Sámi areas

In its list of issues prior to submission of Norway's seventh periodic report, the Human Rights Committee (HRC) has asked the Norwegian government for more information on the measures taken to protect Sámi rights to land and resources under article 27 of the ICCPR.²⁰ The Committee also wants to know how the state ensures special protection of Sámi reindeer husbandry and fishing. The HRC has also called for more information about the measures taken to consult Sámi com-

munities with a view to seeking free, prior and informed consent and effective participation in decision-making whenever their rights may be affected by projects, including the extraction of natural resources, carried out in their traditional territories and affecting their means of subsistence. The HRC has, in this regard, shown particular interest in how the Sámi land rights are protected under the Norwegian Mining Act.

In 2011, the national mining company NUSSIR applied for permission to deposit the tailings from a planned copper mining site in Kvalsund municipality (Finnmark) in the Repparfjord. In December 2015, the Ministry of Environment gave its permission to start underground copper mining in the area of Nussir and Ulveryggen and to deposit the tailings in the Repparfjord. This case is controversial because of the impacts that this mining project will have on traditional Sámi reindeer herding in several reindeer herding districts. Secondly, the case is also highly controversial seen from a Sea-Sámi and an environmental perspective, as submarine tailing deposits are considered an environmental hazard. Repparfjord is vital for the local Sámi fisheries, and is also a “National Salmon Fjord” leading to the Repparfjord River, which is one of the few remaining rivers where wild salmon are still found.

During Norway’s UPR examination in 2014, the country was questioned on intensified mining activities in the north and their impact on indigenous peoples. The Ministry stated that mining permissions were issued with strict conditions that made the operations environmentally acceptable. Reindeer herders in the area claim the permission is violating their human rights, and are preparing legal steps to stop the NUSSIR mining operations. Among those who have responded negatively to the permission are the national environmental organizations, the Sámediggi and the Norwegian Fishermen’s Association.

In December 2016, the Ministry of Climate and Environment decided to uphold the decision of the Norwegian Environment Agency to grant a permit under the Pollution Control Act for mining activities at Nussir and Ulveryggen in Kvalsund municipality and disposal of tailings in the Repparfjorden.²¹ The Ministry of Climate and Environment concluded that the permit granted under the Pollution Control Act was not in conflict with the rights that the indigenous Sámi people have under international law. The Ministry conducted consultations with the Sámi Parliament but agreement was not reached on the matter.

The Sámi Parliament, the Norwegian Society for Conservation of Nature, Nature and Youth and the Association of Norwegian Salmon Rivers raised a case

against the Norwegian Environment Agency's decision to grant a permit under the Pollution Control Act. They argued that there was a lack of knowledge of the environmental impacts and that a permit could thus not be granted. The Sámi Parliament argued that it was irresponsible to grant a permit for mining activities because of the environmental disadvantages, taken together with the disadvantages the permit will have for Sámi culture, reindeer husbandry, and for the Sámi fishing and its community. The Ministry of Climate and Environment overruled the complaints as, in their opinion, they gave no basis for changing the assessments previously made. The decision of the Ministry is final and cannot be further appealed.

Sámi reindeer herders in Norway have also faced challenges in relation to the establishment of wind farms. In 2014, the Norwegian Water Resources and Energy Directorate (NVE) allocated a concession to a wind farm in Kalvvatnan, in the middle of summer pastures belonging to Voengelh-Njaarke (Vestre Namdal) and Áarjel-Njaarke (Cape Mountain / Bindal) reindeer herding districts. Environmental organizations, together with the affected reindeer herding districts, submitted a joint complaint claiming that this was in violation of the national Nature Diversity Act, ILO Convention N° 169 and several UN human rights conventions as it would have major negative impacts for reindeer herding. The Sámediggi also strongly opposed this establishment. In November 2016, the Ministry of Oil and Energy decided not to give a permit for the planned wind farm in Kalvvatnan in Bindal municipality, as these plans would negatively affect Sámi reindeer herding in the area. In its legal assessment of the rights of the Sámi under international law, the Ministry concluded that the state was obligated under article 27 of the ICCPR to consider not merely the negative impacts of the plans to establish this wind farm but also the cumulative negative effects of other projects in the same area.²²

The same Ministry also rejected the expansion of a wind farm on Fálesrášša, in Kvalsund municipality in Finnmark in 2015. This was the result of strong protests from the local Sámi reindeer herders of district 21 Gearretnjárga and the Sámediggi. ○

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RUSSIAN FEDERATION

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

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

Indigenous peoples are not recognised by Russian legislation as such; however, the constitution and national legislation set out the rights of “indigenous minority peoples of the North”, including rights to consultation and participation in specific cases. There is, however, no such concept as “Free, Prior and Informed Consent” enshrined in legislation. Russia has not ratified ILO Convention 169 and has not endorsed the UN-DRIP. The country has inherited its membership of the major UN Covenants and Conventions from the Soviet Union: the ICCPR, ICESCR, ICERD, ICEDAW and ICRC. It also has ratified the Framework Convention for the Protection of National Minorities (FCNM) of the Council of Europe.

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

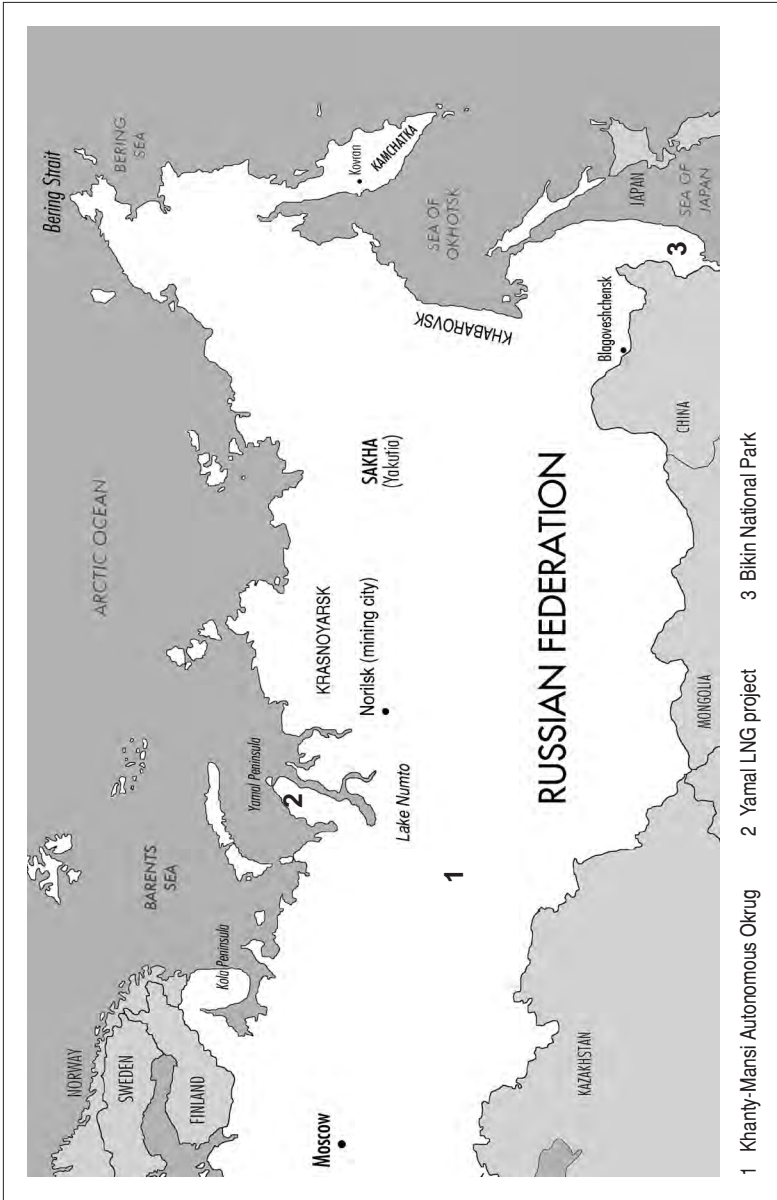
Land and natural resource rights

2016 saw a series of cases triggered by a legal change in the federal Land Codex that entered into force on 1 March 2015¹ (see *The Indigenous World 2015*). This cancelled an article that had stipulated that, in places of traditional residence and traditional activities of indigenous peoples, local authorities should decide on the “prior determination of locations for the placing of objects” (i.e.: industrial facilities, oil rigs, pipelines etc.) on the basis of the results of meetings or referenda of the indigenous and local communities.² This means that local authorities have now lost most of their legal leverage in terms of being able to protect indigenous lands from incursions by business enterprises and other resource users. In 2015 and 2016, this led to a number of cases of violations of indigenous peoples’ land tenure.

Reduction of indigenous peoples’ territories in the Far East

The law on Territories of Traditional Nature Use (TTNU) was passed in 2001. It is the only federal law affording some form of recognition of indigenous peoples’ land tenure. However, the federal government has never confirmed any of the several hundred Territories of Traditional Nature Use (TTNU) created by regional and local administrations, in cooperation with indigenous communities, despite repeated calls from UN treaty bodies, indigenous organisations and human rights experts to do so. The regionally- and locally-established TTNU therefore have no guaranteed legal status and can be dismantled at any time. This is precisely what happened in the Far Eastern region of Khabarovsk in 2016.

On 30 September 2016, without prior notification to the authorised representatives and organisations of indigenous peoples, the acting Governor of Khabarovsk territory issued an order changing the boundaries of the 13 TTNU that had previously been created by the regional or local authorities. This has shrunk the TTNU area to less than half its prior size. The Khabarovsk Krai government said the decision was necessary because it had to allocate land for distribution under the so-called “Far Eastern Hectare” programme, a programme of the Russian government aimed at providing the free distribution of one hectare of land to each Russian citizen wishing to move to the Far East (see *The Indigenous*



World 2016, page 44). In response, the indigenous peoples of Khabarovsk Krai threatened a mass hunger strike.³

Controversy regarding Numto National Park

Lake Numto (“Heavenly Lake”) in Khanty-Mansi Autonomous Area is one of the most sacred places for the indigenous Khanty people.⁴ On 28 October 2016, the government of Khanty-Mansi Autonomous Area approved changes to the boundaries of Numto National Park in order to accommodate the wishes of the regional oil company “Surgutneftegaz” to drill for oil in the area. The areas taken out of the national park are particularly precious in terms of biodiversity, indigenous cultural heritage and livelihood. The area surrounding Lake Numto is an ancient place of worship for three indigenous peoples, the Khanty, Nenets and Mansi, as the place of the earthly incarnation of Num, the god of the heavens and creator of the earth and people.⁵ Back in February 2016, members of the Aborigin Forum, a network of indigenous organisations and activists, wrote in an appeal to the governor: “Nothing can compensate for the loss of the pristine nature and the sacred atmosphere of the entire landscape around Lake Numto.”⁶ Unfortunately, this appeal did not stop the decision to expand oil exploration in the pristine environment.

Oil and gas / Yamal and Taimyr

The Yamal Liquid Natural Gas (LNG) project (see *The Indigenous World 2016*) neared its completion in 2016, amidst serious doubts as to whether and under what conditions Nenets reindeer herders had actually consented to the project. The project will take away much of the dry elevated pastureland on Yamal’s Northwest coast and threatens to severely reduce fish stocks. Yamal LNG is a joint project of Russia’s second-largest gas producer, Novatek, France’s Total and a number of Chinese companies. The German export credit agency Hermes initially received an application for financial investment from a company involved in the project but this was withdrawn in 2016.

Like other Arctic regions with subsoil resources extraction, Yamal is a no-go area for civil society observers because it is classified as a border zone. This means that foreigners are barred from entering without a special permit from the

intelligence service, and even Russian civil society representatives have been turned away when trying to access the region. Those observers who do make it to the peninsula find themselves under tight scrutiny when trying to interview locals and have great difficulty in reaching the affected reindeer herders because the latter are usually at a great distance from the settlements. Locals are also typically too intimidated to speak out.

In the summer, Yamal was shattered by an unprecedented outbreak of the anthrax virus, which claimed the lives of 1,200 deer and one boy. The outbreak was blamed on the unusual and lasting heat in the Arctic that year, which allowed the virus to escape from burial grounds and spread.⁷ As climate change-induced warming is stronger in the Arctic than in any other region, the heatwave was widely seen as an impact of this. The Government of Yamal, however, responded to events by blaming the outbreak on reindeer overpopulation and announced its intention to kill over a third of Yamal's reindeer, without having consulted the affected reindeer herders. The slaughter was to take place within just one month.

At the same time, the environment ministry began handing out exploration and extraction licenses for gas deposits in the region. Minister Sergey Donskoy said at a meeting of the President with the government: "The Resource potential of the Arctic regarding natural gas (up to 20 billion cubic meters of proven reserves) with a unique degree of concentration requires special measures to encourage their fast development. Otherwise, Russia may not be able to use this potential according to its own interests." Accordingly, between June and September, Novatek received licenses for deposits in the region, including in the Syador-sky area of the Yamal-Nenets Autonomous Area, and the Zapadno-Solpatinski, Severo-Tanamski and Nyavuyakhski areas on Gydan Peninsula.

"The coincidence of the announcement of plans to urgently reduce the reindeer population in Yamal by over one third with the rapid issuing of licenses for gas extraction in the same region is cause for the greatest concern over the fate of the reindeer herders who continue their traditional family-based nomadic way of life and have managed to defend this way of life throughout the Soviet era and up until today", said Olga Murashko, a Russian anthropologist working with indigenous peoples. "This means that a huge number of nomads on Yamal and Gydan peninsulas will lose their means of subsistence and the possibility to maintain their traditional way of life. Additionally, it is clear that within the short time frame given, the indigenous reindeer herders cannot be properly consulted on the administration's plans to annihilate a large number of reindeer".⁸ By the end of the

year, the administration announced that 100,000 reindeer had been killed, which is above the annual average but far from their target figure. What prevented the slaughter from affecting a much larger number was simply insufficient capacity.

Another region with a similar level of inaccessibility is Taimyr, to the east of Yamal. The largest settlement in the region is the mining city of Norilsk, which is the planet's northernmost large city and one of the most polluted places on earth. In September, Greenpeace reported on its attempts to inspect oil drilling sites on Taimyr and how it was eventually denied access and turned back.⁹ At the same time, Russian oil and gas companies are working in close cooperation with Western companies in most of these regions.

Fish administration prohibits use of traditional fishing gear

On 19 April 2016, the Ministry of Agriculture published Order 152, which prohibits indigenous peoples from catching fish using net gear, with the exception of Pacific and Arctic salmon, between 1 May and 30 September each year. Net gear means literally everything, including the traditional fishing gear used by indigenous peoples such as fish traps. At the same time, fish nets remain permitted for commercial fishing enterprises.

The indigenous people of Kovran, the main village of the Itelmen people on Kamchatka, signed a joint appeal to the Governor of Kamchatka and the Federal Government. On Monday 30 May, a village gathering was held in the Culture House to protest at the actions of the Federal Fishery Agency, which allegedly benefit the commercial fishing enterprises that are lobbying them. Participants insisted that the local population had been using nets since before even the arrival of the Russians on the peninsula.

On 7 June, the Federation Council urgently convened a meeting of the Working Group on Improving the Legislation of the Russian Federation on the Rights of Indigenous Peoples of the North, Siberia and the Russian Far East during which representatives of the Ministry of Agriculture said that the changes to the rules might be reviewed in the autumn. This would, however, have been too late to resolve the acute food crisis. By the end of the year, the order had not been revised, although no legal action had been taken against indigenous people in Kovran who had defied it. If the order is actively enforced, most indigenous peoples will lose their access to food.¹⁰

Bikin National Park

The 1,160,000-hectare Bikin National Park came into effect in 2016. The park had been officially created on 3 November 2015. It is located in the basin of the Bikin River, which has been nicknamed the “Russian Amazon”, and was created to protect the Siberian tiger population. Its territory is traditionally inhabited and used by the indigenous Udege, a people with a population of 1,500 that has been struggling for recognition of their land rights to this territory since the late 1980s. When the creation of the National Park was originally announced the response was rather mixed because indigenous peoples’ experience of national parks in Russia is overwhelmingly negative. Indigenous peoples are usually excluded from their management, denied access to their territories, denied the right to maintain their traditional subsistence activities or to engage in ethno-tourism, one of the few potential sources of revenue. The announcement of Bikin Park had therefore given rise to significant anxieties. In negotiations, the regional government pledged to ensure that the federal legislation on protected areas would be amended in order to enshrine indigenous land and participation rights in the park’s statutes. An amendment to the federal law was not passed in 2016; however, the adopted statutes of the park guarantee that 68% of the park’s area will be available for traditional use and that the area may not be reduced. In a major breakthrough, in September, the government appointed Alexey Kudryavtsev, a local person proposed by the Udege, as the park’s director who then went on to form the “Permanent indigenous peoples’ council under the national park’s administration”, the chair of which will automatically serve as the park’s vice director. By the end of 2016, observers were therefore more optimistic with regard to Bikin, although concerns remain regarding several other planned national parks, such as on Kamchatka’s Commander Islands, Vaigach island in the Barents Sea, the Shor National Park in Kemerovo region¹¹ and the Udegeyskaya Legenda national park¹² in Primorye.

Criminalisation and stigmatisation as “foreign agents”

In December 2015, Sergey Nikiforov, leader of the Ivanovskoye Evenk community in Amur region who had spearheaded their resistance against Petropavlovsk,

a UK-based gold mining company that extracts gold on the Evenk territory, was sentenced to four years' incarceration in a penal colony (see *The Indigenous World 2016*). Several attempts were made during 2016 to put pressure on the authorities to release him, including advocacy by the UK-based Business and Human Rights Centre with the company and its shareholders and through the European Court of Human Rights. This latter, however, refused to accept his case, as his lawyer reported in November. Amnesty International and the Memorial Centre have both identified Mr. Nikiforov as a prisoner of conscience.

The case of Sergey Kechimov, a Khanty reindeer herder and shaman charged with attempted murder even though, according to his own testimony, he was merely fighting off stray dogs brought in by the oil company (see *The Indigenous World 2016*) had not been finally adjudicated on by the end of 2016.

Another indigenous organisation, the Batani Foundation, was declared a "foreign agent" in March 2016 such that, three years after the adoption of the law on foreign agents (see *The Indigenous World 2013*), most independent indigenous organisations are now listed as foreign agents, together with 150 other civil society organisations. Organisations typically deem it too risky to continue once they have been listed, and so the law has led to the disappearance of many independent NGOs that had often been around since the early 1990s.

On Sunday 11 December, internationally-renowned indigenous rights activist Rodion Sulyandziga was detained and questioned for several hours by the Moscow Konkovo police department. He was about to chair an educational seminar when police officers came to his flat at 7:00 a.m., searched his apartment and seized his personal laptop. No charges were brought against Mr. Sulyandziga, and so observers concluded that this had to be an act of deliberate intimidation.

International human rights mechanisms

The UN Committee on the Elimination of Racial Discrimination (CERD) continued to consider the case of the Kazas village in Kemerovo region, South Siberia, in 2016, a case that had commenced with a submission to the Urgent Action mechanism in spring 2015. No decision was taken by the committee during 2016.¹³ However, in July, CERD received the 23-24 periodic report of the Russian government, which contains several pages of information on the Kazas case.¹⁴ This information has been deemed inaccurate by representatives of the village com-

munity. In 2016, Russia also submitted its 6th periodic report to the Committee on Economic, Social and Cultural Rights.¹⁵ It furthermore submitted its 4th report under the Council of Europe Framework Convention National Minorities (FC-NM).¹⁶

The UN Development Programme has been working on a project aimed at the conservation of biodiversity in Kemerovo region and Kazas under which i.a. a guidebook for “social dialogue” between coal mining companies and indigenous communities was drafted. The Kazas community was very concerned at this guidebook, for one thing because the INECA consultancy that was commissioned to draft it usually works for mining companies and therefore has a track record of acting in a way that is harmful to indigenous interests. Further, because it did not include key international standards such as FPIC and respect for customary land rights and, finally, because the guidebook urges the consideration of international standards explicitly for those cases where foreign businesses are involved, rather than for all cases including those where no international or foreign creditor or business partner requires them. ○

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INUIT NUNANGAT (INUIT IN CANADA)

The majority of the 60,000 Inuit in Canada live in 53 communities in Inuit Nunangat, the Inuit homeland encompassing the Inuvialuit Settlement Region in the Northwest Territories, Nunavut, Nunavik in Northern Quebec, and Nunatsiavut in northern Labrador. Inuit land claim agreements shape the political contours of each Inuit region and form the basis of the Inuit-to-Crown relationship. Through these constitutionally protected agreements, Inuit co-manage with the federal government approximately 35 percent of Canada's landmass and 50 percent of its coastline. Inuit are represented at the national level by Inuit Tapiriit Kanatami (ITK) and at the international level by the Inuit Circumpolar Council-Canada. ITK's board of directors is made up of the leaders of the four regional Inuit rights-holding organizations: Inuvialuit Regional Corp., Nunavut Tunngavik Inc., Makivik Corp., and the Nunatsiavut government.

Election opens policy window for Inuit

Inuit face severe social inequity in Canada, including limited access to healthcare, high rates of suicide, household crowding, food insecurity, and low educational attainment. Inuit are unified politically at the national level and are taking action on priorities that include preventing suicide among Inuit; improving access to appropriate and affordable housing; supporting Inuit self-determination in education; and enhancing the health and wellbeing of Inuit families and communities.¹

The election in October 2015 of a new government and Prime Minister had significant political implications for Inuit and Inuit Nunangat in 2016. Prime Minister Justin Trudeau ran on a platform that promised a renewed relationship with Indigenous peoples based on recognition, rights, respect, co-operation and partnership.² He declared in each of his mandate letters to cabinet ministers that no relationship was more important to him and to Canada than the one with Indigenous peoples, and tasked each minister with contributing to the renewal of this relationship.

In December 2015, Trudeau announced that his government would partner with Indigenous communities, provinces and territories to implement the Truth and Reconciliation Commission's 94 Calls to Action as a key step in advancing reconciliation.³ The federal government announced in May that as part of this commitment it was now a full supporter of the UN Declaration on the Rights of Indigenous Peoples "without qualification" and intended to adopt and implement the declaration in accordance with the Canadian Constitution.⁴ ITK has called on the federal government to take action on implementing the UN Declaration, including through national legislation.⁵

The Liberal government moved swiftly to distinguish itself from the previous Conservative government through a "whole of government" approach to engaging with Indigenous peoples. This has translated into greater access to policy-makers for Inuit as well as partnership on high-level policy files affecting Inuit. Prime Minister Trudeau and Minister of Indigenous and Northern Affairs Carolyn Bennett met with the Inuit Tapiriit Kanatami (ITK) board of directors in January 2016. Inuit leaders used this opportunity to share their expectations of the new government.

Progress for Inuit Nunangat

Canada made progress in 2016 by including Inuit in some high-level policy discussions. ITK revised and contributed language on mental wellness, education and Indigenous languages to the US-Canada Joint Statement on Climate, Energy and Arctic Leadership, released in March, which outlines shared policy priorities between the two countries. ITK participated in First Ministers meetings in March and November to ensure that Canada's climate policy reflects Inuit priorities. Indigenous peoples were excluded, however, from participating in the federal working groups that shaped the Pan-Canadian Framework on Clean Growth and Climate Change, released in December 2016.

The Pan-Canadian Framework is Canada's plan to meet its emissions reduction targets under the Paris Agreement.⁶ A central pillar of the framework is the introduction of carbon pricing in each province and territory. Inuit leaders are concerned that carbon pricing will increase the cost of living in Inuit Nunangat in ways that may worsen social and economic outcomes.



Persisting challenges

Follow-through by the federal government in terms of transforming engagement with Inuit into policy action is a persistent challenge. For example, the Prime Minister announced at an Assembly of First Nations gathering in December that his government would introduce legislation to help protect and revitalize Indigenous languages. Inuit were blindsided by the announcement, only learning of the planned legislation through the media.

Inuit advocacy led to progressive policy action on important Inuit priorities in 2016. The 2016 Budget earmarked CAD 156.7 million over two years specifically for affordable housing in the Inuvialuit Settlement Region, Nunavut, Nunavik and Nunatsiavut, providing Inuit with an unprecedented opportunity to self-determine how federal housing funds were spent in these three regions.

Inuit Suicide Prevention Strategy

The elevated rate of suicide among Inuit in Canada is the most urgent crisis facing the people and demands a national response. The four Inuit regions in Cana-

da have rates of suicide that range from five to 25 times the rate of suicide for Canada as a whole. In July, ITK released the National Inuit Suicide Prevention Strategy to coordinate suicide prevention efforts among Inuit at the national, regional and community levels.⁷ The evidence-based strategy outlines actions within six priority areas: creating social equity; creating cultural continuity; nurturing healthy Inuit children; ensuring access to a continuum of mental wellness services for Inuit; healing unresolved trauma and grief; and mobilizing Inuit knowledge for resilience and suicide prevention. Minister of Health Jane Philpott announced during the release of the Strategy that Health Canada would support its implementation with CAD 9 million over four years.

The year ended on an optimistic note for Inuit. In December, the federal government committed to creating a bilateral committee comprising Inuit leaders and key cabinet ministers that will meet at least three times each year to develop policy on shared priorities, and monitor progress going forward.

Nunavik

Thirty-nine percent of Inuit in Inuit Nunangat live in overcrowded homes.⁸ The 2016 federal budget earmarked CAD 50 million for social housing in Nunavik that was paid directly to the Nunavik region. Makivik Corp.'s Construction Division had used the funds to build 144 housing units by the end of the year. Makivik, the Kativik Regional Government, and the Kativik Municipal Housing Bureau continued to lobby the Quebec government throughout the year to work in partnership with the region to implement long-term solutions that help remedy Nunavik's worsening housing crisis.

The Qarmaapik Family House opened its doors in March in the community of Kangiqsualujjuaq, providing board and lodging for children and parents in emergency situations. The overarching goal of the Qarmaapik Family House is to improve parenting skills and reduce the number of children going to foster homes outside of the community. Staff also offer counselling and various social and cultural activities for parents, families and the community. It was launched through a partnership between the Nunavik Regional Board of Health and Social Services, the Kativik Regional Government, and the Kativik Municipal Housing Bureau. The Qarmaapik Family House received a CAD 700,000 Arctic Inspiration Prize in December to continue its programming.

In November, the *Cost of Living in Nunavik Research Report* was released examining the impacts of cost of living on different income groups. The study was initiated by Makivik, the Kativik Regional Government, and the Quebec government working in partnership with Université Laval. The survey documents the disproportionate economic burden facing low-income households, which spend over 70 percent of their income on food and shelter compared to high-income households, where it is around 50 percent. The results of the study will support efforts to implement long-lasting solutions to the high cost of living in Nunavik.

Inuvialuit Settlement Region

In November, Michael McLeod, Member of Parliament for Northwest Territories, together with Dominic LeBlanc, Minister of Fisheries, Oceans and the Canadian Coast Guard, announced the establishment of the Anguniaqvia Niqiqyuam Marine Protected Area in the Beaufort Sea near the community of Paulatuk, Northwest Territories. The 2,400 square kilometers of ocean territory will safeguard key summering habitat for belugas and is part of Canada's conservation goal of protecting 10 percent of Canada's marine and coastal areas by 2020.

Nunavut

The Hamlet of Clyde River's Supreme Court challenge against the National Energy Board's decision to allow a group of companies to conduct seismic testing in Baffin Bay and Davis Strait was the most significant political development for Nunavut in 2016. The case involves the Hamlet of Clyde River as plaintiff contesting the National Energy Board's claim that it met its constitutional duty to consult with Inuit prior to granting the permits.

The Government of Nunavut led public hearings in 2016 to gather feedback on the territory's Education Act. Nunavut Tunngavik Inc. (NTI), the Inuit rights-holding organization for Nunavut Inuit, has sharply criticized the proposed amendments to the 2008 legislation for limiting local control and renegeing on the law's commitment to provide Inuit language of instruction throughout the primary and secondary grades.⁹

New tripartite negotiations on devolution began in July between NTI, the Government of Nunavut, and the federal government, which are intended to bring about the transfer of Crown lands and resources from the federal government to Nunavut. Formal devolution negotiations with the previous government took place in 2014 and 2015 but Ottawa's hard line on issues such as marine areas and revenue-sharing curtailed the discussion.

Nunatsiavut

The controversial Muskrat Falls hydroelectric project overshadowed political developments in Nunatsiavut throughout the year. The project includes construction of an 824 megawatt hydroelectric dam by Nalcor Energy, the province's crown energy corporation, on the lower Churchill River in Labrador, and more than 1,600 km of associated transmission lines that will deliver electricity to homes and businesses in Newfoundland and Labrador. However the Nunatsiavut government is deeply concerned that the dam will cause methylmercury contamination in Lake Melville, an ecologically significant waterway and Inuit harvesting site. The Nunatsiavut government has insisted that fully clearing the reservoir of trees and soil before flooding takes place is necessary to reduce methylmercury contamination downstream.

Concerned members of surrounding communities blocked access to the site in October, leading to a negotiated agreement between the Government of Newfoundland and Labrador and Indigenous representational organizations, including the Nunatsiavut government. Under the terms of the agreement, Nalcor has been ordered to release water from the reservoir in the spring of 2017, after initial flooding, in order to facilitate further mitigation, which the provincial government says may include clearing trees, vegetation and/or soil from the reservoir. The four parties to the agreement have also agreed to establish an Independent Expert Advisory Committee, which will recommend options for reducing the possible health risks of methylmercury contamination.¹⁰ Newfoundland and Labrador Premier Dwight Ball has asserted that his government would reserve the right to a final say on any recommendations the committee puts forward. Muskrat Falls is expected to start generating power in 2019, with full power coming on-stream in the second quarter of 2020. ○

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NORTH AMERICA

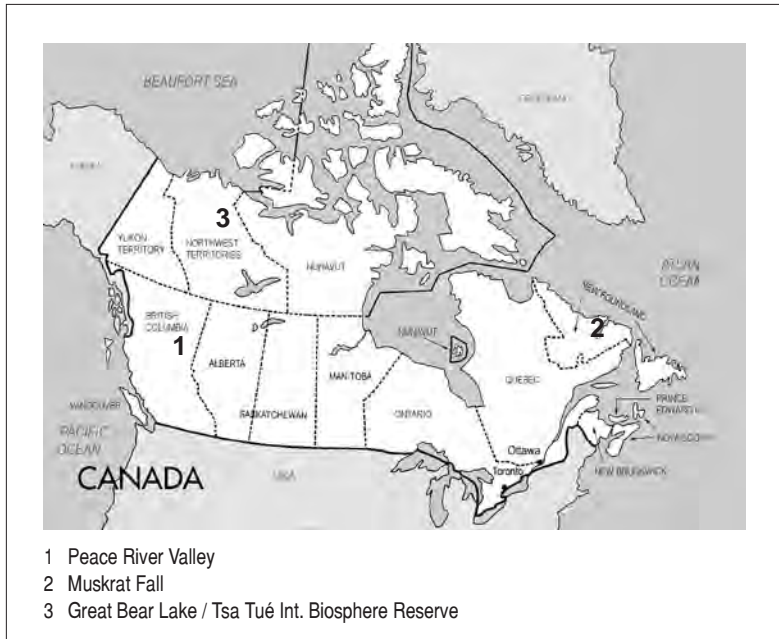
CANADA

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

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

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

In 2010, the Canadian government announced its endorsement of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which was adopted by the UN General Assembly in September 2007. This decision came as a reversal of Canada’s earlier opposition to the Declaration, which it had pursued together with Australia, the USA and New Zealand, who have all since revised their attitude towards the UNDRIP. Canada has not ratified ILO Convention N° 169.



UN Declaration implementation

2016 marks the first full year of the Liberal government of Prime Minister Justin Trudeau. The previous federal government had officially endorsed the UN Declaration in 2010. However, to demonstrate its strong commitment to implementation, the current government sent a major delegation to the UN Permanent Forum on Indigenous Issues last May. The Minister of Justice and Attorney-General of Canada spoke at the opening ceremonies and the Minister of Indigenous and Northern Affairs addressed the plenary the next day. Both delivered the message that Canada fully endorsed the UN Declaration without qualification and, in full partnership with indigenous peoples, would implement it.

In addition to these international political statements, these key Cabinet Ministers, as well as the Prime Minister, have repeatedly committed and recommitted to implementation of the UN Declaration. In particular, the government highlighted four important principles governing its relationships with indigenous peoples –

recognition of rights, respect, cooperation and partnership. Unfortunately, the year ended with the appearance of little more than political rhetoric – and very little concrete work to put action to the words. Indigenous peoples and their allies are growing impatient with the slow pace of substantive action. It would seem that, even with a supportive government at the federal level, implementation remains a formidable challenge for the state. Causes for this include the entrenchment of colonialism in the bureaucracy, pressures from the corporate sector, as well as disputes within government on how implementation might be advanced. The government will need to tackle these and other challenges if it is to maintain credibility and honour the commitments it has made.

At year-end, the Prime Minister announced permanent bilateral mechanisms, with the national indigenous political bodies for First Nations, Inuit, and Métis to develop policy on shared priorities, and make concrete progress on reconciliation.

Bill C-262

The Indigenous World 2016 reported last year on private member's Bill C-641, the UN Declaration on the Rights of Indigenous Peoples Implementation Act, introduced by Cree Member of Parliament, Romeo Saganash. This bill was defeated by the previous federal government. However, in 2016, opposition MP Saganash introduced Bill C-262,³ *An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples*.

The preamble to Bill C-262 explicitly rejects colonialism. Instead, it calls for a contemporary approach based on justice, democracy, equality, non-discrimination, good governance and respect for human rights. The bill also repudiates doctrines of superiority, in the same language as in the UN Declaration.

If adopted, Bill C-262 would provide a much-needed legislative framework for implementing the UN Declaration. The bill establishes two collaborative processes with indigenous peoples - one to ensure that the laws of Canada are consistent with the UN Declaration and the other to develop and implement a national action plan to achieve the objectives of the Declaration.

While the current government appears to support key elements of Bill C-262, it remains to be seen if it will vote in favour of a non-liberal bill. If the government chooses not to support it, it will need to explain how such action is consistent with the mandates given to Ministers to implement the UN Declaration without qualification.

National inquiry into murdered and missing indigenous women and girls

After many years of national and international calls, Canada finally launched a national inquiry into the tragedy of murdered and missing indigenous women and girls.⁴ A thorough process was undertaken to help frame the inquiry, and it was officially launched on 1 September 2016. The commission is to recommend actions to remove the systemic causes of violence and increase the safety of indigenous women and girls. It will also recommend ways to honour and commemorate missing and murdered indigenous women and girls.

It is mandated to set up an inquiry process that is informal and trauma informed; respects the individuals, families and communities concerned; respects the diverse cultural, linguistic and spiritual traditions of indigenous peoples; promotes and advances reconciliation; contributes to public awareness of the causes and solutions for ending violence; and provides opportunities for individuals, families and community members to share their experiences and views, including their views on recommendations for increasing safety and preventing or eliminating violence.⁵

Recommendations will be made to the government through an interim report by 1 November 2017 and a final report by 1 November 2018. Indigenous communities and political organizations have welcomed the inquiry but have also indicated concerns at the slow start and issues have been raised with regard to transparency.

Child welfare

The child welfare case was reported on in previous issues of *The Indigenous World*. On 26 January 2016, the Canadian Human Rights Tribunal (CHRT) issued its ruling that the First Nations Child and Family Services (FNCFS) Program, provided by the Government of Canada through the Department of Indian and Northern Affairs (INAC), had denied child welfare services to many First Nations children and families living on reserves. The CHRT found that the funding mechanisms used by FNCFS incentivized removing First Nations' children from their families. Further, INAC's narrow interpretation and implementation of a child-first

principle (Jordan's Principle) resulted in service gaps, delays or denials, and overall adverse impacts on First Nations children and families on-reserve.

This tremendous victory for First Nations children came after the federal government had spent over 3 million dollars in unsuccessful attempts to get the case dismissed on technical grounds. The complaint was initially filed in 2007 by the First Nations Child and Family Caring Society (Caring Society) and the Assembly of First Nations (AFN).⁶

Since 26 January 2016, despite welcoming the decision and vowing to take action, the Government of Canada has failed to comply - and has been issued with three compliance orders by the CHRT. A second complaint was filed at the CHRT by the Caring Society and the AFN on 16 December 2016, noting Canada's failure to comply. The Caring Society also submitted the same issue of non-compliance regarding First Nations child welfare to the Inter-American Commission on Human Rights on 9 December 2016.

Inter-American Commission on Human Rights

Canada had to appear before the Inter-American Commission on Human Rights (IACHR) at the Organization of American States (OAS) with regard to both the issues of violence against indigenous women and girls, as well as the ongoing discrimination against indigenous children with regard to service delivery on First Nations' reserves. These reviews at the IACHR speak to the egregious nature of rights violations that Canada has not only failed to address adequately but also continues to perpetuate in many ways. While the federal government has taken some measures to address these longstanding and serious situations, there is an ongoing need to pursue international bodies' involvement in order to pressure Canada to take concrete and effective actions.

Resource development

Key decisions to proceed with natural resource development projects have been made this year in Canada. These projects will have disproportionate impacts on indigenous peoples across the continent. In late November, the Government of Canada approved the controversial Kinder Morgan Trans Mountain pipeline (car-

rying bitumen from Alberta to the British Columbia coastal waters) and the Enbridge Line 3 (carrying oil from Alberta to Wisconsin, USA) – while continuing to claim to be a “climate leader”.

After immense public opposition and activism from indigenous peoples in the affected region, the Enbridge Northern Gateway pipeline was finally rejected. However, in the same territory, a proposed liquefied natural gas plant has been given the green light.

While the economic benefits of these developments are appealing, especially to regions in economic distress, there is clearly no widespread consent for the projects. Indeed, many indigenous people have stated that these approvals are a complete betrayal by a government that promised to be a leader in addressing climate change and engage in more meaningful processes with peoples affected by resource development projects.

It remains to be seen how the Government of Canada will reconcile its commitment to the UN Declaration – including FPIC – and its clear desire to move oil and gas to markets both foreign and domestic.

Muskrat Falls

The Lower Churchill Hydroelectric Project at Muskrat Falls, Labrador has been contentious since construction began in 2013. Recent studies by Harvard University scientists⁷ show that, if the dam reservoir is not fully cleared of vegetation before flooding begins, there will likely be a significant increase in methylmercury in the watershed.⁸

Indigenous and non-indigenous people united to call on the federal and provincial governments to prevent this contamination and the resulting effect on fish and animals, as well as the potential devastation to traditional lifestyles.

Actions in 2016 against the flooding of Muskrat Falls included a two-week hunger strike, the occupation of the Muskrat Falls construction site by 50 land protectors, and demonstrations attended by hundreds of people in Labrador and cities across the country. This pressure led to an agreement between the provincial government and indigenous leaders that promised greater consultation. Despite the united efforts of Innu, Inuit, Métis, and settlers in Labrador, however, flooding of the Muskrat Falls reservoir began on 5 November 2016.

The point of no return – the Site C dam

Amnesty International released its report *The Point of No Return: The Human Rights of Indigenous Peoples in Canada Threatened by the Site C Dam*.⁹ The Peace River Valley in north-eastern British Columbia is a unique ecosystem and one of the very few areas in the region that has thus far been largely preserved from large-scale resource development. First Nations and Métis families and communities rely on the valley for hunting and fishing, gathering berries and sacred medicine, and holding ceremonies. Their ancestors are buried in this land.

The proposed eight billion dollar plus Site C hydroelectric dam would flood more than 80 km of the river valley, stretching west from Fort St. John. The severe impact on indigenous peoples is beyond dispute. A joint federal provincial environmental impact assessment concluded that the dam would “severely undermine” the use of the land, would make fishing unsafe for at least a generation, and would submerge burial grounds and other crucial cultural and historical sites.

The West Moberly and Prophet River First Nations have gone to court to protect their traditional lands. Their struggle has been supported by the Union of BC Indian Chiefs, the Assembly of First Nations and many others - including local farmers and other landowners in the Peace River Valley.¹⁰

New American Declaration

The American Declaration on the Rights of Indigenous Peoples was adopted by consensus of the OAS in June 2016. Indigenous peoples in the Americas now have two declarations that specifically affirm and elaborate upon their human rights and related state obligations.

This new American Declaration includes some provisions that fall below the standards in the UN Declaration on the Rights of Indigenous Peoples and other provisions that go beyond. In addition, both declarations include provisions that the other does not have. In any particular situation, the minimum standard is set by whichever is the *higher* in these two human rights instruments.¹¹

Tsá Tué Biosphere

In March 2016, the Tsá Tué International Biosphere Reserve in the Northwest Territories received formal UNESCO ratification. This encompasses Great Bear Lake, the eighth-largest lake in the world, and its surrounding watershed. The Tsá Tué is the largest biosphere reserve in North America and the first such project to be led entirely by indigenous peoples at their express request. The Biosphere is the homeland of the Sahtu'tine people and they are leading the management plan, in cooperation with a range of agencies and organizations.

Reconciliation

Reconciliation is a journey not a step in time. The work is often one step forward and two back. There is no question that some elements in Canada are not interested in the affirmation of indigenous peoples' human rights. Indigenous peoples and their allies face many obstacles and have no room to relax in the work.

In addressing Prince William and Princess Catherine during the royal visit, Grand Chief Edward John reminded them of the history of the province of "British Columbia":

In the mid-1800s, colonial authorities, without our ancestors' knowledge, consent or agreement, unilaterally took all indigenous lands on behalf of the Crown and called it Crown lands. The land became known as "British Columbia".

The fair and equitable resolution of this issue, the "land question" including recognition, restitution, redress and compensation remains outstanding. Current Crown approaches of denial and delay cannot continue. We cannot hope that our future means more litigation or protests on the land. In a constitutional democracy, where the rule of law is an important foundation, we expect more.



Notes and references

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- 3 See *An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples*, (Private Member's Bill C-262), House of Commons, 1st sess., 42nd Parl., First reading (tabled by Romeo Saganash, 21 April 2016). The short title is *United Nations Declaration on the Rights of Indigenous Peoples Act*.
- 4 Information on the inquiry can be found at: <http://www.mmiwg-ffada.ca>
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- 9 Amnesty International, *The Point of No Return: The Human Rights of Indigenous Peoples in Canada Threatened by the Site C Dam*. Available in English, French and Spanish, <http://www.amnesty.ca/our-work/campaigns/site-c>
- 10 This description courtesy of Amnesty International. See their report for further information.
- 11 For a full analysis see Paul Joffe, *Advancing Indigenous Peoples' Human Rights: New Developments in the Americas*. 2016

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UNITED STATES OF AMERICA

Approximately 6.6 million people in the U.S., or 2% of the total population, identify as Native American or Alaska Native, either alone or in combination with another ethnic identity. Around 2.5 million, or 0.8% of the population, identify as American Indian or Alaska Native alone. 567 tribal entities were federally recognized in May 2016, and most of these have recognized national homelands. 23% of the Native population lives in American Indian areas or Alaska Native villages. The state with the largest Native population is California; the place with the largest Native population is New York City.

While socioeconomic indicators vary widely across different regions, the poverty rate for those who identify as American Indian or Alaska Native alone is around 27%.

The United States announced in 2010 that it would support the UN-DRIP as moral guidance after voting against it in 2007. The United States has not ratified ILO Convention No. 169.

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

Presidential election

In November, Donald Trump (R) was elected the next president of the United States. As a businessman with no prior political experience, it is not clear what his election might mean for Native peoples; indigenous issues were completely absent from his campaign. In December, however, members of Trump's Native American Coalition, one of his campaign support groups, proposed privatizing Native lands that hold natural resources, thereby removing federal oversight and regulations. Trump has nominated Ryan Zinke (R), a congressman from Montana, to lead the Department of the Interior, which oversees the Bureau of Indian Affairs (BIA). Zinke has opposed the sale of federal lands to states, worked on the

Blackfeet Water Compact which passed Congress in December, and promotes the export of Montana coal, much of it from the Crow Reservation (see further below).

Obama enacts measures before leaving office

In December, President Obama enacted two important measures protecting landscapes from energy development. Together with Prime Minister Trudeau of Canada, he announced that the majority of Chukchi and Beaufort Seas would be indefinitely closed to off-shore drilling, although this decision is subject to scientific review every five years. The Arctic Slope Regional Council (ASRC), representing Inupiaq interests, reacted strongly to the decision, and vowed to “fight this legacy move by the outgoing president with every resource at our disposal”.¹ In November, the administration had canceled off-shore leases in the area until 2022, after the ASRC acquired leases that Royal Dutch Shell no longer wanted.

In another decision, Obama declared the Bears Ears area in Utah a National Monument. This area holds sacred sites for the Ute, Navajo, Hopi and Zuni tribes. It was the subject of the Utah Public Lands Initiative Act, a proposal by Representative Rob Bishop (R) of Utah, which would have transferred management of lands included in the Ute Tribe’s reservation to the state, protected some of the area, and opened up large areas to energy development. The Bears Ears Inter-Tribal Coalition, consisting of the Hopi, Navajo, Uintah and Ouray Ute, Ute Mountain Ute, and Zuni nations, had proposed the creation of a National Monument in October 2015. Obama also established a Bears Ears Commission, made up of tribal nations, to advise on the management of the Monument. Senator Mike Lee (R) of Utah has stated that he “will work tirelessly with Congress and the incoming Trump administration to honor the will of the people of Utah and undo this designation”.²

Just as these two decisions could potentially be undone by the Trump administration, so too will the fate of the Dakota Access Pipeline, the most famous point of contention in 2016, depend on whether or not Donald Trump intervenes in regulatory processes.

Standing Rock and the Dakota Access Pipeline

In April, some people started to set up a camp on Standing Rock reservation in North Dakota, protesting the Dakota Access Pipeline, a project to carry oil from



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|---------------------------|--|-------------------|---|
| South Dakota | Pine Ridge Sioux Rosebud Sioux Cheyenne River Sioux Yankton Sioux | California | Pechanga |
| | | Oklahoma | Choctaw Chickasaw |
| North Dakota | Standing Rock Sioux Three Affiliated Tribes (Fort Berthold) | Idaho | Nez Perce |
| Washington, D.C. / | | Washington | Yakama Umatilla Colville Lummi |
| Alaska | Shishmareff (Inupiat) Akiachak Native Community Chilkoot Indian Association Chalkyitsik Village Tuluksak Native Community Arctic Slope Regional Council (Inupiaq) | Arizona | Navajo Hopi |
| Nebraska | Omaha Iowa | New Mexico | Zuni |
| Minnesota / | | Utah | Uintah and Ouray Ute |
| Montana | Crow Blackfeet Northern Cheyenne | Colorado | Ute Mountain Ute |

western North Dakota through South Dakota and Iowa to Illinois. Initially, the protests were meant to safeguard the location of some burial sites on the reservation. The pipeline was not to cross reservation territory but to pass within a few hundred meters north of the Cannonball River, the reservation boundary, before crossing the Missouri River, here dammed as Lake Oahe. However, the Standing Rock Sioux Tribe had also been opposing the pipeline route for several years. The confluence of the Cannonball and the Missouri is host to several sites of great cultural and spiritual importance, and the tribe draws its drinking water from Lake Oahe and feared that a spill would have grave consequences.³ In July, the Standing Rock Sioux Tribe sued the U.S. Army Corps of Engineers for ignoring laws requiring consultation with tribes over sacred sites and for not consulting with the tribe before allowing the pipeline to cross Lake Oahe. The Corps controls the land around the lake. The Cheyenne River Sioux Tribe joined this suit later; the Yankton Sioux Tribe filed a separate lawsuit. After the lawsuit was filed, many people came to join the camp, and most camped on Corps lands. Eventually, three different camps with thousands of people were set up. The Corps allowed them to stay on its land as long as there was no damage but the tribal government paid for sanitation and other services. In August, Dakota Access (which owns 75% of the pipeline) sued Standing Rock for blocking construction of the project, and the state of North Dakota withdrew the water tanks and trailers that had provided drinking water to the camps and declared a state of emergency, which allowed it to ask for additional police officers and equipment from other states. Over the next months, police officers from Minnesota, South Dakota, Wisconsin and Indiana lent their support. The North Dakota National Guard also began to operate a road block on Highway 1806, the road between Bismarck/Mandan and Standing Rock reservation. The International Indian Treaty Council (an international indigenous peoples' organization) and Standing Rock urged the UN High Commissioner on Human Rights to look into the situation.

At the end of August, Tim Mentz, former Tribal Historic Preservation Officer of the Standing Rock Sioux Tribe, surveyed a segment of the pipeline route at the invitation of a landowner. He filed a deposition with the court handling the lawsuit on 2 September, noting that he found several important cultural sites that did not appear in the surveys conducted for Dakota Access. This area was on private land, so the federal government had no control over it. On 3 September, Dakota Access removed the topsoil from this portion of the pipeline route and graded it. Protesters tried to halt the activity, and unlicensed security guards working for

Dakota Access allowed their dogs to attack the people. On 4 September, Standing Rock and Cheyenne River filed a request for a temporary restraining order to halt all work on the pipeline within 20 miles of Lake Oahe. During these events, it became obvious that while Dakota Access needed no federal permits to build on private lands, it had not secured the permit from the Corps to drill the pipeline under Lake Oahe to cross the Missouri River. The court concluded that "Dakota Access has demonstrated that it is determined to build its pipeline right up to the water's edge regardless of whether it has secured a permit to then build across. Like the Corps, this Court is unable to stop it from doing so".⁴ While the court denied the request, a few hours later, the Departments of the Army, of Justice, and of the Interior released a joint statement declaring that the army would "not authorize constructing the Dakota Access Pipeline on Corps land bordering or under Lake Oahe until it can determine whether it will need to reconsider any of its previous decisions regarding the Lake Oahe site." They also called for a voluntary halt to construction within 20 miles of the lake, and government-to-government consultations with tribes on the existing framework for consultations on cultural resources.⁵ On 22 September, the Special Rapporteur on the rights of indigenous peoples asked the United States to halt construction of the pipeline.

Protests continued, not only near the pipeline route and in North Dakota but also in Washington, D.C. and other cities. On 23 October, protesters erected a camp on the direct route of the pipeline, about 2.5 miles north of the reservation, on private land. At the same time they built three road blockades, two of them on Highway 1806. The day before, police had arrested over 100 activists who were trying to stop work at a construction site. On 27 October, police and National Guard with armored vehicles cleared that camp site and the road blockades in a multi-hour operation and arrested over 140 protesters. After this violence, Grand Chief Edward John, member of the UN Permanent Forum on Indigenous Issues, traveled to North Dakota to observe the situation and collect testimonies. He urged the Special Rapporteur to visit and voiced strong concerns about the consequences of potential oil spills, the lack of consultation, and especially the escalating violence. On 14 November, the Corps released a statement that the "Army ha[d] determined that additional discussion and analysis are warranted" and that it "continue[d] to welcome any input that the Tribe believes is relevant to the proposed pipeline crossing or the granting of an easement." During these consultations, construction on the crossing could not occur.⁶ Protests and arrests still continued and, on 20 November, police used water cannon to spray activists in

sub-freezing weather. A young woman was seriously injured by a small explosion in the conflict. On 28 November, the Corps declared that people camping on its land would be trespassing, although it would not try to actively remove them. This was followed quickly by an evacuation order by the state governor, who cited an approaching blizzard as a safety risk. The state also considered blocking water and food from reaching the camp but reconsidered.

On 4 December, the Army announced that it “will not grant an easement to cross Lake Oahe at the proposed location based on the current record” but would engage in a review of alternative locations, a discussion of potential risks of oil spills, and a review of treaty rights.⁷ Dakota Access’ parent company, Energy Transfer Partners, denounced the decision as a “purely political action”, “the latest in a series of overt and transparent political actions by an administration which has abandoned the rule of law in favor of currying favor with a narrow and extreme political constituency” and vowed to ensure “that this vital project is brought to completion and fully expect to complete construction of the pipeline without any additional rerouting in and around Lake Oahe.”⁸ North Dakota Congressman Kevin Cramer (R) wrote that he was “encouraged we will restore law and order next month when we get a President who will not thumb his nose at the rule of law.”⁹ North Dakota Senator Heidi Heitkamp (D) stated that the project “remains in limbo. The incoming administration already stated its support for the project”¹⁰ and Speaker of the House of Representatives Paul Ryan (R, Wisconsin) tweeted that the decision was “big-government decision-making at its worst. I look forward to putting this anti-energy presidency behind us.” The president and CEO of the American Petroleum Institute asked President-elect Trump “to restore the rule of law in our nation’s regulatory regime and make the approval of the Dakota Access Pipeline a top priority when he takes office.”¹¹ Dakota Access insists that it has all the permits to complete its work; the Chairman of the Standing Rock Sioux Tribe, Dave Archambault, has said that “this is far from over”. In light of this, the Standing Rock, Cheyenne River and Yankton Sioux tribes appeared before the Inter-American Commission on Human Rights on 11 December to “call on the United States to adopt precautionary measures to prevent irreparable harm to the Tribes, their members, and others resulting from the ongoing and imminent construction of the Dakota Access Pipeline (‘DAPL’), and from the harassment and violence being perpetrated against people gathered in prayer and protest in opposition to DAPL.”¹²

Pipelines, natural resources and conflicts

The events at Standing Rock, where militarized police with armored vehicles, mace canisters, bean-bag and rubber projectiles, and Long-Range Acoustic Devices faced dedicated activists who blocked roads, burned cars, and occupied land, show that the media still pays attention to Native issues mostly when violent conflict erupts. At the same time, the Iowa Tribe of Kansas and Nebraska and the Omaha Tribe of Nebraska received almost no attention when they raised similar concerns over cultural sites and a lack of consultation in the Dakota Access route in Iowa and South Dakota.

The Three Affiliated Tribes on the Fort Berthold reservation in North Dakota, in the meantime, were prevented from interfering in the construction of the Sacagawea Pipelines under Lake Sakakawea by court order in September. The coming months will show whether the new administration will interfere in the Environmental Impact Statement process initiated by the Corps, or whether the public awareness raised will create enough political pressure to stop the project altogether.

The Sacagawea Pipelines case shows that Native agendas are complex. One of the partners in the pipeline is Greywolf Midstream, a company owned by the tribe itself. The complexity of weighing economic development against ecological protection was also showcased in May, when the Corps of Engineers denied a permit for a coal shipping terminal on Puget Sound in Washington, citing the fishing rights of the Lummi Nation. The Gateway Pacific Terminal was supposed to export 48 million tons of coal per year, mostly from the Crow reservation in Montana. The nominee for Secretary of the Interior, Ryan Zinke, was a staunch supporter of the terminal, raising speculation that the decision could be overturned under the new administration. He also opposes a January moratorium on new coal leases on federal lands, which affects mostly the Powder River Basin in Wyoming and Montana, home to the Crow and Northern Cheyenne tribes. Cloud Peak Energy's Big Metal Mine is expected to pay the Crow tribe USD 10 million in the first five years once it opens. In April, a coalition of environmental groups, including Dine Citizens Against Ruining Our Environment (CARE), filed a lawsuit against the federal government for extending operations at the Navajo Mine and the Four Corners Power Plant in Arizona. The Navajo Mine is operated by Navajo Transitional Energy Company, wholly owned by the Navajo Nation, which final-

ized the purchase of the mine from BHP Billiton in July. The mine provided USD 35 million to the nation's general fund in 2015.

Land and water rights

In March, the Supreme Court of the United States decided on *Nebraska v Parker*, a suit by the state of Nebraska claimed that the village of Pender was not situated on Omaha reservation territory. The Omaha Tribe had attempted to regulate liquor sales in Pender according to its beverage ordinance. The Supreme Court decided that although parts of the Omaha reservation were sold to non-Indians in 1882, this did not diminish the reservation; however it did not render a verdict on whether this means that the tribe may tax retailers in Pender.

In addition to the Blackfoot Water Compact, the Water Infrastructure Improvements for the Nations Act signed by President Obama in December included water settlements for the Pechanga Band of Luiseno Indians in California and between the Chickasaw and Choctaw Nations and the state of Oklahoma. This is a dispute between Oklahoma City and the Choctaw/Chickasaw over who has the right to the water. The city projects that it needs more water, and the lake is within the tribes' territories; the southern plains, like many other areas in the US, has a water shortage. Under the agreement, spurred by a 2011 lawsuit, the state controls the water rights for the traditional territories of the Choctaw and Chickasaw Nations in Oklahoma. However, the tribes are guaranteed specific stream flows and water levels at Lake Sardis, from which Oklahoma City wants to draw water.

In August, the state of Alaska dropped its appeal against the Bureau of Indian Affairs' decision to allow Alaska tribes to put their lands into trust. In July, a federal court in Washington, D.C. had ruled in favor of the Akiachak Native Community, the Chilkoot Indian Association, the Chalkyitsik Village Council and the Tuluksak Native Community, who were suing the Department of the Interior. Tribes can now apply to have their lands transferred to the federal government, which will hold them in trust for them. This provides protection of titles from seizure for debt, protects them from state taxation, and grants greater jurisdiction. The first application came in October from the Craig Tribal Association, and concerned a one-acre parcel of land.

Health

In July, emergency room services at the Indian Health Service (IHS) hospital on Rosebud Reservation in South Dakota reopened after a seven-month closure. Emergency services were shut down because an inspection of the hospital found conditions there to be life-threatening. Patients had to be diverted to a facility 50 miles away, and at least six died during transport. The Rosebud Sioux Tribe filed a lawsuit against IHS in April. In October, the Office of Inspector General of the Department of Health and Human Services released two reports on IHS hospitals. They concluded that there was limited oversight of these hospitals and their quality of care. In addition, despite increasing numbers of users, two IHS Area Offices had “reported losing over 50 percent of their staff positions in recent years”. Most providers at one hospital “explained that the hospital’s providers are primarily midlevel providers and family practice physicians who are not equipped to provide specialty care”, so that patients are often referred to non-IHS providers. Theoretically, the Purchased/Referred Care (PRC) program would pay for these services but the program has been underfunded for decades and only pays for medical emergencies. Patients from IHS hospitals that are isolated often have to travel 100 to 200 miles for post-acute care or to see specialists. In addition, IHS hospitals showed a 33 percent vacancy rate for physicians. More than half of IHS hospitals reported “that old or inadequate physical environments challenged their ability to provide quality care” and more than two-thirds are too small.¹³

Youth

In October, President Obama signed into law the Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act, which creates a Commission on Native Children. This commission will conduct a comprehensive study of federal, state and tribal programs, on the impact of jurisdiction on child welfare, and on barriers to Native children’s success. It will then make recommendations for improvements and develop plans for federal policy related to Native children. The issues to be studied include Indian education, juvenile justice programs, and health care issues. The lack of well-being of Native youth in many communities is highlighted by high suicide rates and other social issues. In October, three judges

had their positions terminated on the Pine Ridge reservation in South Dakota after they ordered the return of a boy to his mother who is accused of then beating him to death.

In December, new rules went into effect for the Indian Child Welfare Act (ICWA). The main change is that state courts now have to ask, in every child custody hearing, whether the child or its parents are American Indian, and whether ICWA applies. ICWA was enacted because many Native children were placed with adoptive and foster parents who were not Native. However, in Minnesota, for example, the rate of Native children in foster care today is higher than in 1978, when ICWA was passed. Fewer than two percent of children in the state are American Indian, yet Native children make up almost a quarter of the state's foster care population. There are often not enough Native foster parents available to host children who need foster homes.

Further issues

Also in Alaska, in August, the Inupiat village of Shishmaref held an election on whether to develop a new village site on the mainland in order to relocate from a barrier island that has been heavily eroded. Over 30 Alaskan villages face an imminent threat of coastal erosion and flooding caused by climate change. Shishmaref voted to relocate in 1973 and in 2002, but could not find either funds or suitable locations to make the move happen. The move would now cost USD 200 million; the state is ready to grant USD 8 million towards it.

Ancient human remains found in 1996 and known as Kennewick Man will be transferred to the Yakama, Nez Perce, Umatilla and Colville tribes and the Wanapum Band in Washington and Idaho. They will be reburied at an undisclosed location. The tribes had fought a long legal battle over the remains, which were declared to not be legally Native American under the Native American Graves Protection and Repatriation Act (NAGPRA) in 2004. Recent DNA analyses were able to link the 9,000-year-old remains to the tribes, however, clearing the way for repatriation.

Native Hawaiians

In September, the Department of the Interior created a final rule re-establishing formal government-to-government relationships with Native Hawaiians, "if the

Native Hawaiian community forms a unified government that then seeks a formal government-to-government relationship with the United States". This "could provide the community with greater flexibility to preserve its distinct culture and traditions. It could also enhance their ability to affect its special status under federal law by exercising powers of self-government over many issues directly impacting community members".¹⁴ In practice, the federal government is offering to recognize Native Hawaiians as a community in a similar fashion and with similar rights as it recognizes American Indians and Alaska Natives as sovereign nations. It would not change federal laws that have established trust relationships with Native Hawaiians. Native Hawaiians would not be listed as a federally-recognized tribe and would not be eligible for Indian programs, services or benefits.

Last words

On the occasion of the eighth and probably final White House Tribal Nations Conference in September, President Obama reflected on his administration's legacy in American Indian policy. While he saw much progress, many of the policies may be undone by the incoming administration. Some people will see his presidency as not having made enough progress but it is indisputable that his administration did at least have the intention of taking Native issues and voices seriously. He ended on an optimistic note but one that it will serve indigenous peoples in the United States well to remember:

But this progress doesn't end with my presidency. We need to continue the conversation and stay focused on tackling the important challenges facing Indian country. True and lasting progress depends on all of us – not just whoever sits in the Oval Office, but also those who are willing to organize and mobilize, and keep pushing for justice and opportunity.¹⁵ ○

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MEXICO AND
CENTRAL AMERICA

MEXICO

Mexico is the country in the Americas with largest indigenous population and the greatest number of native languages spoken in its territory: 68 languages and 364 counted dialect variations. The National Institute of Statistics and Geography (INEGI), the National Population Council (CONAPO), and the Economic Commission for Latin America (ECLAC) count 16,933,283 indigenous persons in Mexico, representing 15.1% of all Mexicans (112,236,538). The indigenous population is experiencing sustained growth, on account of higher indigenous fertility rates, offset only in part by a greater overall mortality rate (with significant, persistent, troubling differentials in infant and maternal mortality, which, in some states, is as high as triple the national average). The country signed ILO Convention 169 in 1990 and, in 1992, recognized Mexico as a pluricultural nation upon amending Article VI of the Constitution. In 2001, as a result of an indigenous peoples' mobilization demanding legislation based on the "San Andrés Accords" —negotiated in 1996 between the Government and the Zapatista National Liberation Army (EZLN)—, Articles 1, 2, 4, 18, and 115 of the Mexican Constitution were amended. As of 2003, the EZLN and the National Indigenous Congress (CNI) commenced implementation of the Accords throughout its territories, creating autonomous indigenous governments in Chiapas, Michoacán, and Oaxaca. Although the states of Chihuahua, Nayarit, Oaxaca, Quintana Roo, and San Luís Potosí have provisions regarding indigenous peoples in their state constitutions, indigenous legal systems are not yet fully recognized. In 2007, Mexico voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples.

Indigenous peoples' health and limited information

Efforts to construct a panorama of the health of indigenous peoples in Mexico faces a set of difficulties, which fundamentally result from a lack of official epidemiological information. Officially, indigenous peoples are considered to be



the most vulnerable sector of the population, with the highest maternal and infantile mortality rates, acute and chronic malnutrition rates higher than the national average, lower life expectancy, and severe limitations for access to health services. They should therefore constitute “a group warranting priority attention.” Nonetheless, the institutions of the National Health System (the Department of Health, the Mexican Social Security Institute, the Institute for Social Security and Services for Government Workers, the National Defense Department, the Department of the Navy, and PEMEX) do not produce specific data in their epidemiological records. However, multiple evidence included in indigenous health case studies “documents their high vulnerability, as well as their constant exposure to several risks in conditions of social inequity, which reduce their response capacity to mobilize social resources for dealing with health problems.”¹ In *El Mundo Indígena 2015* we indicated that the work of the 2012 National Health and Nutrition Survey (ENSANUT) is one of the few efforts that explicitly recognizes the need for a comparative analysis between indigenous and nonindigenous populations. For such purpose, “differences in proportions or averages were estimated by making

an indigenous/nonindigenous comparison for each year as well as between 2006 and 2012.² In other words, the disadvantageous conditions of the indigenous peoples in health matters were recognized (ENSANUT itself considers that this is “a group warranting priority attention”), but no epidemiological data logging instruments are regularly and systematically applied that distinguish the indigenous population from the Mexican population as a whole, which, in its majority, is non-indigenous. We shall also see that when the data’s application is announced, such data does not appear in the general reports or in the individual state reports.

The conclusions themselves, and the discussion of the above-mentioned work regarding the ENSANUT, are illustrative of the theoretical, methodological, and practical limitations of the National Health System for explaining the health situation of Mexican indigenous peoples. The results communicated by the authors do not go beyond the data provided by the UNDP-CDI or INEGI, much less by the status tables offered by the National Social Development Policy Assessment Council (CONEVAL):³ “60% of Mexico’s total indigenous population lives at the lowest socioeconomic level,” state Leyva Flores and collaborators, and they add: “Increasing the coverage of the Popular Insurance presents *heterogeneous results* in the use of health services, while the Oportunidades Program *does not have an impact on improving the socioeconomic condition of the indigenous population.*”⁴ In fact, CONEVAL indicates, with a greater analytical scope: “This is reflected in the fact that, according to estimates of poverty developed by CONEVAL, the percentage of the population living below the poverty line in 2012 that speaks an indigenous language was almost double that of the population that does not speak an indigenous language (76.8 as compared to 43.0 %) and the percentage of the population living in extreme poverty was almost five times greater (38.0 as compared to 7.9 %). Also contributing to this situation is the fact that six out of every ten indigenous language speakers suffer from at least three factors to their social detriment, while such a situation only affects one third of persons who do not speak any indigenous language. Furthermore, half of the indigenous language speaking population have income below the cost of basic foodstuffs, compared to 17.9 % of population that do not speak an indigenous language.”⁵ The authors conclude that: “In Mexico there has been little analysis to understand the indigenous health situation, and the ENSANUT represents one of the few sources of information for analyzing health and the effective scope of social programs. This work shows that there are differences in terms of the averages and proportions of the indicators selected in the years 2006 and 2012 (to

which the ENSANUT was applied) Such a comparison in time is made by way of a description, and we are aware of the limitations for establishing causal relationships, which are not the subject matter of this work".⁶

Indigenous Mexicans in the United States labor market

The current political changes in the United States and the belligerent discourse of its president towards migrants in general and Mexicans in particular has intensified the debate over the presence of the indigenous Mexican population in that country's agricultural fields and, significantly, in California. According to data from the 2010 United States Census, California is one of the states with the greatest diversity of Mexican indigenous groups, 31 of which have been counted, of which Mayans, Mixtecos, Zapotecos, Purépechas, and Triquis are the most numerous. These groups represent 47%, 19%, 9%, 8% and 4%, respectively, in relation to the total indigenous population registered in the State. Durand and Massey have proposed to call this process the "indigenization of agricultural labor in the United States".⁷

This population has been integrated into the work that requires the greatest physical effort and that is the worst paid. Thus, it is considered to constitute labor reserve: "The last group able and willing to work in agriculture under the current conditions [...]"⁸ The vulnerability of indigenous Mexicans in the United States is associated with the position they occupy in the structure social: "due to their position of political, social, and cultural subordination, as well as to economic exploitation in Mexico and the United States".⁹

Indigenous presence in the agricultural labor markets contradicts migration enforcement policies, because a large undocumented population works in this activity. Research by the University of California, Berkeley reported data in said regard: "in five years (1992 to 1997) the proportion of agricultural workers in California without authorization to work legally in United States increased from 9 to 43%." Nonetheless, as Barrón mentions, there is a labor market that absorbs them.¹⁰ The explanation for their presence in California's labor markets lies in the fact that the contracting of the indigenous population has allowed U.S. producers to reduce production costs by resorting anew to a contracting scheme that employs "cheap," "flexible" labor, because they provide forced labor for low wages. The *ñuu savi* are one of the groups that fulfilled the demand for labor in Mexico's agricultural zones. Afterwards, they were brought in as a labor for Southern Cali-

fornia growers, not only due to their experience working the land, but also because they accept low wages.

Notwithstanding the above, for them and other groups, agricultural wage labor continues to be a labor option in the United States. Some *ñuu savi* of San Miguel Cuevas state that they prefer it, because it is what is closest to what they know how to do, and because they can earn more if they work more than eight hours. When there is less work in the agricultural fields, they perceive the advantage of being able to go back to their towns to participate in the patron saint festivals and visit their relatives. In other words, they do not have a labor situation that limits them. It is also difficult for them to work in other economic activities given their undocumented status, and because they do not have academic or technical training and do not speak English.

Given how far back this phenomenon dates and because Mexicans now seek other employment to increase their income and reduce the physical effort they expend in agriculture, their integration into other activities has also been documented. Wallace and Castañeda¹¹ reported the following demographic data on the labor profile of Mexicans in the United States: 50.3% of sewing machine operators; 43.4% of agricultural workers; 41.6% of fence erectors; 41.4% of drywall installers and plasterers, and 39.1% of dishwashers are Mexican. For women, 43.2% of recent Mexicans immigrants ages 18 to 64 participate in the U.S. labor force. They comprise 34.2% of farm workers, graders, and sorters; 26.3% of meat processing workers; 25.9% of hand packers and packagers; and 25.4% of packing machine operators. 310,000 Mexican immigrants work as housekeepers and 64,000 in childcare.

Labor markets have diversified, but precise data is not available on how many of these workers are indigenous. Some studies indicate their participation in gardening, the construction industry, factories, restaurants, services, the hotel industry, electronics, salmon fishing, childcare, dishwashing, foods, and canning.¹² The network of home-town association, ethnicities, of friendships or work relationships help them get more information on the labor markets, which in turn helps them become part of a broader labor pool.

Indigenous candidate for the 2018 presidential elections

In the framework of the Fifth National Indigenous Congress (CNI) from October 9 to 14, the EZLN and the CNI commemorated the 20th anniversary of the National

Indigenous Congress and of the living resistance of the native peoples, nations, and tribes of Mexico. At the close of the Congress they released a communiqué named: *And May the Earth Tremble at its Core* (quoting a line from the Mexican National Anthem) where they report that they will run an indigenous woman as an independent candidate for the 2018 elections.

In its communiqué the EZLN mentioned “ [...] *we declare ourselves as being part of an ongoing assembly, and we will engage in consultation in each of our geographic areas, territories, and travels regarding the resolution of this Fifth National Indigenous Congress (CNI) to designate an indigenous council of government whose word will be materialized by an indigenous woman, and who will represent the CNI as an independent candidate running on behalf of the National Indigenous Congress and the Zapatista National Liberation Army in the 2018 elections for the presidency of this country*”.¹³ As one would suppose, the declaration has aroused intense national debate, since the indigenous organization spent more than 20 years opposing the electoral process in the country. 2016 was marked by a constant struggle waged by teachers against the Educational Reform. The EZLN also joined that struggle and on May 30, 2016 published a communiqué entitled: “*May: Between Authoritarianism and Resistance*”.¹⁴ In that communiqué it announced its support for the struggle of the National Confederation of Education Workers (CNTE) and its total opposition to that Reform, while stating:

“The misnamed ‘educational’ reform is not an educational reform; it is a labor reform. Had it been an educational reform it should have taken the opinions of teachers and families into account. When the government refuses to dialogue with teachers and families regarding the reform, it is acknowledging that what is sought is not to improve education, but to ‘adjust the payroll,’ which is the name given by capital to firings. Yes indeed, the objective of the educational reform is to privatize education. In fact, such privatization is already underway. Leaving schools without attention and without a budget failed to do away with public education in Mexico for a human reason: the teachers. So now, those teachers, be they men or women, must be destroyed.”

Finally, on Monday, December 26, the EZLN inaugurated the conference entitled “Zapatistas and those with a ConScience for Humanity” at the installations of the

University of the Earth (*Universidad de la Tierra* - UniTierra), with the participation of 82 scientists from 11 countries. The scientists made presentations on mathematics, volcano studies, astrophysics, astronomy, nuclear fusion, geophysics, neurosciences, agro-ecology, energy savings, and several other subjects. Sub-commander Galeano in his participation asked certain questions to the scientists and stated that in Chiapas, rather than fortresses, open pit mines, and luxury hotels, “under our collective operation direction, what is being built are astronomical observatories, laboratories, physics and robotic workshops, as well as observation, study, and nature conservation posts.”

Otomí evicted and robbed of their lands in Xochicuautla for construction of a highway

On December 5, 2016 the construction project commenced for the Toluca-Naucaupan highway, which affected a large part of the Otomí-Mexica State Park, the largest natural area (105,875 hectares) protected by the Mexican government since 1980. The company named Autopista de Vanguardia SA de CV (Autovan), an affiliate of the Higa Group, is in charge of this work. However, members of the San Francisco Xochicuautla Otomí community, belonging to the Municipality of Lerma, State of Mexico, were not notified in advance of the project that encroached upon their lands. In February 2016 District Court Number Five (State of Mexico) granted a definitive suspension of the project, but the project did not cease going forward, which led to the demolition of the home of Armando García Salazar, an Otomí leader and municipal representative, on April 11, 2016. Nearly 800 police also demolished the Peace and Dignity Resistance Camp in Xochicuautla, set up by the Peoples Front in Defense of the Resources of Mother Earth to stop the highway's construction. On September 4, 2016 six members of the United Nations Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises met with the inhabitants of this community to hear their denunciations regarding how they would be harmed by the highway's construction. This case is a clear example of how construction companies operate in indigenous territories of Mexico. It also exposes a problem that not only affects the indigenous population but that, if the ecocide of the Great Otomí Forest is perpetuated, would affect one of the vital natural resources for the ñátho community and the cities of Toluca and Mexico City: water. If the highway is built

through the Great Otomí Forest, water production would diminish by 2 million liters per year.

Repression and violence in Nochixtlán, Oaxaca

Since the year 2012, the current federal administration has been promoting an *Educational Reform* that has not enjoyed the consensus of teachers on a national level. This resulted in a series of protest actions that became particularly acute during 2016. The states with the greatest presence of indigenous population in the country were the ones that have shown the greatest resistance. Teaching is one of the few professional sectors where young indigenous people can develop a professional career. There were several highway blockades during the month of June in the State of Oaxaca, and June 19 was the day on which the Federal Police decided to disperse them in the cities of Oaxaca, Juchitán, and Nochixtlán. All of those cities have a predominant presence of a Zapoteca and Mixteca population. On said account, there were violent confrontations. The most violent one was the dispersing of the blockade maintained by teachers from Local 22 of the National Confederation of Education Workers (CNTE) and parents on the Oaxaca-Mexico City highway, in Nochixtlán, Oaxaca. That confrontation resulted in at least 6 deaths and dozens of wounded. According to several communication media reports, anti-riot police opened fire in an attempt to break up the protests, in which vehicles had been burned and blockades and barricades had been set up on certain roads. What ensued was practically a state of siege that led to deaths of indigenous teachers and members of the civilian population. The repression of the teachers' movement and the criminalization of its leaders, who were held responsible for the confrontation, is a clear sign that the federal government has no intention of backing down from its dismantling of the only option for basic education that the indigenous populations in Mexico have: free public education.

The right to autonomy

In what is considered a historic meeting, held in the municipality of Hopelchén, state of Campeche, on Saturday, August 13, 2016, members of the Mayan, Za-

poteca, and Yaqui peoples signed a proclamation addressed to the Enrique Peña Nieto regime, in which they called for their human rights to be respected, particularly their right to autonomy, to free development, and to prior, informed consent in relation to megaprojects intended to be developed in their communities. They emphasized that so far, consultations conducted in their ancestral territories have been carried out without using proper procedures and “as mere paperwork” to get approval for the projects. In their declaration, the native peoples demanded the definitive cancelation of the megaprojects adversely affecting them, in particular, the voiding of the administrative permits granted by the Mexican State in violation of their human rights; respect for self-determination and autonomy regarding their decision to hold a consultation; the conducting of consultation processes in a free, prior, informed, culturally appropriate manner, respecting the decision of the communities, and that no comments be made aimed at influencing the decision of the peoples consulted.

San Miguel del Progreso and the mining companies

The me'phaa indigenous community of San Miguel del Progreso in the municipality of Malinaltepec, Guerrero, through community organizing, succeeded in preventing the entrance of two mining companies that had a concession over 142, 430 hectares, belonging to 7 municipalities. In 2010, the inhabitants of this community requested the corresponding information regarding the concessions granted to the following companies by the Department of the Economy: Minera Zalamera (an affiliate of Chesapeake Gold Corp., with legal domicile in Canada), Minera Hochschild México (a Peruvian company with British capital), and Camsim Minas SA de CV (with legal domicile in Acapulco). In the region of the Mountains and the Costa Chica region of Guerrero there are 42 mineral deposits, on which the Mexican federal government has granted 30 concessions with 50 year terms for their mining exploitation. In 2015 the inhabitants, represented by the Tlachinollan Mountains Human Rights Center (CDHM-T), requested the revision of certain articles of the Mining Act, because they considered that those articles violate the rights of Indigenous Peoples under Convention 169 of International Labour Organization (ILO). The result of this revision resulted in the cancelation of 22 of the 44 mining concessions registered up until December 2016. These

cancelations were made by the companies themselves, thus leaving 32,616 hectares occupied. ○

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GUATEMALA

Guatemala is estimated to have six million indigenous inhabitants, accounting for approximately 60% of the country's total population. The principal ethnic groups are the Achi', Akateco, Awakateco, Chalchiteco, Ch'orti', Chuj, Itza', Ixil, Jacalteco, Kaqchikel, K'iche', Mam, Mopan, Poqomam, Poqomchi', Q'anjob'al, Q'eqchi', Sakapulteco, Sipakapense, Tektiteko, Tz'utujil, Uspanteko, Xinka, and Garifuna. The country still lacks a differentiated statistical base on indigenous peoples, especially on indigenous women. The publication "*El Perfil de Salud de los Pueblos Indígenas de Guatemala de 2016*" [Indigenous Peoples Health Profile of Guatemala, 2016], published by the government, the Pan-American Health Organization, and the World Health Organization, highlights the disparities between the indigenous and the non-indigenous population in employment, income, health, and education. The statistics clearly demonstrate persistent racism and discrimination against indigenous peoples. Despite representing more than half of the population and participating actively in the country's economy, their political participation is not equitably reflected.

Given the political changes in the fight against corruption and impunity that mobilized the most diverse sectors of Guatemalan society, 2016 was expected to be a key year for reaching consensus to overcome the historical problems of poverty, exclusion, and discrimination. The political situation in 2015 was characterized by intense social mobilization, which led to the resignation and subsequent prosecution of several government officials. Yet this opportunity for change was lost, since no commitments were made to change the direction of the country's development model. The new administration, which took office in January 2016, soon showed that it lacked a work plan and would continue in the political style of its predecessors: exclusionary, lacking participation, and even with indications of corruption. The government quickly lost credibility in the eyes of the population.

During 2016, little progress was made in the political participation and living conditions of indigenous peoples. In fact, only one indigenous woman was appointed to a high office in government. (Aura Leticia Teleguario, Ministry of Labor and Social Benefits). Of the 158 representatives in the Guatemalan Congress, 18 were indigenous, two less than during the previous session. This shows that under an electoral system marked by exclusion, indigenous peoples primarily participate as voters, rather than as candidates with true possibilities of being elected. The new administration did not promote any legislative bills or propose any public policy in response to the indigenous peoples' demands. Rather, indigenous leaders were often persecuted and criminalized.

The social gap for the indigenous population

With respect to health, employment, income, housing, and education, there is a great disparity between indigenous peoples and the rest of the population. Official data indicates that extreme poverty affects 21.8% of the indigenous population, compared to 7.4% of the non-indigenous population. However, critics point out that the situation may even be worse, as the State is suspected of intentionally avoiding differentiated or updated statistics so as to not show the severity of the ethnic gaps.

Reports on the social situation of indigenous peoples published by several different sources show an enormous contrast between indigenous and non-indigenous populations. For example, on health issues, the highest maternal mortality rate is among indigenous women. Despite the magnitude of the problem, the State has not developed any specific strategies to change this state of affairs, since the indigenous agenda is a low priority for the current administration, as is reflected in the lack of budgetary items specifically addressing the particular needs of indigenous peoples.

Impunity for the stealing of river water, lack of a Water Act, and hydroelectric projects

Due to the absence of a water act, the use, management, and conservation of water is not officially regulated. Many types of businesses, such as industry, agri-



cultural plantations, cities and towns, recreation centers, and hydroelectric projects take advantage of this situation. They pay nothing for their water usage, do not contribute to water conservation, and assume no responsibility for pollution caused by discharges of waste. What is alarming is that the majority of groundwater recharge areas are located within indigenous territories, yet the affected indigenous peoples do not receive any support from the State or from the various water users to protect the aquifers.

Several indigenous and local communities have denounced that many rivers of the Southern Coast region have been illegally diverted to sugar cane, banana, and palm oil plantations and cattle ranches, especially during the dry season (December to April). This situation was denounced in previous years, but no attention was paid to it by the government. The stealing of river water, a very common practice among powerful landowners, robs from the Communities of a valuable resource, radically transforming the natural ecosystems and considerably reducing local fishing yields, which for many living in these areas is their primary means of subsistence. A clear example is the case of the polluting of the La Pasión River, reported in *Mundo Indígena* in 2016, which has not moved forward in the court system despite overwhelming evidence. The case evidences a true ecocide caused by the palm oil processing centers.

The new administration's Minister of Environment, when he came into office, offered to address the matter and headed up a series of inspections that corroborated the communities' denunciations. He also offered to file charges against those responsible for the plundering of the rivers. His offer quickly evaporated, however, and the subject received little attention from the public. Many analysts interpret this situation as a step backward, owing to pressure from large economic interests that use water resources with impunity.

In response, several communities organized a "free the rivers" campaign and demanded that the State commence a broad discussion to draft a water act. Indigenous and civil society organizations, along with the University of San Carlos of Guatemala met to discuss the bills, but were countered by other bills proposed by interest groups. As a result, approximately ten bills have been drafted, which have not moved forward or been debated by Congress. The possibility of a prompt consensus among the different sectors to enact a water act is highly unlikely.

At the same time, the Chuj and Kanjobal communities in the department of Huehuetenango in northwestern Guatemala continue defending their ancestral territories. The communities demand the suspension of the hydroelectric project being built by the Spanish-owned company Ecoener Hidralia on the Cambalam River. This project started construction without respecting the right to free, prior, and informed consultation with the indigenous peoples, thus directly affecting the livelihoods of the local inhabitants. The government's response always favored business interests. Several indigenous leaders have even been arrested, though later freed when not found guilty of any crime. Finally, in an official communiqué,

the company announced the suspension of its investments, alluding to the project's social impact.¹ With the company's withdrawal, a social peace and order is returning to the affected communities. Now these communities must recover from the impact of the murders, kidnappings, assaults on women, and the incarceration of their leaders. Above all, they have a long road ahead to mend the disintegration of the social fabric harmed by the economic interests of the hydroelectric project.

The *Sepur Zarco* case and access to justice for indigenous peoples

The complainants in the *Sepur Zarco* case, a group of 15 women of the Maya Q'eqchi people who were victims of rape and sexual slavery committed by members of the army in the *Sepur Zarco* military base during the internal armed conflict, denounced those acts and asked for justice. After a long process, two of the principal culprits were arrested: a coronel and a commissioned officer. Finally, 34 years after the acts were committed, in February 2016, the army officers were sentenced to 120 and 240 years of imprisonment, respectively. Clearly, this case sets a precedent worldwide, since it is the first time a crime of sexual abuse during an armed conflict has been tried in the same country where it was committed.²

Nonetheless, other cases of crimes committed by the military against the indigenous population during the armed internal conflict remain in impunity. Such is the case of the former Commander in Chief, Efraín Ríos Montt, whose case is no longer being prosecuted due his mental incapacity to stand trial. Other cases of high-ranking military officers are still awaiting trial and are expected to be long, costly processes, given the power still held by several of those implicated.

Legal claims for indigenous rights

On October 12 the principal organizations of indigenous peoples held a massive march, demanding recognition of their collective rights to land and indigenous and communal territories. The organizations took the occasion to file a series of specific legal complaints with the justices of the Supreme Court regarding restitu-

tion of territorial rights. Representatives of the Q'eqchi, Ch'orti, Kaqchikel, and Ixil peoples submitted files on the plundering they have been subjected to, so that those cases will be taken up by the courts.

Historically, the legal claims of indigenous peoples over territorial rights did not reach the courts, because the governmental entities systematically blocked them. But in the past five years some cases have received a favorable response, which indicates that the possibility is opening for the State to restore the rights that have been denied them.

In 2016 several indigenous mobilizations took place, all of which focused on the core demand to have the State recognize the fundamental rights of indigenous peoples. Some mobilizations demanded the termination of mining licenses, as is the case of the Puya Community, who, over the course of the year, maintained an ongoing protest in front of the Ministry of Energy and Mines to demand suspension of the gold and silver mining project named *Derivada IV*. In a major win for the indigenous and peasant struggle, in June the Constitutional Court — the highest-ranking constitutional review court in the country—, ordered the definitive suspension of this mine, on the grounds of failure to consult with the surrounding communities.³

In the department of Alta Verapaz, 196 communities of the Maya Q'eqchi' people of Santa María Cahabón had planned to hold a ballot referendum on July 31 regarding the Oxec I and Oxec II hydroelectric projects on the Río Cahabón River. But a last-minute constitutional relief action in favor of the construction company suspended the referendum. The hydroelectric project was approved by the government without taking the impact on the communities into account. Although the company claims to have conducted the community consultation, the local inhabitants indicate that the consultation never took place. Recently, in April 2016, the Supreme Court of Justice provisionally suspended the license granted by the Ministry of Energy and Mines. Nonetheless, the company continued operating. Toward the end of year, the Supreme Court of Justice granted constitutional relief in favor of the communities against the project.⁴ This case is expected to be a long legal dispute.

Other indigenous and peasant mobilizations took place throughout the year to demand better conditions of life, and especially the enactment of the Rural Development Act, which has been held up in the Congress of the Republic.

Climate change and the rights of indigenous peoples

Guatemala is considered to be one of the most vulnerable countries in the world to the impacts of climate change. To counteract these effects, a series of measures have been created, including public policy, laws, and legislative bills. Nonetheless, these initiatives have not been sufficiently discussed, and are seen to be very weak with respect to indigenous peoples in terms of their implementation. In response, the *Mesa Indígena de Cambio Climático* [Indigenous Climate Change Roundtable] has demanded greater inclusion of indigenous peoples in decision making and in proposals being brought to international forums on climate and biological diversity, where indigenous participation is insignificant. Several studies demonstrate, however, that it is the indigenous peoples who have contributed the most important advances for the conservation and management of natural resources, as is reflected in the Map of Indigenous Peoples and Natural Ecosystems of Central America.⁵ Even so, the governments resist recognizing their territorial rights and their systems of governance.⁶

The Peace Accords twenty years later: current demands

2016 marked the twentieth anniversary of the signing of the Peace Accords which put an end to a 36-year armed conflict that devastated the country between 1960 and 1996. After two decades, the country was expected to have advanced in solving the problems that unleashed the war. Yet socioeconomic indicators indicate that these structural problems either remain or have worsened, especially on key issues such as access to land, employment and income, access to health and education, and discrimination and racism. Consequently, the organizations of Indigenous Peoples, in a series of commemorative activities, reiterated their proposals for building a society with greater equity and social justice.

The Accord on the Identity and Rights of Indigenous Peoples includes fundamental aspects, such as recognition of a pluri-national State; the fight against discrimination and racism; recognition of the right to tenancy of ancestral lands; recognition of the indigenous legal system; and the development of an educational model with cultural relevance. Nonetheless, the since then only minimal

progress has been made, far from overcoming the inequality that still reigns in the country.

Constitutional reforms

One of the political commitments assumed by the government following the social mobilizations of 2016 is to promote constitutional reforms allowing for improved coexistence and, above all, ensuring a better functionality of the judicial system. During 2016 several sectors, supported by the International Commission against Impunity in Guatemala, supported dialogue among the various parts of society to obtain ideas for a constitutional reform proposal. In connection with that effort, the organizations of indigenous peoples made several proposals. An example is the proposal made by the Indigenous Peoples Coordinating and Convergence Body, which includes a series of proposals to guarantee the recognition of indigenous rights, recognition of the pluri-national nature of the State, access to justice and the indigenous legal system, the strengthening of the indigenous worldview and identity, and the right to territory.

Among the proposed constitutional reforms was to substitute a paragraph of Article 203 of the Constitution that currently states *“No other authority may intervene in the administration of justice”* with the following: *“The authorities of the indigenous peoples may exercise judicial functions using the standards and procedures of the indigenous peoples themselves, provided that the same are not contrary to the Constitution, to human rights, and to the laws of Guatemala. This shall be regulated by statute.”*

Against all predictions, the Constitutional Reform Project did not receive the necessary support in the Congress of the Republic. The discussions have been postponed until 2017, but analysts predict that its approval is highly unlikely. ○

Notes and references

- 1 *“La empresa española Ecoener-Hidralia anuncia su retirada de Guatemala tras años de lucha indígena,”* eldiario.es, 12/26/2016. At: http://www.eldiario.es/desalambre/hidroelectrica-Ecoener-Hidralia-anuncia-retirada-Guatemala_0_593890887.html

- 2 <http://www.mujeerestransformandoelmundo.org/es/articulo/caso-sepur-zarco-el-largo-camino-la-justicia>
- 3 <http://www.prensalibre.com/guatemala/justicia/cc-suspende-licencia-de-minera-derivada-vii-en-san-jose-del-golfo>
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- 6 <http://www.iccaconsortium.org/wp-content/uploads/Mesomerica-Resumen-de-Politiclas-Consorcio-TICCA-no.-3.pdf>

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NICARAGUA

The seven indigenous peoples of Nicaragua are distributed, historically and culturally, between those of the Pacific, Central and Northern region where the Chorotega (221,000), Cacaopera or Matagalpa (97,500), Ocanxiu or Sutiaba (49,000) and Nahoa or Náhuatl (20,000) peoples live; and those on the Caribbean (or Atlantic) coast, inhabited by the Miskitu (150,000), the Sumu-Mayangna (27,000) and the Rama (2,000) peoples. Other peoples who enjoy collective rights under the Constitution of Nicaragua (1987) are Afro-descendants, referred to as “ethnic communities” in the national legislation. They include the Creole or Kriol (43,000) and the Garífuna (2,500) communities. In 1979, the Sandinista National Liberation Front (FSLN) took power in Nicaragua, after which it faced an armed confrontation supported by the United States. The indigenous peoples of the Caribbean coast, principally the Miskitu, participated in the opposition. In 1987, in order to put an end to indigenous resistance, the FSLN created the Autonomous Region of the Caribbean (Atlantic) Coast, as well as the Northern and Southern Autonomous regions (abbreviated in Spanish as RACCN/RACCS). This system of autonomy was based on a new Constitution and an Autonomy Charter Act (Law 28). As a result of the judgment of the Inter- American Court of Human Rights in the case of the Mayangna (Sumo) Awas Tingni Community v. Nicaragua in 2001, Law 445 was issued on the Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and of the Bocay, Coco, Indio, and Maíz Rivers. That law also provides for the right to self- government in the communities as of 2003 and creates a procedure for them to gain title to their territories. As of 2005 the State commenced the process for granting title to 23 indigenous and Afro-descendent territories in the Autonomous Regions, which culminated with the granting of property deeds in the year 2013. In addition, the General Education Act of 2006 recognizes an Autonomous Regional Educational System (SEAR). In 2007, Nicaragua voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples and in 2010 it ratified ILO Convention 169.



For the indigenous peoples and Afro-descendants of Nicaragua, 2016 was marked by a harsh situation of illegality for indigenous and Afro-descendant authorities. It is likewise important to note that little respect is shown for communal property titles and the communities' legal representation. Another troubling aspect is the increase in deaths of Miskitu divers related to sea cucumber fishing off the Caribbean coast.

Just as in 2015, a major concern is that the national government is unilaterally pushing ahead with the construction and promotion of the Grand Interoceanic Canal through communal lands. At the international level, the case of *Acosta, et al. v. Nicaragua* was filed with the Inter-American Court of Human Rights (IACHR Court), on which judgment is expected to be handed down next year.

Indigenous Miskitu men and sea cucumber fishing

For several decades, deaths of indigenous Miskitu men who dive for lobster (*Panulirus argus*) in the Caribbean has remained an unresolved issue, despite multiple denouncements and legislation enacted to address this problem. Fishing for “sea cucumbers” (*Holothurians* or *Holothuroidea*) has added another dramatic dimension to this situation. Between September and October 2016, 15 accidents were reported, with 14 deaths of Miskitu men from the RACCN Autonomous Region. The divers engage in deep sea diving using an improvised system for diving as deep as 120 feet below the surface for up to six hours daily. This creates a high-risk situation due to the depth, the frequency of the dives, and lack of training and/or proper equipment. Divers often suffer from decompression syndrome, also known as the “bends.” Many divers, when experiencing minor symptoms of decompression self-medicate or even drink alcohol to ease the pain. Some go so far as to use drugs such as marijuana and crack before diving to gather more courage. This situation increases in the likelihood of accidents or death.

Evenor Saballos, a leader of the Divers Union of the Autonomous Region of the North Atlantic (Sibumiraan) stated that divers do not have life insurance and are not affiliated with the Nicaraguan Social Security Institute (INSS), even though 1800 divers have been accounted for, who work in approximately 900 sea cucumber fishing boats. In the year 2016, as of the month of July, Nicaragua had exported 8.30 million USD worth of sea cucumbers; amounting to a 207% increase compared the same season in 2015. The economic chain involves diving crews who go out to fish in boats and then sell the product to stockpilers. The companies then export the product or sell it to other larger companies to be exported to the United States and from there to Asian destinations, such as Hong Kong or China.¹

Families of the deceased divers say that the time has come for the authorities to take the pertinent measures to stop the deaths of Miskitu divers in the Caribbean, either by changing the fishing method or by prohibiting this mode of fishing.

The Case of Acosta et al. vs. Nicaragua before the IACHR Court

During the 56th Special Session of the Inter-American Court of Human Rights, which took place in October 2016 in Ecuador, the public hearing was held in the case of *Acosta et al. v. Nicaragua*.² Judgment in this case is expected to be handed down in April 2017.

The case involves the murder of Francisco José García Valle, the husband of human rights defender María Luisa Acosta,³ which occurred at their home in Bluefields in 2002. At the time of his murder, Mrs. Acosta, the coordinator of the Indigenous Peoples Legal Assistance Center (CALPI), was counsel for the indigenous and Afro-descendant communities of the Twelve Communities of the Laguna de Perlas Basin and of the Rama and Kriol territory, which had been adversely impacted on account of the Internet sale of seven of the Perla Keys and other properties by Peter Tsokos and Peter Martínez Fox, whom Mrs. Acosta indicates as the intellectual authors of the murder.⁴

In June 2007, CALPI, along with the Center for Justice and Human Rights of the Atlantic Coast of Nicaragua (CEJUDHCAN) and the Nicaraguan Human Rights Center (CENIDH), in representation of the victims, filed the case with the Inter-American Commission on Human Rights (IACHR). After exhausting all procedures in search of an amicable solution with the State of Nicaragua, the IACHR found that the criminal proceedings over the murder of Mr. García Valle were marked by violations of the right to personal integrity, as well as violations of guarantees and of the right to protection by the courts consecrated in the American Convention. Therefore, on August 9, 2015, the IACHR filed the case before the Inter-American Court of Human Rights (IACHR Court).

In its petition, the IACHR and the victims motioned the IACHR Court to rule on *“the right to defend rights”* and to declare the international liability of the State of Nicaragua, since *“the flagrant omissions in investigating the strongly suspected intellectual authorship of a crime such as the one committed against Mr. García Valle could be understood as a form of deliberate cover-up”* perpetrated by the Nicaraguan judicial system.⁵

Limited respect by the State for communal property deeds

The National Commission on Demarcation and Title Granting (CONADETI), in Resolution N° 016-26-03-2012, recognized 382,007 hectares of land as the territory of the Twelve Indigenous and Afro-descendent Communities of the Laguna de Perlas Basin. In this area the communities carry out their traditional activities, including on the 24 small islands or keys for traditional fishing. The deed is for Full Dominion over the Communal Property, which is *“inalienable and perpetual, and which cannot be sold, given away, or taxed.”*

Nonetheless, less than two months before the President of the Republic of Nicaragua formally handed over title to the authorities of the Laguna de Perlas Basin,⁶ the Supreme Court of Justice of Nicaragua, through its October 4, 2016 judgment, canceled the registrations of six out of the seven Perlas Keys, that is, all but the Grape Key.⁷ Rather than maintain the seven Keys in favor of the indigenous and Afro-descendant communities, whose property deed was issued by the State in the year 2012, the judgment established them as communal property, and the Supreme Court registered the Keys in the name of the State of Nicaragua.

Although the judgment establishes that the Perlas Keys do not belong to Mr. Tsokos,⁸ this nonetheless constitutes a tremendous setback for the rights of indigenous peoples, given that it orders the Keys to be registered as government property. Thus, the judgment turns the State of Nicaragua into a “third party” in indigenous lands. “Third party” is defined by Law N° 445⁹ as: the *“Legal entities, other than the communities, that claim ownership rights within a communal land or an indigenous territory.”* This undermines the legal certainty of indigenous ownership of the Keys, which privileges traditional use over any title that was not supported by possession prior to 1987.¹⁰

With this judgment, the State of Nicaragua failed to comply with its legal obligation to honor the title issued by the State of Nicaragua itself in favor of the communities of the Laguna de Perlas Basin and protected by the *sui generis* collective land regime, which recognizes the ancestral and historic use and enjoyment by the indigenous peoples and Afro-descendants as a source of ownership right established in the Constitution of Nicaragua.

The Community of Tilba Lupia excluded from the Tasba Pri Territory

The Community of Tilba Lupia, comprised by 500 families, extends over 10,000 hectares located in the municipalities of Prinzapolka and Puerto Cabezas in the RACCN Autonomous Region, with a collective property deed since 1905. In 2013, the Secretary of the National Commission on Demarcation and Title Granting (CONADETI) issued the Communal Property Deed over the Tasba Pri Mískitu Territory, certifying that this territory is comprised by several communities, including the community named 5 Kukalaya Puente. The deed listed Tilba Lupia as a hamlet of Kukalaya Puente, but in reality Kukalaya Puente is a hamlet within the community of Tilba Lupia.

The authorities filed a claim with CONADETI, since the CONADETI is the body that issues certifications of demarcation and title grants for the communal area and the supplementary area of the indigenous community of Tilba Lupia. In February 2014, as is recorded in the Meeting Minutes, an agreement was reached between the authorities of the Community of Tilba Lupia and CONADETI, that: *“...In the month of March, the authorities will meet... the non-inclusion will be discussed of Kukalaya Puente as a Community in the Deed to the Territory of Tasba Pri; since they are not of Indigenous stock and do not possess lands; because they are settled on the lands of Tilba Lupia ... CONADETI, recognizes these authorities as the legitimate owners of Tilba Lupia ...”* and it was agreed that the community of Tilba Lupia would continue to be part of the Tasba Pri Territory.

Nonetheless, once again the agreements were violated, and CONADETI, through Resolution N° 022-23-06-2014 issued the “Mískitu indigenous Tasba Pri territorial and communal property deed,” in which it recognizes Kukalaya Puente as a community and excludes the community of Tilba Lupia. This resolution was not notified to the representatives of Tilba Lupia, who found out about the resolution when the President of the Republic of Nicaragua, on October 29, 2016, granted title to six territories, among them the Territory of Tasba Pri.¹¹

The problems of ownership and legal representation of the community of Tilba Lupia have grown over recent years, given the enormous wealth represented by the territory, which has been exploited and pillaged by persons from outside the community and who have been attributed its legal representation.¹²

The Deed of the Creoles of Bluefields

The process of granting title to the traditional territory of the Black Creole Indigenous Community of Bluefields (CNCIB) in the RACCS Region was aborted by the State of Nicaragua in June 2013, based on the enactment of Law No. 840,¹³ which grants the concession of the Great Inter-Oceanic Canal by Nicaragua (GCIN) to the Hong Kong Nicaragua Development (HKND) company, owned by Chinese capital.¹⁴ Both these events were carried out by the State without consulting the indigenous Rama peoples and Kriol Afro-descendants or the CNCIB, even though 52% of the GCIN's route runs over the territories of these peoples. These acts violate the right to Free, Prior, and Informed Consent (FPIC), according to international standards established for that type of project.

In 2006, the CNCIB applied for title, which was accepted by the State in 2010. The Diagnostic of the Territory of the Black Creole Indigenous Community of Bluefields was submitted in 2012.¹⁵ During 2013, certain meetings were held with the CONADETI. No agreement was reached, however, principally because the representative of the President of the Republic in the RACCS Region intended to deny the CNCIB its territorial rights. Finally, after admitting that the CNCIB had those rights, he considered that the territory claimed was too large.

But rather than proceeding with a technical and legal negotiation over the territorial area claimed, as is provided for in the procedures established by Law 445, the State, through members of its political party involved in the municipal and regional administration, illegally worked to create a parallel government to the government of the CNCIB.

Once the traditional institutions of the CNCIB had been weakened, the State also usurped the position of the Creole representative before CONADETI, and, in violation of due legal process, it issued title to less than 7% of the 2,004,952 hectares of land plus 114,696 nautical miles of marine zone administratively claimed by the CNCIB.

On October 29, 2016 the President of the Republic granted the deed to the parallel government of the CNCIB, thus freeing up 93% of the CNCIB's territorial claim over the route of the GCIN.¹⁶

In addition to what is stated above, there was a lack of guarantees and protection by the courts, since the Nicaraguan judicial system has not taken into account any of the 10 constitutional relief (*amparo*) actions filed by the CNCIB.

Those actions documented each and every one of the violations of due process perpetrated between 2013 and 2016, starting with the enactment of Law No. 840. Therefore, the CNCIB, together with members of the Rama Indigenous People and of the Kriol communities, filed a Petition with the IACHR to regain their rights to personal integrity, to a *life with dignity*, to Free, Prior, and Informed Consent, to self-determination, and to ownership of their traditional territory.¹⁷

The Rama and Kriol Territory to which the State granted title in the year 2009

Even though the State granted them title in the year 2009, in 2013, the State granted the concession of the GCIN over part of their territory, thus violating the right to Free, Prior, and Informed Consent of the Indigenous Rama people and of the Kriol Afro-descendants communities who comprise the Rama and Kriol Territory. Bangkukuk Taik is one of the nine communities that comprise the Rama and Kriol Territory, with the last speakers of the Rama language.¹⁸ It has been one of the most hard-hit communities, together with Monkey Point, since, according to the Environmental and Social Impact Study of the GCIN approved in 2015, a Deep Water Port is planned to be built on their land. As a result, the community will be displaced. Yet to date nothing has been proposed to them.¹⁹

Members of the Rama and Kriol Territorial Government (GTR-K) in January 2016 denounced coercion by the State to sign the “*Free, Prior, and Informed Consent Agreement for Implementation of the Grand Interoceanic Canal of Nicaragua Development Project*,” which contains the acceptance of having attained Free, Prior, and Informed Consent for a leasing with an “*indefinite*” or perpetual term of 263 Km² of the Rama and Kriol territory.²⁰

Given the refusal of the GTR-K to sign the “Agreement,” on May 3 the President of the GTR- K appeared in Managua, signing it. The judicial system did not take up the 2 *amparo* petitions submitted by the authorities of the GTR-K, and the State presented the “Agreement” as “*a unique precedent in the history of Nicaragua, of Latin America, and possibly of the world*”²¹ before the United Nations Permanent Forum on Indigenous Issues in 2006.

Nonetheless, the authorities of the GTR-K filed their complaints within the Petition before the IACHR in 2014, and appeared as the protagonists of the video

“We Do Not Consent”,²² indicating the lack of Free, Prior, and Informed Consent over the “Agreement.”

Representative Brooklyn Rivera returns to the National Assembly

The Representative of the regional indigenous party, Yapti Tasba Masraka Nanih Aslatakanka (YATAMA), Brooklyn Rivera, was stripped of his parliamentary immunity in the previous legislative session by the representatives of party in office, for allegedly selling land illegally. He was never accused before the judiciary, however, and was reelected as a congressional representative by the RACCN region to the National Assembly during the November 2016 elections.

The election for the presidency and for the National Assembly members was marked by abstentions and was widely indicated as fraudulent. The Supreme Electoral Council (CSE) transported the electoral results records from the RACCN to Managua with the pretext of conducting a recount, while the members of YATAMA protested and while Bilwi, Puerto Cabezas was militarized by members of the National Police anti-riot unit.²³

At the same time, the official daily *La Gaceta* and the official webpage of the CSE published inconsistent results. The CSE webpage doubled the votes favoring the party in office in the RACCN and RACCS regions, which led to Rivera losing his seat.²⁴ Finally, it proclaimed that Brooklyn Rivera won the only seat as a representative awarded to YATAMA, with Nancy Elizabeth Henríquez as alternate representative. In total, 71 of the 92 representatives for the next legislative assembly went to the party in office.

Measures by the Inter-American Court and Inter-American Commission

In January 2016, the IACHR granted precautionary measures in favor of seven communities in the territories of Wanki Li Aubra and Li Lamni Tasbaika Kum,²⁵ in addition to those granted to 5 communities on October 14, 2015, making a total of 12 communities. The conflict involves the illegal invasion of non-indigenous persons or “settlers” in legally titled indigenous territories. However, the State of Nicaragua did not respect the precautionary measures. Thus CEJUDH-

CAN and the Center for Justice and International Law (CEJIL), requested provisional measures from the IACHR Court, which were granted in September 2016.

Those measures were requested in order to prevent irreparable harm to the rights to the life and personal integrity of the members of the indigenous Mískitu communities of the RACCN. Nonetheless, due to the lack of State action, community members are still unable to move freely for the use and tenancy of their lands to freely engage in their hunting, fishing, and fruit gathering activities, because they are faced with armed settlers who are invading encroaching upon their lands.²⁶ In particular, many women and children have been forcibly displaced and have abandoned their homes for fear of being attacked, and have even taken refuge in Honduras.

Nonetheless, the State of Nicaragua, through a report to the IACHR, has tried to justify its inaction, arguing that the acts have not been denounced to the national police. For their part, the indigenous peoples and their attorneys state that: *“the community members have denounced the crimes or disappearances that have occurred there to the Police, but the Police have not conducted investigations because they say that they have not received orientations from their superiors”*.²⁷

Moreover, during 2016, violence in these communities has received extensive coverage in the national and international communications media, and the authorities are obligated by law to investigate on their own initiative once they become aware of illegal acts. ○

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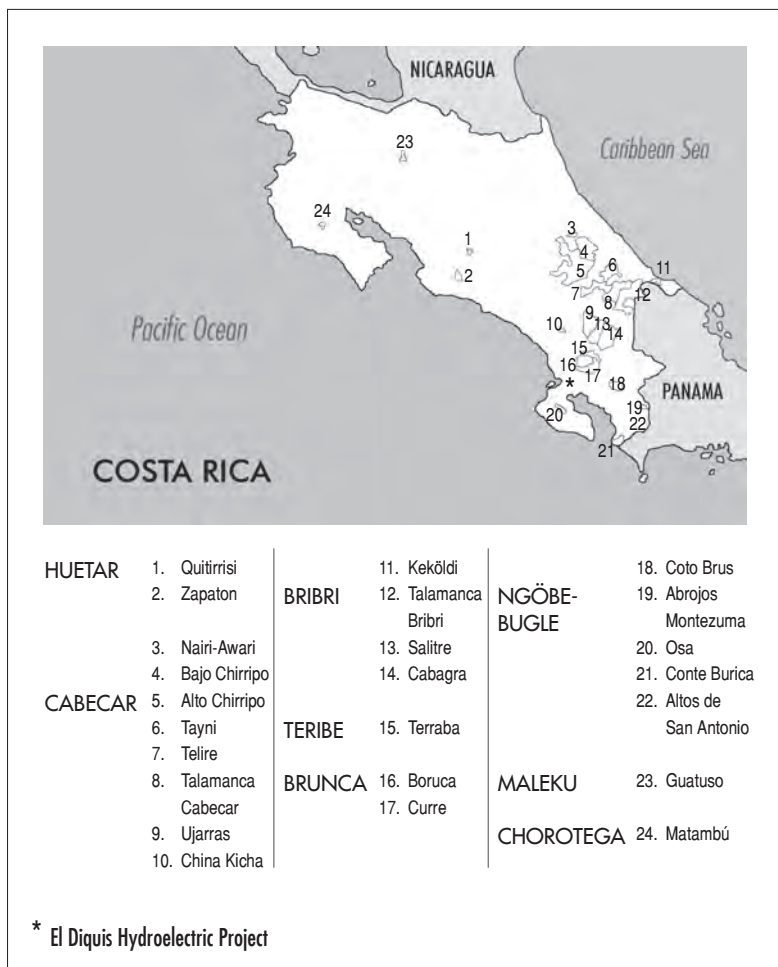
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COSTA RICA

The indigenous territories in Costa Rica account for some 6.7% of the national territory (3,344 km²) while the indigenous peoples make up 2.4% of the total population. According to the 2010 National Population Census, around 100,000 people self-recognise as indigenous.

Eight different peoples live in the country's 24 indigenous territories, seven of them of Chibchense origin (Huetar in Quitirisí and Zapatón; Maleku in Guatuso; Bribri in Salitre, Cabagra, Talamanca Bribri and Këköldj; Cabécar in Alto Chirripó, Tayni, Talamanca Cabécar, Telire and China Kichá, Bajo Chirripó, Nairi Awari and Ujarrás; Brunca in Boruca, and Curré, Ngöbe in Abrojos Montezuma, Coto Brus, Conte Burica, Altos de San Antonio and Osa; Teribe in Térraba) and one of Meso-American origin (Chorotega in Matambú). Indigenous territorial rights are constantly violated in the country and more than half the area of some territories is now occupied by non-indigenous settlers, with the state doing nothing to rectify this theft. In Costa Rica, as in other countries of the continent, the indigenous lands were titled without a prior process of regularisation.

ILO Convention 169 was ratified more than two decades ago but this did not result in recognition of indigenous rights in the country. The indigenous peoples continued to be discriminated against, with greater levels of social exclusion and less public investment. Although the 1977 Indigenous Law recognises the traditional indigenous organisations, the concept of *Integral Development Associations* (ADIs) has, in practice, been imposed on them with the aim of representing each territory. This concept is completely alien to their traditional power structures. The validity of the ADIs depends on the supervision, approval and willingness of the National Department for Community Development (Dinadeco), a state body that does not have the capacity to understand cultural diversity, indigenous rights, differences between peoples and territories or an intercultural approach.



Although concrete progress was made throughout the year in terms of the government's consultation of indigenous peoples and, at the end of the year, the precautionary measures granted by the Inter-American Commission on Human Rights (IACHR) were fulfilled, the indigenous rights agenda continued to suffer delays in 2016. This related particularly to Congress's consideration of the *Law on Indigenous Peoples' Autonomous Development*. Two decades on, this

has still not been discussed due to strong racist resistance and opposition from the private sector, which considers the right to self-determination and self-management of indigenous territories to be a risk to extractive investments.

The national policy for a *Society Free from Racism, Racial Discrimination and Xenophobia* (2014-2025), which should have commenced in 2015, is still awaiting implementation.

Preparing a general consultation mechanism for indigenous peoples

The consultation processes initiated by the Costa Rican Electricity Institute – an autonomous institution – were halted by the government in 2015 as this latter has, since 2012, been working on a “single consultation protocol” with the support of UNDP. By ignoring the differences between peoples and consultation issues, this instrument may well have created conflicts and sociopolitical tensions in the indigenous territories, both between the communities and with the state. In any case, at the end of 2015, the Presidency of the Republic drew up a directive aimed at establishing the basic conditions for designing participatory consultation mechanisms. At the start of 2016, the Presidency of the Republic issued the *042-MP Executive Directive*, which sets out the steps to be followed in agreeing the necessary features of the process for consulting the country’s indigenous peoples. The government drafted a proposed consultation mechanism that drew comprehensively on national and international indigenous rights legislation, although it was still far removed from the cultural and sociopolitical realities of the eight different peoples that make up the country’s indigenous diversity. The process of producing the consultation mechanism was launched in 2016, with the following results:¹

- An initial informative stage during which 22 informational workshops were held in the country’s 24 indigenous territories. The aim of the workshops was to analyse the main international standards on consultation and present a proposal for the process and subsequent stages. During the workshops, the specific territories were able to include suggestions aimed at adapting the proposal to each territorial reality.
- An initial territorial meeting, the aim of which was to commence the joint production of the mechanism using guided methodologies in focus groups. A series of questions was used to initiate the dialogue. The infor-

mation was systematised in what were known as “feedback documents”, to which was annexed an initial government proposal on the issues discussed at each meeting.

- A second territorial meeting was held with three main objectives: 1) to revise the feedback documents and make relevant amendments, 2) to understand the government proposal on the stages of consultation, and 3) to elect the territorial representatives to the National Indigenous Consultation Meeting. Twelve meetings were held at this level in 2016 and another twelve are planned for 2017.

Some positive aspects should be noted:

- Up until 2016, the different state institutions were conducting various kinds of consultations with indigenous peoples, some of them side-lining the traditional authorities, thus creating conflicts and giving a general impression of a lack of consistency in public policy and in the application of indigenous rights. With the Presidency of the Republic’s process of producing a consultation mechanism, these parallel consultations have come to a halt and will be re-commenced on the basis of these agreements, presumably during 2017.
- Although the Costa Rican Institute for Water and Sanitation had reached an agreement with the Brörán Council of Elders (Térraba territory) on a method for consulting on the route and management of a rural aqueduct, it is hoped they will be able to agree the consultation mechanism. In 2016, this same institute employed professionals to work on the indigenous territories from an intercultural approach in order to be able to conduct consultations appropriate to their reality.²
- It should be emphasised that the Costa Rican Institute for Water and Sanitation did put the award of a contract for the air transportation of materials out to consultation with the indigenous Bribri community in Telire territory, and ruled out hiring a company that had previously entered the territory (transporting mining scouts) without seeking the permission of the authorities.³

The following are just a few of the strategic issues that should be included for discussion on the agenda of the consultation mechanism in 2017:

- The institutional framework for the consultations, including allocation of a budget that will enable its permanent functioning.
- The specific features required of the consultation according to the different indigenous peoples, different territories and different issue to be consulted on. It should be recalled that each people has different power and decision-making structures, as well as different roles assigned to their traditional authorities, such as for example, the clan heads, spiritual guides, elders and women.
- The funding of the consultations.

Indigenous peoples' right to self-determination continues to be denied by the state

The draft bill of law on indigenous peoples' autonomous development has still not been discussed in the Congress of the Republic, despite being submitted more than two decades ago following a wide consultation process with the indigenous peoples. Because of the failure to enact this law, indigenous peoples and their territories continue to be represented by organisations that have structures alien to their cultures, and which were defined at the end of the 1970s by a regulation that lacked any ethnic and cultural sensitivity.

Lack of recognition of territorial rights

The territorial rights of Costa Rica's indigenous peoples have been recognised since 1956. More than 300,000 ha have been registered in the names of indigenous peoples and communities, divided between 24 different territories. These lands were never regularised, however. The 1977 Indigenous Law⁴ establishes a budgetary precept exclusively for the regularisation of the indigenous territories but in the four decades that have passed since its entry into force, this budget has never been allocated. Land invasions continue and indigenous production systems have been destroyed by the plundering of settlers, who transform the forests into pastureland for their cattle. More than half the area of some territories is now occupied by non-indigenous settlers.

The state has tolerated this invasion of indigenous land, and the Indigenous Development Associations – legitimised by the state – have registered outsiders as indigenous so that they are able to occupy the lands. These actions have resulted in serious conflict, are preventing indigenous territorial governance and human development, and form a backdrop to the poverty and social exclusion of indigenous peoples. The government institution responsible for the regularisation of the indigenous territories is the Rural Development Institute (INDER).

In 2016, INDER hired a group of officials to fulfil its duties with regard to indigenous lands. The indigenous organisations, the Ombudsman and indigenous rights organisations all considered this a positive sign. Studies on the regularisation and reorganisation of indigenous lands have begun, in particular a census of farm holdings; however, no financial resources have been allocated to this process, nor any compensation for non-indigenous settlers. The indigenous leaders' demands relating to the lack of information on this process and the failure to meet the deadlines agreed with the government for progressing with the land regularisation (which expired in 2016) are therefore serious.

The land recovery movement, which began in 2011 on the Bribri territory of Salitre in the South Pacific region of the country, has spread to neighbouring territories, particularly Cabagra, which also belongs to the Bribri people.

This process of land recovery has created a climate of tension in the region that is legitimising acts of violence (threats, physical torture, burning of houses and crops, theft of animals, racist insults, etc.) towards indigenous peoples on the part of farmers and other non-indigenous people. In 2015, the Presidency of the Republic handed responsibility for this conflict to the Ministry of Justice and Peace. During 2016, this ministry was therefore responsible for institutional coordination and local dialogue aimed at halting the increased local discrimination towards indigenous peoples and the ever more intense acts of violence.

In April 2015, given the gravity of the situation and the state's lack of action in the face of the racist violence, the IACHR granted precautionary measures for the Bribri of Salitre and the Brórán of Térraba, these latter for aggression committed by non-indigenous settlers living on their territory and who are members of their ADI. In practice, however, the state did not implement these measures.

State representatives never met with the Brórán. They held a meeting with the Bribri from Salitre in April 2016 but, by November, had only discussed an outline of how the precautionary measures would be implemented. On 2 December 2016, in the context of a working group meeting at the 159th period of sessions

of the IACHR in Panama, the state undertook to reach an agreement with the Bribri and the Bröran in order to work on implementing the measures requested by the commission. These arrangements were due to start in January 2017. However:

*[...] “Despite recent demonstrations of good faith by the state, the violation of the distinct rights of the indigenous peoples is a reality in Costa Rica. On 29 November 2016, a Petition was thus presented to the IACHR (No. P-2472-16) on behalf of the Bribri of Salitre. This denounces violations of the right to property, primarily due to the fact that the territorial demarcation conducted by the state does not correspond to their traditional territory, because the property title is not held by the people as such but by the Integral Development Association (ADI) and because the territory is occupied by non-indigenous persons, for which reason Costa Rica is also failing to meet its obligation to remove all kinds of interference on the territory in question. The violation of the right to legal status is also denounced, due to the state’s imposition of the concept of ADIs, in contrast to the peoples’ right to elect their own forms of political and legal representation. In addition, violation of access to justice is cited, due to the lack of a mechanism for claiming territorial rights, the ineffectiveness of joint actions taken against illegal occupants of the territory, and the undue delays in processing complaints of violence. Furthermore, violation of the right to physical integrity is cited due to the constant aggression being suffered by community members in retaliation for their land recovery action, without the state taking the necessary action to correctly investigate, prosecute and, where appropriate, punish those responsible. In essence, what is cited is a lack of correspondence between Costa Rican law and Inter-American law”.*⁵

The preliminary report of the 14th mission of the Human Rights and Indigenous Autonomy Observatory (ODHAIN), which visited Salitre and Cabagra at the end of December 2016, indicates the following:

- *“An important event that coincided with these recoveries in Cabagra was the burning of the Úsure (a house of special use – Bribri spirituality – Bribri ceremonies and rituals), located in Rafael de Cabagra, which was built at the initiative of one of the Cabagra Councils of Elders, with the*

support of universities and other Costa Rican social and professional organisations.

- *The two violent attacks that have taken place in the last 10 months, including firearm injuries requiring hospitalisation, leaving some permanently injured, were denounced by those (affected) but those responsible were never arrested, despite having been identified by the victims of the attack and by witnesses to the aggression; these criminals remain on the Cabagra Territory, taking lands and promoting threats and violence.*
- *They stated their disheartenment, powerlessness and indignation at the little or no action taken by the government authorities and the courts in the face of the constant aggression, threats and grabbing of their lands.*
- *They conveyed the sense of fear and uncertainty these latest aggressions have left them with, in both communities, in terms of living and moving freely, working in the fields or going to the mountains, due to the direct threats and constant intimidation with gun fire, among other forms of violence, from non-indigenous settlers and their employees".⁶*

Conclusions

The issue of indigenous rights in Costa Rica and, in particular, the rights to land and self-determination, is facing fierce resistance from those who hold political and economic power. This is why, even though ILO Convention 169 was ratified in 1993, it has not been implemented and alien forms of social and political organisation continue to be imposed on the indigenous peoples.

There were nonetheless some positive signs in 2016:

- The process of jointly producing an indigenous consultation mechanism.
- The start-up of studies to analyse land tenure in the indigenous territories of the South Pacific region.
- The stated willingness to comply with the IACHR's precautionary measures granted in favour of the inhabitants of Salitre and Térraba in December.

Despite this progress, risks do still persist, however, including a lack of state consideration with regard to indigenous peoples' own organisations, the insuffi-

cient research into territorial rights and indigenous systems of land and water governance, the lack of an interdisciplinary perspective in the analysis and operation of indigenous rights and the emphasis on legal issues. The lack of an adequate institutional framework for defending the rights and autonomous development of the indigenous peoples is a contributory factor in all of these issues. The existing institution, the National Commission for Indigenous Affairs, continues to have an integrationist outlook, and its definition has not been revised in line with the new concepts of indigenous rights and the international conceptual and legal framework. ○

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PANAMA

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

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

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

2016 was markedly different from the previous year in Panama, with the Panameñista Party government curtailing implementation of indigenous rights in various ways.

The year began with a highly complicated dialogue meeting on 15 March 2016 at which all the highest authorities of Panama's indigenous peoples managed to obtain an audience with the national government cabinet through the good offices of the United Nations. Initially, their (indigenous) technical staff were not permitted to take part but a favourable intervention from the First Lady rectified this and the President of the Republic took this opportunity to state his commitment to ratifying ILO Convention 169 no later than 30 September of that year. In addition, an interinstitutional working commission was established, and this undertook a legal consultation with the director of the International Standards Office (ILO offices in San José) and the director of the PRO 169 Department of the ILO's International Standards Office in Geneva. The issue was also placed on the agenda of the Cabinet Council. However, the Ministry of the Interior attempted to put the issue of ratification out to a public consultation, thus causing a "justified" delay due to a misinterpretation of the indigenous requirement for "Free, Prior and Informed Consultation". In the end, the UN Resident Representative, Martín Santiago Herrero, withdrew as mediator of the process and there was no further follow-up on President Juan Carlos Varela's commitment in 2016.

At the same meeting on Isla Colón, Interior Minister Milton Henríquez stated in front of the leaders of all the country's indigenous congresses and councils that the state would only recognise the traditional authorities of the five existing *comarcas*, thus side-lining the authorities of 30 indigenous territories from any future consultations and negotiations.

The Minister was consequently declared *persona non grata* by all the indigenous authorities. Some decided not to participate as beneficiaries in the Indigenous Peoples' Comprehensive Development Plan, and the Guna Yala General Congress, whose authorities had suffered other intimidation opposed to their right to control access to their *comarca* and tourism, decided to expel government officials from their *comarca*, particularly those of the Panamanian Maritime Authority (AMP) and the National Migration Service, which had offices on the island of Gaigorgordub and in Puerto Obaldía. Both offices have now closed.

It was precisely at this time that the international Mossack Fonseca scandal erupted and Panama's public image was seriously affected. Minister Milton Henríquez had no alternative but to apologise, stating his recognition of all the au-

thorities of the seven indigenous peoples and their autonomies, in order to prevent further political tension. Being able to demonstrate a climate of social peace, thus guaranteeing favourable conditions for foreign investors and depositors, as well as safe use of the Panama Canal, is a high priority for Panamanian governments.

Although Mossack Fonseca's involvement in facilitating an unlawful system of large-scale tax evasion - used by international politicians, businessmen and celebrities alike – has no direct effect on the indigenous movement, it does harm them indirectly. The illegal depositing in Panama of funds coming from companies and people in wealthy countries inflates Panama's Gross National Income (GNI). Most international cooperation agencies are unable to assist indigenous peoples with technical and financial cooperation if a country's GNI is above the OECD DAC threshold, set at USD 12,745 per capita.⁴

The Indigenous Peoples' Comprehensive Development Plan under the spotlight

In 2016 the Panamanian government obtained financial commitments from Canada, by means of an 80 million dollar loan through the World Bank, to finance the Indigenous Peoples' Comprehensive Development Plan. The attempts of a group of indigenous lawyers (via a draft bill of law) to ensure that this kind of plan would become a permanent fixture in the national budget, under some level of indigenous control, were not successful. Quite the contrary, the Vice Minister of Indigenous Affairs directly hired indigenous technicians and handed the project administration over to a tourism company, *Universal Travel*, leaving the indigenous authorities without a social monitoring system.

Indigenous movement's unity continues to build around territorial defence

The traditional congresses and councils of all seven of Panama's indigenous peoples have now spent two years coordinating a struggle around the specific fulfilment of their territorial rights. This includes the titling of pending territories, the defence and regularisation of their territories and ratification of ILO Convention

169. This alliance, known as the “Unity Forum”, also comprises authorities from complementary areas to the already-established *comarcas*.

“Eyes in the sky and feet on the ground”: cutting-edge technology in indigenous hands

As a result of the several youth training and field work projects conducted by highly qualified technical support staff, through the traditional authorities, the indigenous peoples of Panama now have a satellite system for monitoring land use in their territories. Some of the FAO’s contributions to this process appear to be aimed at preparing the incorporation of the indigenous forests into the REDD mechanism, while others seek to build an early warning system for deforestation and illegal settlement of these forest territories. With free images provided by NASA and the European Space Agency (ESA) and open-source geographic information system (GIS) software, it is now possible to see, at a very low cost, changes in the land use to an accuracy of 5x5 metres every 16 days. This technology has been used to produce a base map of forest cover, with indigenous territories that are recognised or in the process of recognition, and their correlation with the corresponding protected areas, for use as a reference in support of territorial defence initiatives (see map).

Using this technology, it was possible in 2016 to ascertain that Panama’s indigenous territories account for two thirds of the country’s closed forests and, analysing the changes in land use inside the boundaries of the indigenous territories and protected areas, that in most cases the indigenous territories have demonstrated a greater capacity for conservation than the national protected areas system.

Collective titling process halted at critical point

Since the titling of two territories, Arimae and Ipetí, in 2015, no new titles have been registered by means of Law 72.

One reason is because the Ministry of the Environment (MiAmbiente) declared the inadmissibility of holding collective lands in areas overlapping with protected areas. This obstacle seems to be a political statement rather than an ad-

ministrative or legal one as MiAmbiente referred to an unrelated law in making this decision.⁵ Moreover, one of the first territories titled via Law 72, Puerto Lara, was recognised despite it overlapping with a protected area, as is the case also of all the *comarcas*.

This position seems to lack strategy as it endangers the country's social peace and political stability by provoking indigenous peoples as a whole, given that such a decision will prevent the titling of 10 whole territories, including Tagarkunyal, which is the ancestral home to the Guna people, plus all the lands of the Naso Tjërđi people, along with half of the Bri bri territory, creating a real risk of genocide for these latter. An international legal study of the case states that “by not fully recognising the indigenous peoples' territorial rights, it is highly likely that the Panamanian state if taken before the international bodies will be found guilty of violating the right to collective property and other human rights, and consequently will have an international obligation to provide compensation for such violations”.⁶

Under pressure from COONAPIP and the Unity Forum, MiAmbiente informed they would consult the Attorney-General's Office regarding the legality or viability of titling collective lands in protected areas. In actual fact this never happened, thus demonstrating its lack of will to make progress in the titling process.

Meanwhile, progress was being made in preparing scientific and legal documentation as justification for the titling of each one of the pending territories, including the Emberá juã Sõ territory (The Heart Territory), which is also completely superimposed by a protected area (Chagres National Park). This area is also under a special administrative regime, being located in the Hydrographic Basin of the Panama Canal. This territory generates the larger proportion of the water resources needed for the functioning of the canal. In this case, through a process of digital mapping as part of the “Eyes in the Sky-Feet on the Ground” project of Forests of the World, it has been possible to verify that a significant peasant farmer population has been settled unlawfully in this basin for some decades, causing alarming deforestation precisely over the same period during which the Chagres National Park (which covers the same basin) has been in existence. Given that the national authorities have not acted to reverse this process, the Emberá authorities have felt obliged to develop a proposal for intercultural cohabitation, including conditions that will guarantee the recovery of the forest cover, and improve the quality and volume of water collected. By titling the whole of the basin (88,850 hectares) as indigenous territory, it is thus hoped that the

state will gain its best ally for the conservation of water resources, acting as a precedent for other similar cases around the country.

By the end of 2016, there continued to be a lack of legal recognition of 25 indigenous territories. Of these, 22 belong to the Emberá and Wounaan peoples, one to the Guna (Tagarkunyal) and one to the Bri bri. There is also the *comarca* to be created for the Naso Tjërđi, as well as the areas to be annexed to already-recognised *comarcas*, as in the case of the Buglé in Santa Fe, Veraguas Province, plus the inclusion of the 21 Guna communities of Nurdargana into the Guna Yala Region (*comarca*).

In 2016, the titling and territorial defence processes received support from the Danish NGO Forests of the World, Rainforest Foundation US, *Culturas y Desarrollo en Centroamérica* from Costa Rica and the International Land and Forest Tenure Facility. This latter initiated a pilot project for the titling of Emberá communities in Bajo Lepe, Pijibasal and Majé Cordillera/Unión Emberá and the creation of a legal clinic but the project had not achieved the expected outputs by the end of its trial period so it was extended until February 2017 with its remaining funds distributed to other territories such as Tagarkunyal, Bri bri, Naso Tjërđi, Wargandí and Wounaan. It was also decided to reorganise its managerial and administrative set-up with a view to a possible continuation.

New laws without prior, free and informed consent

Executive Decree No. 59 of 9 March 2016 was enacted during the year, creating and regulating the concept of “shared management” in the National Protected Areas System (SINAP). In contrast to what was agreed between the state and COONAPIP, however, this decree was not put out to prior consultation with the representative indigenous authorities, which is compulsory given that it establishes a system for the management and administration of protected areas which, in 26 cases, overlap with indigenous territories. MiAmbiente recognises “*comarcas* populations” and that the consent of “communities in collective lands” is required to sign a shared management agreement but it does not refer to all indigenous territories admissible via Law 72 and nor does it clearly recognise indigenous peoples as subjects of collective territorial rights. This means that MiAmbiente has missed a legal opportunity to promote synergy with all indigenous peoples around conservation.

Law 37 of 2 August 2016 establishes the mechanism for indigenous peoples' prior, free and informed consent and, if applied appropriately, has the potential to prevent many future conflicts. Nonetheless, despite its draft bill having initially been presented by an indigenous Member of Parliament, and it having been considered by the Legislative Committee for Indigenous Affairs, this law was also not put out to consultation with each and every one of the indigenous peoples as it should have been. This is very important given that the aim of the law itself is precisely to ensure the right to free, prior and informed consultation. This omission has meant that a number of weaknesses remain in its content. First, there is no definition of a proactive role for the state in the case of private sector projects on indigenous lands/territories, nor of most importance, considering the unfortunate experiences of the past year, does it clarify that the concept of "free", also refers to indigenous peoples' right to choose and benefit from whatever advisory assistance they should wish. Second, it is not clear that the mechanism must be applied regardless of whether the jurisdiction of collective indigenous property has been legally recognised or not. Nor has it been clarified that possible agreements are binding on the state, the indigenous people affected and the company, as it refers confusingly to only "both parties", and finally, these agreements will be settled with the traditional authorities registered with the Ministry of the Interior, where party-political manipulation is reported to exist. One final feature is that the law only comes into force on 20 June 2017, more than a year after its approval, which is prior to the promised ratification of ILO Convention 169, which would otherwise have served as a reference point for standards in this regard.

Risk of flooding continues in negotiations on the Barro Blanco hydroelectric project

The Barro Blanco hydroelectric project in the Ngäbe-Buglé territory, adjacent to the *comarca* of the same name, continues to be implemented without consent, with funds from the German Development Bank, a subsidiary of the German public financial institution, KfW and the Dutch Development Bank, FMO. The construction company is *Generadora del Istmo* (GENISA). The dubious consent agreement signed at the end of 2015 between President Varela and the head of the *comarca*, Silvia Carrera, was not approved by the *comarca's* congress despite including significant compensation. Indeed, the congress reacted by replac-

ing their leader for having failed to conduct prior internal consultation on said consent. Communities were forcibly evicted from the project area in order to begin a test fill of its reservoir, which flooded sacred sites, farmland and houses. These apparent violations led the indigenous authorities, in cooperation with activists, to draw international attention to the matter and, as a consequence, the Panamanian government has removed the project from the list of initiatives from which the state benefits through the Kyoto Protocol's Clean Development Mechanism (CDM). ○

Notes and references

- 1 According to the 2010 National Census.
- 2 Regulated via Executive Decree No. 223 of 29 June 2010.
- 3 The number of councils and congresses affiliated to COONAPIP varies in real terms depending on the issues it is working on and the level of representativeness perceived by the authorities of each territory/people in the different political environments. As of the end of 2015, the following were not involved in COONAPIP's dynamic: Congress of the Guna Yala Comarca, Guna Congress of the Madungandi Comarca and the Wounaan Congress, the General Congress of Embera de Alto Ba Yano and the General Council of Naso Tjërdi.
- 4 GNI in Panama in 2013 was USD 10,700 per capita and in 2014 USD 11,130 per capita. If the preliminary results of research into the size of illegal deposits are correct, they correspond to several full years of Panama's current Gross National Income. If these funds were returned to their countries of origin for the appropriate payment of tax, the indigenous peoples – who are not benefiting from these funds in Panama – would stand a better chance of receiving appropriate support.
- 5 The Ministry of the Environment refers to Law 80 of 2009 on ownership rights and the titling of individual (not collective) lands in coastal and island areas, which provides that ownership rights will not be recognised in protected areas unless initiated prior to the areas being declared as such and, in this case, "to enjoy the land, the title holder will be subject to applicable environmental regulations" (Art. 10). Similarly, Law 1 of 1994, which establishes the forestry legislation, declares the state's forests as inalienable and indicates that no state body or institution, including ANATI, "may rent, sell, allocate or dispose of lands with primary forests belonging to the State's Forest Heritage without the prior appraisal of the corresponding authority and favourable opinion of the [Ministry of the Environment], which will determine their use in line with their forest vocation" (Art. 31).
- 6 Legal assessment of the rights of indigenous peoples and the overlap of protected areas and indigenous lands in Panama, Leonardo J. Alvarado, Rainforest Foundation – US, 7 September 2016.

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SOUTH AMERICA

COLOMBIA

According to official data, indigenous peoples' population in Colombia is currently estimated at 1,500,000 inhabitants (3.4% of the total population). In fact, 80% of indigenous peoples in Colombia are concentrated in the Andean area and la Guajira, to the North East of the country. The majority of indigenous peoples live in regions like the Amazon and the Orinoco (70), with a very low population density, several of them with serious survival problems. There are 65 Amerindian languages spoken in the country, from which five have no capacity for revitalization and another 19 are "in serious danger" of disappearing. Almost a third of the national territory is indigenous "Resguardos" (Reserves). Most of them have environmental conflicts due to extractive activities in the zone. Between 1990 and 2000, trafficking funds allowed the appropriation of more than 5 million hectares of agricultural lands. At the national level, indigenous peoples are represented by two main organizations: the Organización Nacional Indígena de Colombia (ONIC) and Autoridades Indígenas de Colombia (AICO). The Political Constitution of 1991 recognised the fundamental rights of indigenous peoples, and ratified ILO 169 (today Ley 21 de 1991 [Act 21 of 1991]). In 2009, Colombia supported the United Nations Declaration on the Rights of Indigenous Peoples. With Decree 004 of 2009, the Constitutional Court ordered the state to protect 34 indigenous peoples at risk of disappearing due to the armed conflict, a situation that the Court described as "an unconstitutional state of affairs." President Juan Manuel Santos signed Decree 1953 of October 7th, 2014, which created a special regime to put into operation the administration of indigenous peoples' own systems in their territories, until Congress issues the Organic Law of Territorial Management that will define the relations and coordination between the Indigenous Territorial Entities and the Municipalities and Departments. In December 2016, negotiations between the government of President Santos and the Revolutionary Armed Forces of Colombia (FARC) finally concluded, ending an armed conflict that lasted more than half a century, and which displaced many "campesinos" (peasants), indigenous and Afro Colombian families from their territories.



Colombia is a country where the vast majority of its people are discontent with the social system and dissatisfied with the social results of the government. Nonetheless, it manifests indifference and pessimism towards policies that seek to transform it. This was revealed in October's referendum to approve the peace

agreement between the government and the FARC, having a high abstention (63%) and which results rejected the Agreement to finally achieve the peace. More than indifference and pessimism, there is scepticism about the possibilities to change the economic model. Even worse, the idea that all institutions are corrupt or corruptible and that there are no impartial institutions is very widespread. The abomination of this situation is that reality may be giving reason to dissidents. The most harmful, however, is this exploitation of nonconformity and dissatisfaction present in a large part of the population that can generate a generalized feelings of rejection to the political class, leading the people to support - once again - an authoritarian populist model, as is happening in several regions of the world.

An example of this nonconformity is what is currently happening with the agrarian problems, which concerns in particular landless campesinos, indigenous peoples and Afro-Colombians. In economic terms, it would be very productive for the country that the displaced population return to their lands. For that purpose, the law on victims and restitution of land was issued. However, that project has been politically unfeasible, as shown in an Amnesty International report¹ on the land restitution fiasco in the last two and a half years. Land has been returned to just over 300 people. Furthermore, many of the displaced have not received the land because “good faith” people, such as Cementos Argos, had occupied it. In the department of Meta, 25% of the returned land ended up in the hands of only one person. Should this trend continue, in the 10 years of the implementation of this law, only an estimate of 1,200 people of the 192,638 indigenous people and 794,703 Afro-descendants will benefit, people that according to the Victims Unit have been hit by the armed conflict.² Despite this data, there is hope that the peace agreement with the FARC could change this situation and accelerate the process of land restitution so that at last indigenous peoples and Afro-descendants can live peacefully in their ancestral territories.

At the heart of the problem is the political unfeasibility in the “real existing Colombia” to reform the land tenure system, which is the most important socio-economic component to allow Colombia to move forward towards the creation of a modern society and state.

This political unfeasibility to achieve social readjustment of the land has been accentuated with the polarization between the current President Juan Manuel Santos, as an entrepreneur representative, and the former president Álvaro Uribe, who besides representing the business class, also represents the land-

holder class. This polarization turned out to be the best business for the Colombian oligarchy, since it generated the weakening (in part division and co-optation) of the democrats and the left sector. With the defeat of the October referendum to endorse the Havana Agreement the government's ability to negotiate and manoeuvre to implement the post-conflict agrarian agenda agreed upon in Havana declined. This included the following topics: land acquisition, funding of productive projects, substitution of the economy of drug trafficking, redress for victims, modernization of the rural registry, among others. Given these circumstances, many analysts wonder whether in the implementation of the Peace Agreement with the FARC the country will be able to undertake a radical reconfiguration in the relationship of the state with society, which will allow it to put an end to this "certain inevitability" of the civil war that has always operated in Colombia.³

And after the peace agreement, what is next?

Surely the FARC will demobilize and thousands of fighters will be reintegrated into civilian life to try to make with their lives something socially more constructive than cultivating coca, kidnapping, carrying out attacks, and keeping entire regions on tenterhooks. It will not be easy for them to build a powerful political force, but they will be integrated into civil society. Peace will also bring, if not justice for the victims, at least closure to the conflict so that they return to their lands and rebuild their lives. In any case, there is still some uncertainty regarding the behaviour of those who oppose land restitution and do not hesitate to kill agrarian leaders.

There will probably be a reduction in coca cultivation, and possibly some rural development in areas where there are social organizations and communities with some capacity to decide on the public goods that will be provided by the state under these agreements. Meanwhile, FARC will find a way to momentarily enter the spheres of power, and they will shine for few years in the political firmament, but the establishment will then close its ranks to suffocate them and finally they will languish. And what will happen to Colombia? The state will reduce poverty levels and impunity somewhat, improve employment situation and temporarily combat the terrifying corruption, illegal mining and illicit crops. That is, many things will change so that everything stays the same. Certainly, there are things that are not going to change. Defence and security expenses will remain, because contrary to what it is believed, which it is that the mobilisation of the FARC

will bring some relief to the finances, the state will continue to prepare to face the social conflicts of the future, predicted to be equally ill-fated if the inequality gap is not addressed and closed.

Hence, this is the moment to take Colombia forward to the next level, and address the fundamental problems that keep the country poor and unequal, and which generate conflicts.

Dimension of ethnic issues in the peace agreement

Data from the Victims Unit show that 192,638 indigenous people and 794,703 Afro-Colombians were affected by the war experienced in recent years. The guerrilla made life impossible for several indigenous peoples and Afro-Colombians. Massacres such as that of the Awá in Nariño and Afro-Colombians in Bojayá (Chocó), mined collective territories, communities stripped of their territories and young people and children recruited are some examples of the FARC's violent acts carried out against ethnic peoples. Forced displacement caused by the conflict in their territories is the most common victimizing fact that the ethnic population of the country has suffered as a result of the armed conflict. Among them are Afro-Colombian peoples who have been the population group most affected, marginalized, and displaced by the war. In this sense, a closure of the armed conflict represents the hope of being able to live quietly and peacefully in their territories, but indigenous peoples pursue something more. They demand the truth and reparation, in addition to demanding to be protagonists of the implementation of the Agreements in their territories (point V). For all these reasons Afro-Colombians fear that the political class in their regions will continue to decide on the economic and social development of their communities and manage investment resources, or that self-appointed leaders from new groups will emerge after the conflict and, in the framework of the Agreements, lead the implementation of development plans in their territories, occupying spaces of political participation of ethnic organizations.

It is also of concern to indigenous peoples and Afro-Colombians how the creation of Peasant Reserve Areas (*Zonas de Reserva Campesina*; ZRC) will affect their territories. These areas will receive FARC combatants that have been reintegrated, in regions like the Pacific, traditional territory of Afro-Colombian and indigenous communities, which have been the epicentre of multiple armed con-

frontations. For example, in several regions of the coast in the department of Nariño there is heavy fighting among medium level FARC's commanders and Afro-Colombian leaders who will not accept the creation of ZRC in non-titled territories of black communities, or that these areas could be used for cultivation of illicit crops or mineral extraction. In order to avoid future disagreements, the Commissioner for Peace Sergio Jaramillo developed a peace scheme with a territorial approach to guarantee an ethnic perspective in the development of the agreements. But indigenous peoples, fearing the laxity of the state in the implementation of the Agreements, demanded alongside with the Afro-Colombian leaders the inclusion in the final Agreement of what was called the "Ethnic Chapter."

The Ethnic Chapter of the Peace Agreement

On the 8th of March, the National Indigenous Organization of Colombia (*Organización Nacional Indígena de Colombia*; ONIC) and the Afro-Colombian National Peace Council (*Consejo Nacional de Paz Afrocolombiano*; CONPA) issued Resolution N° 001, with the intention of actively participating in all discussions of the peace process. The Resolution allowed for the creation of the Ethnic Commission for Peace and the Defence of Territorial Rights. The Commission was installed as a national body, autonomous, plural, decisive, and participative and self-representative of peoples and organizations. This Commission was created with the aim, *inter alia*, of "working for the construction of peace from our peoples in function of our rights to identity, autonomy, participation, territoriality, exercise of self-government and peace of the Nation." In this way, it was made known to the government and the negotiating table of Havana.

However, on the 29th of June, the movement Patriotic March, very close to the FARC, published a document in Havana that revealed the "*contributions of indigenous peoples to an ethnic territorial approach in the Havana agreements.*"⁴ Through this document, "indigenous grassroots organizations grouped together in the National Coordination of Indigenous Peoples, Organizations and Indigenous Leaders (*Coordinación Nacional de Pueblos, Organizaciones y Líderes Indígenas*; CONPI) made a political and ideological proposal, which should be included in the agreements as a road map for the subsequent implementation of agreements in the territories."

However, ONIC and OPIAC disregarded this general approach, which appeared on the scene of the negotiation process as a parallel organization, and presented the substantive and structural issues they had been raising since the beginning of the dialogues. These included the territorial issue, illicit crops, victims and the termination of the conflict, as well as the future of the indigenous people who are linked to the FARC after the demobilization process. They also raised central concerns about the implementation of agreements and demining in some indigenous territories that were the epicentre of the armed conflict.

On Tuesday 24th of August, while the press and negotiators announced that the imminent peace agreement with the FARC was ready and that only the negotiating chiefs' signature was missing, indigenous peoples and Afro-Colombians knew nothing regarding the fate of their proposals.⁵ Despite being the main victims of the conflict, they endured uncertainty until the last minute in order to be included in the final agreement.

Although the FARC agreed with the document (20 pages), they objected to two main issues: the Peasant Reserve Areas (ZRC) and indigenous justice. Regarding the first, the position of indigenous peoples and Afro-Colombians demanded that these reserve areas should not overlap with their collective territories, also stating that this was a matter that concerned only ethnic groups and campesinos, and was completely inappropriate for the FARC to speak on their behalf and even less to represent them on this issue.⁶ Second, on the issue of justice, according to the FARC this also had to be solved. On this issue they referred to the situation of indigenous guerrillas belonging to the FARC, who were sentenced in November 2014 by the indigenous justice for up to 60 years prison for the assassination of two members of the indigenous guards belonging to the Nasa people, in Toribio, Cauca.

The government delegation intended that in the official text of the Havana Agreement it would only be stipulated that these agreements have an ethnic focus and it was not possible to devote a specific chapter to the ethnic issue. Given the indigenous refusal to accede to this claim, the government proposed to summarize the proposal in one page. In the end they reached a deal comprised of a four-page Agreement that included an "Ethnic Chapter." From Havana that same day, the chief negotiators announced the signing of the last agreement. Iván Márquez, head of the negotiating delegation of the FARC, affirmed that the Ethnic Chapter had been achieved by "the very struggle of indigenous peoples and Afro-descendants." This referred to the fact that a couple of days before, indigenous

peoples had declared themselves in permanent assembly, threatening with road blockades at national level and to vote against the approval of the Agreement in the referendum due to the exclusion of the Ethnic Chapter from the final agreement. Only then, at the last minute negotiators in Havana accepted to meet delegates from ONIC and CONPA to solve the ethnic issue in the peace agreement.

What was agreed in the Ethnic Chapter:

- The agreements signed in Havana cannot be “to the detriment of the rights of ethnic peoples;”
- on the issue of rural reform, the current legal conditions of property and ancestral territories will be guaranteed;
- with regard to participation, the inclusion of candidates from ethnic peoples in the lists of Special Territorial Peace Constituencies will be guaranteed;
- it was defined that ethnic peoples’ own security systems (indigenous guard and maroon guard) should be expanded and strengthened. On the issue of illicit drugs, it was agreed that “the cultural use and consumption of traditional plants classified as illicit will be protected and respected;”
- programs for the settlement, return, devolution and restitution will be created for the Nukak indigenous community, the Embera Katío people of Alto San Jorge, the territory of the Alto Mira and Frontera Community Council, and the communities of Curvaradó and Jiguamiandó.

Issues of concern in the Peace Agreement

The mechanism of “Special Electoral Peace Constituencies” (*Circunscripciones Electorales Especiales de Paz*) enables the demobilized FARC, already without their weapons, to have political advantages when competing for local power. This will encourage the political organization and participation of reintegrated guerrillas. However, in a region with a high presence of ethnic groups, this mechanism could generate tensions with indigenous and/or Afro-Colombian organizations.

Regarding this point, organizations and specially communities are asking if the state will be able to shield the territories abandoned by the FARC so other armed groups do not occupy them. There is uncertainty also with regard to what will happen in the territories where there are already illicit crops and whether de-

mobilized sectors can sell the franchises to other groups (armed or not) to continue their exploitation.

Some guerrilla fronts are made up of indigenous people and/or Afro-Colombians, many of them forcibly recruited and others seduced by economic retributions or the ostentation of authority given by the weapons. Some communities, from which these demobilised people originated, reject them and others demand that they be re-integrated into their territories, subject to the authority of their organizations. The majority, however, demand that they disassociate themselves from any political organization outside their own communities, and that they do not participate in political projects coming from the FARC's political party. An additional concern is who will judge these indigenous or Afro-Colombian ex-combatants for *crimes against humanity*, committed against members of their own communities. Will that be special peace judges or an indigenous jurisdiction? These concerns, and others which are starting to come to light, are legitimate and will have to be carefully addressed in the post-conflict with the participation of indigenous peoples.

National Indigenous Congress

Freed from the burden and tensions generated by their work in the last months in order to guarantee that their rights were recognised in the formulation of the Peace Agreement, ONIC held its IX Congress in Bosa from the 8th to the 14th of October. With its slogan up: *Strengthening our autonomy and unity, we defend our ancestral territories for the construction of peace and survival of peoples!* The congress brought together almost 4,000 indigenous people from all over the country, belonging to 47 indigenous subsidiaries. This congress sought to establish guidelines to lead the work and course of action so that their rights are not violated during the implementation of the agreements. The event agenda concentrated on strengthening the notions of territory, unity, culture and autonomy, which have been the motto of the organization since it was founded 35 years ago.

The congress was attended by several personalities of Colombian culture and politics, who not only participated in the deliberations of the Congress, but appreciated the indigenous gastronomy, tasting culinary delights of the different ethnic groups of the country, having the opportunity to also admire and buy authentic works of art. The former mayor of Bogotá, Gustavo Petro, a passionate friend of the indigenous people, highlighted with a speech aimed at encouraging

the spirit of ethnic resistance of the indigenous struggle in the past to oppose the “*paramilitarism that with chainsaws tried to take over the country.*” The senior councillor of ONIC, Luis Fernando Arias, described with memorable genius the resistance and autonomy with which this organization will face the challenges of the moment: “*the recognition of the indigenous government is not granted by colonial or republican institutions. These are formal aspects to continue to control the legal and political life of all the (indigenous) peoples of the world...*”⁷

On the 12th of October, as is traditionally done in the country, indigenous peoples made a formidable mobilisation in commemoration of the “Day of the Resistance of the Peoples.” On October 13th, the closing ceremony of the IX Congress was held with the election of ONIC’s Major Governing Council. The Congress elected an illustrious group of regional leaders and senior councillor Luis Fernando Arias was re-elected, a distinguished leader of the Kankuamo ethnic group of the Sierra Nevada of Santa Marta. Arias pledged to keep strong the fighting spirit of Colombian indigenous peoples.

The campesinos, Afro-Colombian and indigenous leaders participating in the “Post-Conflict” Inter-Ethnic School are aware - even with the concerns they have and the new difficulties that will surely appear in the future - that ending the war will greatly benefit their peoples and communities. On the one hand, they will finally have the opportunity to develop their life projects without the interference of weapons that have caused them so much suffering, and may also continue the process of recovery and consolidation of their political autonomy with more reasons to live a good life. ○

Notes and references

- 1 *Las críticas de Amnistía Internacional a la restitución de tierras*, Verdad Abierta, 26.11.2014, <http://www.verdadabierta.com/restitucion-de-bienes/5528-las-criticas-de-amnistia-internacional-a-la-restitucion-de-tierras>
- 2 *Las pobres cifras de la restitución de tierras*, Fundación Paz & Reconciliación, 26.3.2014, <http://www.pares.com.co/documentos-e-informes/las-pobres-cifras-de-la-restitucion-de-tierras/>
- 3 *¿El final del comienzo?*, El Espectador, 7.01.2017, <http://www.elespectador.com/noticias/politica/colombia-el-final-del-comienzo-articulo-673655>
- 4 <http://www.conpi.org>
- 5 Although the formal proposal for indigenous and Afro-Colombians had been included in the final agreement since August 12, only until Wednesday morning (one day before the signing) indigenous peoples and Afro-Colombians were summoned by the parties in Havana.

- 6 According to ONIC, there are problematic cases such as the Serranía del Perijá inhabited by the indigenous Yukpa, or the Catatumbo where the Barí people live.
- 7 Más de 4.000 indígenas se reúnen en el IX Congreso Nacional de la ONIC, Contagio Radio, 10.10.2016, <http://www.contagioradio.com/mas-de-4-000-indigenas-se-reunen-en-el-ix-congreso-nacional-de-la-onic-art>

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VENEZUELA

The Constitution of the Bolivarian Republic of Venezuela (1999) for the first time in history, recognized the multiethnic, pluricultural, and multilingual character of Venezuelan society. 2.8% of the country's 30 million inhabitants identify as indigenous. In 2001 Venezuela ratified ILO Convention 169, and it has enacted a set of laws directly developing the specific rights of indigenous peoples, such as the Law on Demarcation and Guarantee of the Habitat and Lands of Indigenous Peoples (2001), the Organic Law on Indigenous Peoples and Communities (2005), and the Indigenous Languages Act (2007), as well as several favorable provisions found in a number of Venezuelan legal norms. Venezuela has also created institutions devoted to overseeing public policy formulation in indigenous affairs, such as the Ministry of Popular Power for Indigenous Peoples.

Venezuela saw 2016 open with a reconfiguration of the political scenario, resulting from the opposition taking a majority in the National Assembly. The opposition party clearly established its lines of action, aimed at removing President Nicolás Maduro from power. Legislative activity was suspended based on an injunction issued by the Supreme Court of Justice, which voided the election of the three winning candidates in the State of Amazonas, plus the indigenous candidate for the southern region. The opposition proposed several strategies: direct removal of the president from office, a National Constitutional Assembly, and a revocation referendum. While none of those three proposals succeeded in being implemented, the last of them was especially controversial due to the different positions in favor and in against it among the various sectors of the country. The National Electoral Council (*Consejo Nacional Electoral*; CNE) applied state court injunctions on requests to activate the referendum and suspended their processing. This situation created a climate of political instability throughout 2016. In the latter half of 2016, Pope Francis, given the severity of the situation, invited the various political players to a "Dialogue Table" in search of a peaceful conflict resolution mechanism, but to date that effort has not had concrete results.

Second Universal Periodic Review of Venezuela

In November the Venezuelan State, for a second time, underwent a United Nations review of its compliance and commitment to its human rights obligations. This second cycle of the Universal Periodic Review focused on follow-up of the recommendations made by the States during the first interactive dialogue, which had been held in 2011, as well as on the general human rights situation between 2011 and 2016. On this occasion, the Minister of Popular Power for Indigenous Peoples, Aloha Núñez, highlighted three fundamental aspects of the presidential administrations of Hugo Chávez Frías and Nicolás Maduro: the allocation and demarcation of lands in the zones belonging to the ethnicities, the application of measures for proper mining extraction, and the inclusion of these communities in activities of the executive branch. “In the year 2014, under our democratic government, President Maduro created the Council of Indigenous Peoples to promote public policies on indigenous affairs, in which more than 2,000 of the country’s communities participated”.¹

Demarcation of indigenous territories

The demarcation of indigenous territories continues to be the principal right pending resolution for Venezuela’s indigenous peoples and communities. The Constitution’s interim provisions obligated the State to demarcate indigenous territories within not more than two years. However, according to reports from the indigenous peoples and communities themselves, the amount of lands provided did not surpass 13% of the total. In August 2016, the indigenous organizations grouped around in the Regional Organization of Indigenous Peoples of Amazonas (ORPIA) and the Confederation of Indigenous Organizations of Amazonas (COIAM) issued a communiqué voicing their concern over insufficient progress in the demarcation of indigenous habitat and lands, almost 17 years after the enactment of the Constitution’s Article 119, which establishes a constitutional obligation for the Venezuelan State to demarcate and uphold the integrity of indigenous territories.

“We are concerned over the standstill in the national process of demarcation, particularly in the State of Amazonas, where the Regional Demarcation Commission, coordinated by the Ministry for Indigenous Peoples (MINPPI) has gone



more than two years without holding a meeting, and its Executive Secretariat has informed us that there is no budget to work on the pending files. We are saddened upon seeing that the cases of the Yabarana-Multiethnic (Manapiare) Uwottüja-Jivi (Autana) and Ye'kuana-Sanemá (Manapiare) peoples not only fail to advance, but are at a standstill, without expectations for being processed".²

The Amazon Social and Environmental Working Group "Wataniba," which accompanies the struggle of these organizations on an ongoing basis, has also insisted on several occasions upon the need to activate the demarcation process. This deactivation of the demarcation process has not held back the work of indigenous organizations. For instance, in March 2016 the "Horonami Organización

Yanomami” submitted its request to the Regional Demarcation Commission of the State of Amazonas to commence a demarcation process. The Horonami’s submission of the request for demarcation is of great relevance. It is the product of sustained work over many years, where the organization’s membership and the communities, with technical support from the “Wataniba” Social and Environmental Working Group, developed mental maps, georeferenced their territory, and conducted censuses to request commencement of the demarcation process.³

As of the writing of our article, the 2016 Report and Statement of the Ministry of the Popular Power for Indigenous Peoples has yet to be published. The most recent official data correspond to the 2015 Report and Statement and reflect the following: 64 consultations were conducted in stages of the demarcation, benefiting a total of 4,761 persons. Workshops were held to disseminate information on demarcation, in which 630 persons participated. 10 cases were brought for Collective Titles for the Kariña, Cumanagoto, Pume, Chaima, and Japreria Indigenous Peoples of the states of Anzoátegui, Apure, Monagas and Zulia, corresponding to a total of 264,563.84 hectares.⁴ On the other hand, in 2016, during the presentation of the Venezuelan Report on Human Rights to the United Nations in Geneva, the Minister of Indigenous Peoples stated that the government had provided 102 collective land titles for approximately 3,280,298.72 hectares where 101,498 people live, grouped into more than 25,000 families from 683 communities.⁵

Mining and the rights of indigenous peoples

Conflicts over illegal mining in Amazonas and Bolívar

In 2016, ORPIA and COIAM denounced encroachment by illegal miners in the area of the Parucito River and its tributaries (Manapiare Municipality). Aggression and threats were denounced, occasioned upon the Yabarana, Hoti, and Panare peoples, who are the original inhabitants of that zone, affecting their constitutional rights to territory (Article 119), to a healthy environment (Article 127) and to personal and cultural integrity (Article 121).⁶ ORPIA and COIAM also denounced increased illegal mining in several zones of the State of Amazonas. They stated that over the past three years an increase has been seen in illegal mining of the beds of several rivers and zones of the high rainforest. This includes the use of motor pump machines, which utilize river dredging methods. The result of this

activity has been an evident environmental destruction in areas such as the Yacacana National Park and the Orinoco, Atabapo, Guainía, Sipapo - Guayapo, Alto Cuao, Ocamo, Manapiare - Ventuari, Parucito - Majagua, Parú, Asita, Siapa and other rivers. Such activity has polluted the waters due to the presence of mercury and has altered the river ecosystems in general, among other things, taking the lives of numerous fish that are a source of food for indigenous communities along the river banks.⁷ For its part, the Working Group on Indigenous Affairs (*Grupo de Trabajo sobre Asuntos Indígenas*; GTAI) of the University of the Andes published a communiqué exposing death threats made by illegal Brazilian miners in the zone against indigenous captain general Pemón of the Ikabarú Juan Gabriel González sector in the Municipality of Gran Sabana of the State of Bolívar.⁸

Creation of the Orinoco Mining Arc Strategic Development Zone

On February 24, 2016, President Nicolás Maduro issued Decree No. 2,248, creating the “Orinoco Mining Arc Strategic Development Zone” (AMO). The AMO is comprised by a territory measuring 111,843.70 square kilometers, corresponding to 12.2% of Venezuelan national territory. The zone is divided into four areas for the exploration and exploitation of minerals: Area 1 (24,680.11 kms²), predominantly for bauxite, coltan, rare earth elements, and diamonds; Area 2 (17,246.16 kms²), predominantly for iron and gold; Area 3 (29,730.37 kms²) predominantly for bauxite, copper, kaolin, and dolomite; and Area 4, (40,149.69 km²) predominantly for gold, bauxite, copper, kaolin, and dolomite. There is also a special block outside of the arc, located in southern Bolívar, in the Ikabarú zone. 150 companies from 35 countries will be participating in this megaproject. 7.51 % of the indigenous population lives inside the boundaries of the Orinoco Mining Arc.⁹

According to experts, the negotiations with the mining companies did not include consultation with the Indigenous Peoples, thus violating the right to free, prior, and informed consultation guaranteed in Article 120 of the Constitution and Article 11 of the Organic Law on Indigenous Peoples and Communities. These experts also stated that none of the environmental impact studies, mandated under Article 129 of the Constitution, have been carried out. Likewise, some indigenous persons have come out against this decree. In March 2016, Gregorio Mirabal, the coordinator of ORPIA, expressed the concerns of indigenous organizations and communities in the Venezuelan Amazon over the Orinoco Mining Arc plan: “It affects us, because they’re talking about a mining exploitation, about an

extraction policy, about searching for resources, and it takes a high toll on us. Why? Because it will bring about the destruction of the forests and of the Venezuelan Amazon's most important river basins."¹⁰ Pressure and arguments on the part of the indigenous organizations and of the "Wataniba" Social and Environmental Working Group kept up in 2016 in response to the Mining Arc and its implications for what, from a legal perspective, was a historically protected status. The State of Amazonas, which originally formed a part of the "Mining Arc," was finally excluded from it.

On May 4, 2016, the Kuyujani Organization of Caura (State of Bolívar) and authorities from 49 Ye'kwana-Sanema and Pemón indigenous communities issued a statement in opposition to the Orinoco Mining Arc decree:

"We consider the Mining Arc to be a violation of our legitimate right to health and to a secure territory of our own, with quality of life. We consider the decision taken on the mining policy within indigenous territories to be inconsistent, insofar as it undermines the indigenous rights consecrated in the Constitution, in Convention 169, and in the Organic Law on Indigenous Peoples. The Ye'kwana and Sanema cultures depend upon the forests, waterways, and other ecosystems and natural resources of the Caura river basin to continue our existence. The illegal mining activity in our territory has had its first impacts on the environment and on human health, which are the initial signs of a process internationally classified as ethno-genocide".¹¹

In August 2016, COIAM issued a communiqué alerting as to "the potential social, cultural, and environmental impacts of the implementation of new policies for mineral extraction in the country's southern region, such as what is being called the Orinoco Mining Arc, to be carried out in extensive territories occupied by indigenous peoples and communities and without processes for free, prior, and informed consultation. One of the most negative impacts of these activities might be the abandonment of the indigenous peoples' traditional activities in their territories and in their own subsistence economy, when social and production patterns are introduced that are not in keeping with their social and cultural dynamics and their identity. These policies could lead to a true ethnocide."¹² Upon becoming aware of the inclusion of Ikabarú in the Mining Arc, the indigenous authorities noted that they already have title to Ikabarú, and they requested "the elimination

of the Special Ikararú Block identified by the Orinoco Mining Arc Strategic Development Plan”.¹³

The indigenous peoples’ voices have also been joined with by academic scholars, intellectuals, and social movements, who have called upon the National Government to “Stop Mining Ecocide...”¹⁴ A group of citizens even created a space for coordination named *Platforma* (“Platform”), calling for the AMO to be voided, and they brought an action before the Political and Administrative Division of the Supreme Court of Justice to void the AMO on the grounds of illegality and unconstitutionality. A group from the Institute of Tropical Zoology and Ecology of the School of Sciences of the Central University of Venezuela wrote a report named “Environmental Consequences of the Mining Arc Project,”¹⁵ in which they requested information from the Venezuelan State regarding the phases and procedures of the AMO, since they were unaware of plans for mitigation and restoration in the areas that will be affected by mega-mining in “oldest zone of the planet.”

As a consequence of being questioned by a broad range of sectors, in April 2016 the Presidential Commission on Eco-Socialist Development and Safeguarding of the Rights of Indigenous Peoples in Mining Activity was created¹⁶ through Presidential Decree No. 2,265, published in Official Gazette Number 40,864. This permanent, multidisciplinary, inter-institutional, high-level consultation and advisory body seeks to strike a balance in the first decree with respect to the presence of indigenous communities living in the AMO. Likewise, the National Executive Branch, through Decree No. 2,350, published in Official Gazette No. 40,922 of June 9, 2016, created the Ministry of Popular Power for Ecological Mining Development, whose mandate was “the development, exploitation, and control of non-renewable natural resources under its jurisdiction, in keeping with applicable laws and regulations, always observing a deep respect for human beings and the environment.” On August 3, 2016, the Vice President for Social Development, Jorge Arreaza, reported that approximately 181 indigenous communities would be incorporated into the Mining Arc: “we are conducting the consultations; we started in one of the areas of the Mining Arc with eight indigenous peoples. The Mapoyo and Pijiguaos populations have made extraordinary contributions that will be incorporated into the mining plan and the strategic development zone”.¹⁷ On August 9, 2016 the National Executive Branch issued Decree No. 2,412,¹⁸ prohibiting the use of mercury for mining exploitation. However, that decree did not determine how large-scale extractive industries will engage in open-pit exploitation of minerals. The decree also raises the question of what will happen with the present

conflicts over illegal mining, which has not been brought under control despite the implementation of several different plans, such as mining reconversion and the Caura Plan, implemented in 2010 by the national government to stop the environmental devastation generated by illegal mining.

Coal mining project and thermoelectric plant in the State of Zulia

During 2016 denunciations continued to be made over Decree No. 1,606 published in Official Gazette No. 40,599, which transfers coal exploration and exploitation rights to Carbones del Zulia, an affiliate of Petróleos de Venezuela, in an area encompassing 24,192.14 hectares. Current mines cover an area of 1,763 hectares, with concessions for a total of 7,250 hectares, implying an expanding activity. The *Homo et Natura* organization explains that the expansion, if it takes place, will harm more than 13,000 inhabitants in the municipality of La Guajira and approximately 12,000 persons from the municipality of Mara.¹⁹ “It will affect us a lot. It has already been decreed and will result in the displacement of the indigenous communities, who will be left without water and without a territory,” indicated Diego Fuenmayor, a representative of the *wayúu Maikiraalasalii* indigenous association, who also pointed out that the indigenous peoples were not consulted.²⁰

Indigenous right to health

An HIV epidemic continues affecting the Warao people located in the State of Delta Amacuro. The first cases were detected in 2007 by the Red Cross. In late 2011 researchers from the Venezuelan Scientific Institute (IVIC) and the Biomedicine Institute of the Central University of Venezuela conducted a study (2013), which found that 55 indigenous persons were carrying the Human Immunodeficiency Virus. These specialists were alarmed, because 9.55% of the inhabitants from eight communities studied had contracted the virus. In July 2015, a group of physicians took new tests from 666 Waraos in 15 communities. The results were a 7% prevalence, greater than what was estimated both in Venezuela and in the rest of the world.²¹ In addition, Warao physician Jesús Jiménez reported that in one month 37 indigenous persons had died from multiple causes in the community of San Francisco de Guayo alone, which is located in the State of Delta

Amacuro. According to Jiménez, the shortage of doctors and medicines at three hospital centers, which are the only hospital centers in the municipality of Antonio Díaz, were determinant factors for their deaths.²²

Malaria has also expanded in Venezuela, principally in areas where indigenous peoples and communities live. According to data from the Defending Epidemiology Network and the Venezuelan Public Health Society, the year 2016 closed with 210,000 cases. The State of Amazonas was one of those most affected. Currently four municipalities are in a state of epidemic. The situation has been aggravated by recurring shortages in the supply of medications, the precarious control of the vector occasioning the disease, problems entailed in supplying a rough terrain, and illegal mining. Statistics from the Environmental Health Service of Puerto Ayacucho indicate that in 2016 there were 27,212 cases counted in the State of Amazonas, 20% more than in 2015. Of them, 3,810 ill persons sought medical attention in the municipality of Atabapo (with a 90% indigenous population) once diagnosed.²³ In 2016, COIAM alerted a deteriorated provision of health services to indigenous communities from the various municipalities of the State of Amazonas, as well as impacts to the outpatient care system, major shortages in the supply of medications and logistic resources (fuel, radios, and outboard motors), and a lack of budget funds for the functioning of fundamental programs such as control of malaria and other endemic diseases.

José David González (Wayuú), coordinator of the Human Rights Committee of Guajira (State of Zulia), stated that one of the most severe problems in territory of the Wayuú is malnutrition. On June 4, 2016 two brothers, Jaimy Yairuma (a seven month old baby) and Jaiber (eight years old) from the community of Wayamurisirra died at the Adolfo Pons Hospital of Maracaibo. The committee has also reported twelve cases of malnutrition among children and adults from Sinamaica and Alta Guajira, and reported a complete family in a state of malnutrition in the community of Caracolito.²⁴ In November another boy died of malnutrition who was just two months old.²⁵ ○

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- 9 The Orinoco Mining Arc includes both the right and left side of the Orinoco and goes from the Apure River (lands of the Pumé), passing through Palital (Kariña zone across from Guayana City) to the limit with the State of Delta Amacuro in Barrancas (Warao zona) along its left side; it then goes towards the right of the Orinoco, to Cuyuní (Arawak, Pemón, and Kariña zona), to the zone of influence of the Canaima National Park (Pemón), to the Paragua River (a tributary of the Caroni-zone Pemón, Sapé, and lands of the last Uruak and Arutani) and then goes down to the Aro (Kariña zone). From there it moves to the Caura basin (Yekwana, Sanema zona), which it crosses and then continues to the Sierra de Maigualida Natural Monument (Hoti zone) to the Cuchivero (Eñe'pa or Panare zone) and to the Parguaza (Wanai or Mapoyo, Piaroa zone). Finally, it returns to the original point, which is also seasonally occupied by the Hiwi.
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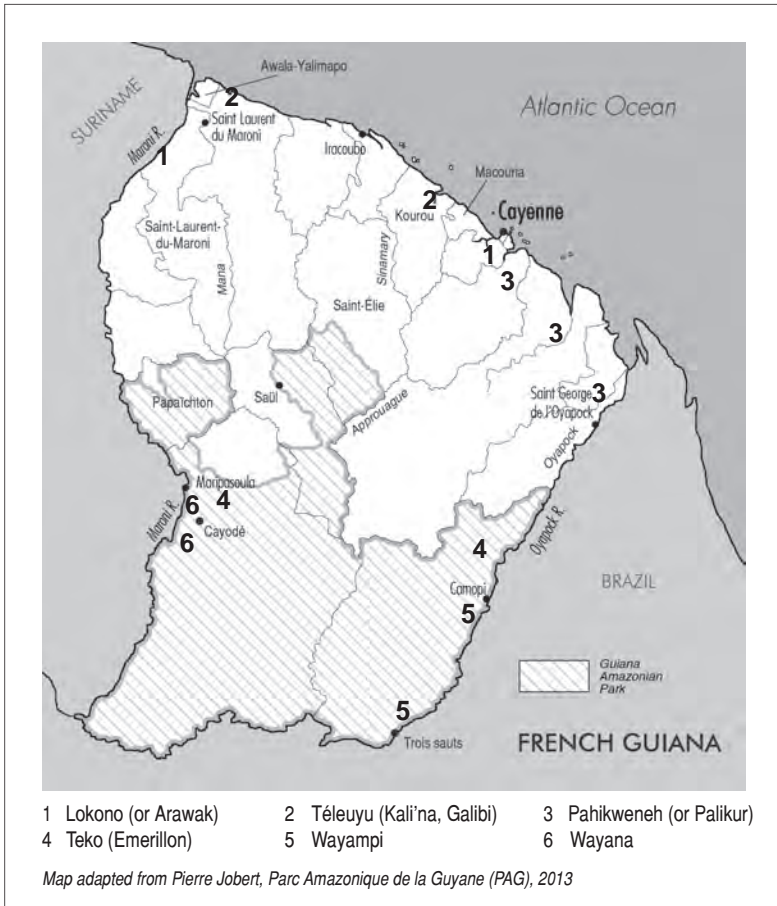
FRENCH GUIANA

Guiana is an overseas department and region of France in South America. It is bordered to the west by Suriname and to the south and east by Brazil. It has a population of 244,118 inhabitants (INSEE, 2013). The interior of the country (90% of the land mass) is covered by dense equatorial forest that is only accessible by plane or canoe along the Maroni River from the west or the Oyapock River from the south-east.

Indigenous peoples account for 5% of the population, or around 10,000 people. The Lokono (or Arawak), the Tékéuyu (also called Kali'na, Galibi) and the Pahikweneh (or Palikur) live along the coast between Saint Laurent du Maroni and Saint Georges de l'Oyapock. The Teko (or Emerillon) and Wayampi live along the upper Oyapock, and the Wayana, plus a few Teko along the upper Maroni. Their traditional practices of fishing, hunting, gathering and slash-and-burn agriculture have become increasingly difficult due to numerous regulations and mining activities.

France has ratified the 2007 UN Declaration on the Rights of Indigenous Peoples but not ILO Convention 169. It only recognises Areas of Collective Land Use Rights (Zones de Droits d'Usage Collectifs / ZDUC), concessions and transfers. These areas cover 8% of the area of Guiana and give only a simple right to use of the land.

During 2016, representatives of Guiana's indigenous organisations, associations and networks (customary chiefs, National Indigenous Organisation of Guiana/ONAG, Federation of Indigenous Organisations of Guiana/FOAG, First Nations Collective, Consultative Council of Amerindian and Bushinenge Populations/CCPAB, indigenous youth, Collective Alliance of Amerindians of Guiana/ACAG...) continued to make their voices heard and denounce the recurrent problems affecting indigenous men and women.



Biopiracy and bioprospecting

On 25 January, in Paris, the Senate examined the draft bill of law to recapture the biodiversity of nature and landscapes. At the same time, the France Libertés Foundation denounced “the unethical practices of the Institute for Development Research (IRD)”. In a press release, it emphasised that the Institute “was relying on the traditional knowledge of indigenous and local communities to submit a patent related to a Guianese plant; this would give the Institute a monopoly over

its commercial exploitation without recognising the contribution and rights of the Guianese people who had participated in the research project”.¹ The Foundation has lodged an appeal with the European Patent Office, and ONAG has supported it in this action.

Consultative Council of Amerindian Populations and Bushinenge (CCPAB)

The CCPAB was established by Law No. 2007-24 dated 21 February 2007 following an amendment by Guianese Senator Georges Othily.² Amendment no. 344, article 18, on Recapturing Biodiversity, submitted to the National Assembly by Mrs Chantal Berthelot & al., on 24 February 2016, recalls that “the CCPAB must be able to express an opinion on all projects or proposals for deliberation by the General Council, Regional Council or State with regard to the environment, living environment and cultural activities of Amerindian and Bushinenge populations”. It highlights that “in fact, it has been called upon rarely, and nothing in the law requires that it is”. Since the transition in 2016 to the Territorial Authority of Guiana (CTG), there has been a duty to inform the Council. The texts anticipate a major change for the CCPAB: “all projects or proposals for deliberation that have consequences for the environment, living conditions or are related to the activities of Amerindian or Bushinenge populations must be submitted for the prior opinion of the Consultative Council / Article L71-121-4”. Finally, the CCPAB becomes “the legal person of public law responsible for organising the consultation with the inhabitants of the community (ies) who hold traditional knowledge associated with genetic resources under conditions set out in Articles L. 412-9 to L. 412-12 of this law”.³

In a letter dated 4 December sent to the President of the Republic, the CCPAB expressed its concerns at the points contained in the Agreement on the Future of Guiana.⁴ It recalled that the customary chiefs had not been involved or consulted and that their consent had not been sought. The CCPAB considers that this Agreement on the Future of Guiana “*directly affects their customary communities, in violation of Law 2011-884 of 27 July 2011, Heading XII Chap. 1: Art L71-121-4 and L 71-121-5*”. Such is the case of the planned cession of 200,000 hectares of primary forest to the CTG, intended for biomass. This project directly affects the customary lands and subsistence areas of the communities. The CCPAB recalled

in its letter that “previous demands made by their communities (since 18/12/1992) under the auspices of Law D 34 of the State Property Code and Decree No. 87-467 of 14 April 1987 were frozen by the local and state authorities; the communities are still demanding the return of their customary lands to this day”. The CCPAB is not in favour of granting the CTG the power to regulate, let alone legislate, on the land issue in Guiana.⁵

Education

The start of the 2016 school year was heavily marked by a lack of accommodation and support for Amerindian high school students who are following their studies on the coast and by a need to keep the Cayenne residential schools open at the weekends and during short holidays. Parents from the Upper Maroni repeated their desire to build a “middle school” in Wayana country, at Taluen village. They feel their children are still too young (at 10 and 11 years) to leave the family nest and fend for themselves in Maripasoula.

France has recognised regional languages since 1992. There has been academic provision for mother-tongue teachers (Intervenants en langue maternelle –ILM-) since 1998, within the context of Article L31 of the Education Code. This provision helps pupils feel at home at school and gives them the opportunity of developing a mastery of their mother tongue and valuing their culture, in order to help develop their self-esteem and facilitate their learning of French. The Guianese authority has signed an agreement with the university to establish, as from 2016 on, a university degree in education and training sciences that will enable ILM to take part in examinations for the teaching profession and thus put an end to their precarious situation.

Gold mining

The Guiana Amazonian Park (PAG) noted an increase in illegal gold mining sites during 2016. By November, the PAG had recorded 139 sites of illegal operations. This represents a 23% increase on 2015. This is the highest number of illegal sites observed in the park since the start of the overflight campaigns in 2008. In 2016, the PAG noted eight active sites at Camopi, nine at Saül and 91 at Maripa-

soula. Twelve barges (eight active and four under construction) were present on Guiana's inland waterways as opposed to only one the previous year.⁶ Illegal gold mining affects natural habitats and the local populations who depend on those habitats. It causes methylmercury contamination, which enters the food chain through the consumption of fish and is toxic to the central nervous system.⁷ Wild game is increasingly rare, the forest and river environment is polluted and destroyed. There are significant health (skin problems, deformations related to mercury etc.) and social consequences (insecurity, illegal trafficking, prostitution, violence, etc.). In September, five young Wayana men were arrested by the Surinamese police for stealing a canoe in relation to illegal gold mining. They were imprisoned in g, prostitution, violence, tions related to mercury etc) and social consequences (insecurity, illegal trafficking, prostitut Paramaribo in Suriname, where they await their fate. The inhabitants of the Upper Maroni and Upper Oyapock regularly protest against illegal gold mining, with shots sometimes being exchanged with the Surinamese and Brazilians.

Religion

Forced evangelisation of the Amerindian population of the interior is not a new phenomenon, but it has grown considerably in scale in recent years, particularly during 2016. In April, young residential students in Maripasoula and inhabitants from the villages of the Upper Maroni suffered from attacks of "spasmodophilia". Some months later, Talhuen village had its first evangelical church. The practices promoted run counter to respect for traditional, particularly shamanic, beliefs. Followers of this church consider shamanism to be evil. They are encouraging changes in the traditional way of life of the Amerindians: to stop drinking *cachiri* (a traditional drink) and to no longer practise their artisanal and ceremonial activities... In the context of several meetings, the ADER association alerted the indigenous organisations and public authorities: sub-prefects, Guiana Amazonian Park, Regional Unit for Better Living for the Populations of the Interior (CeRMEPI).... PAG's Scientific Committee also took a position in December, sending the Prefect a letter of warning regarding the increase in evangelical movements.

Guiana's Amerindian populations at the Senate

A Guianese delegation of some 15 people (representatives of Amerindian communities, local and voluntary actors, elected members, heads of public authorities, of CeRMEPI...), responded to an invitation from Senator Aline Archimbaud, co-author with deputy Marie-Anne Chapdelaine of the parliamentary report on suicide among the Amerindian population,⁸ to attend a seminar on Guiana's Amerindian population at the Senate on 30 November. The follow-up given to the report, published at the end of 2015, and its 37 proposals for countering the problem of suicide⁹ and creating the conditions for well-being, were discussed. Some delegation members met the Minister for Overseas Territories and raised the lack of consultation of indigenous populations on the part of Guiana's different authorities and institutions. ○

Notes and references

- 1 Thomas Burelli, "Des chercheurs français s'approprient des savoirs guyanais ancestraux", *France Libertés*, 25 January 2016, <http://www.france-libertes.org/Des-chercheurs-francais-biopi-raterie.html>
- 2 Maude Elfort, "Pouvoirs publics, populations amérindiennes et bushinenge en Guyane Française", *Pouvoirs dans la Caraïbe*, n° 16, 22 September 2011, <http://plc.revues.org/819>.
- 3 Chantal Berthelot et al., "Reconquête de la biodiversité", Amendment No. 3442, National Assembly, Art.18., 24 February 2016. At the start of 2017, the government adopted an amendment in the Senate enabling the regional authority to create an "establishment for cultural and environmental cooperation". A third of the representatives of the Consultative Council for Amerindian and Bushinenge Populations were to sit on the Board of Directors (Art. L. 7124-21).
- 4 The agreement on the future of Guiana was announced by the President of the Republic on 13 December 2013. It sets financial, structural, legislative, social and other commitments for the next 15 years on the part of the State and Guiana's elected representatives in essential areas such as infrastructure, education and health, in order to encourage Guiana's development.
- 5 Conseil Consultatif des Populations Amérindiennes et Bushinenge de Guyane (CCPAB), "Pacte d'avenir de Guyane", *Lettre à l'attention de Mr le Président de la République*, 4 December 2016, <http://foag.over-blog.com/pa/2016/12/lettre-du-conseil-consultatif-des-populations-amerindiennes-et-bushinenge-ccpab.html>
- 6 PAG, *Suivi de l'évolution de l'orpaillage illégal*, <http://www.parc-amazonien-guyane.fr/>
- 7 Aline Archimbaud & Marie-Anne Chapdelaine, "Suicides des jeunes Amérindiens en Guyane française", *Rapport au Premier Ministre*, 2015, proposals 26 & 27, pp. 93-94.
- 8 Ibid.

- 9 The annual rate of suicide in metropolitan France is 16 per 100,000. In 2014, it was 172 per 100,000 in Upper Maroni and Upper Oyapock combined. This was 11 times more than in metropolitan France (Sources: Decentralised Health and Prevention Centres (CDPS) of the Andrée Rosemon Hospital (CHAR); ADER Association; Remi Pacot, 2016, *La problématique du suicide chez les Amérindiens de la commune de Camopi entre 2008 et 2015*, Medicine Thesis; and the National Suicide Observatory (ONS).

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Jean-Philippe Chambrier, General Coordinator & **Anne-Marie Chambrier**, Delegate Coordinator, *Fédération des Organisations Autochtones de Guyane (FOAG)*.

Christophe Pierre, *Réseau Jeunesse Autochtone*.

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SURINAME

The Indigenous peoples of Suriname number approximately 20,344 people, or 3.8% of the total population of 541,638¹ (census 2012). The four most numerous Indigenous peoples are the Kali'ña (Caribs), Lokono (Arawaks), Trio (Tirio, Tareno) and Wayana. In addition, there are small settlements of other Amazonian Indigenous peoples in the south of Suriname, including the Akurio, Apalai, Wai-Wai, Katuena/Tunayana, Mawayana, Pireuyana, Sikiiyana, Okomoyana, Alamayana, Maraso, Sirewu and Sakëta. The Kali'ña and Lokono live mainly in the northern part of the country and are sometimes referred to as "lowland" Indigenous peoples, whereas the Trio, Wayana and other Amazonian peoples live in the south and are referred to as "highland" peoples.

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

Land rights issues

The recognition of Indigenous peoples' rights in Suriname, including land rights, has not advanced, in spite of the Inter-American Court of Human Rights ruling of November 2015 which ordered the State to do so. Threats and conflicts continued, with the issue of the land title acquired by the international airport of Suriname, covering two Indigenous villages as a continued hot topic. The brutal arrest of two village leaders in June 2016 led to an outburst by the villagers and barricading of the road to the airport. Talks between government min-

isters and the villages in the following months did not lead to a solution, and the ministers referred the issue back to the President of Suriname for further instructions.

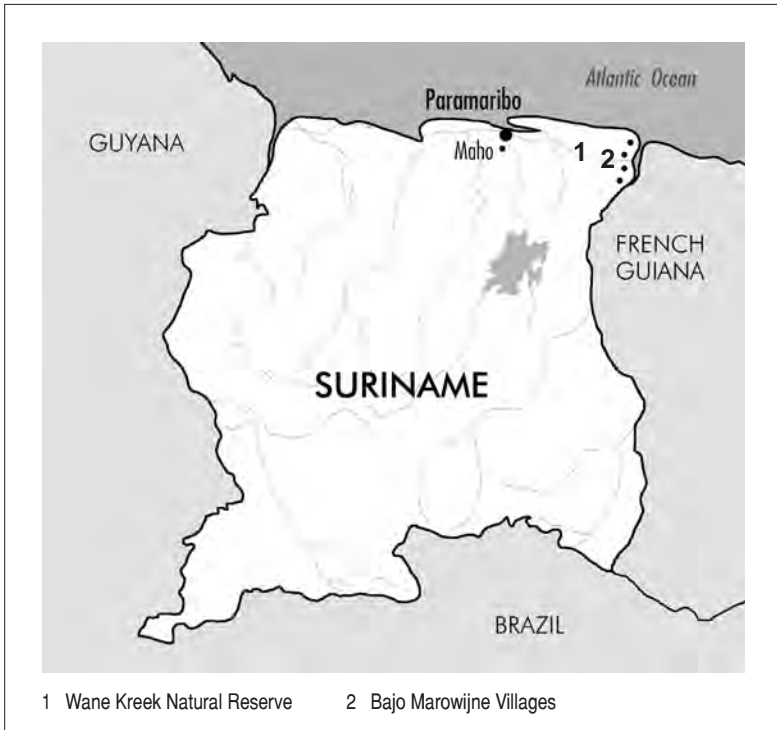
In the village Maho whose case before the Inter-American Commission on Human Rights was admitted in 2009,² the situation also got grimmer, after a new land owner bought land covering part of the Kaliña community's traditional territory. The new land owner immediately started to level the terrain with the apparent intention of a land development project for building houses. At the same time, the government started the construction of a road through the village. Protests by villagers are still ongoing, and one of them has been brought to court in Suriname by another land owner at the time of writing this article.

On 9 August which in Suriname is also celebrated as a national holiday, namely the Day of Indigenous Peoples, a manifestation to demand attention for these and other issues was held in the streets of Paramaribo, the capital. A petition requesting protection and support from the national parliament was handed over to the chairperson of the National Assembly. Reassuring words by the chairperson however, did not materialize in solutions.

On a more positive note, the *Vereniging van Inheemse Dorpshoofden in Suriname*, VIDS (Association of Indigenous Village Leaders), implemented a land and resource management project, funded by the Worldwide Fund for Nature (WWF) which resulted in, among others, mapping of the traditional territories of six villages in the Para Oost region of Suriname and initial land and resource management plans.

Kaliña and Lokono case

The judgment of the Inter-American Court of Human Rights in the Kaliña and Lokono against the State Suriname has quickly become a major stronghold for the Indigenous and tribal peoples of Suriname, in the absence of domestic protection and remedies. The judgment³ of the Court of 25 November 2015 and officially published on 28 January 2016, orders Suriname to, among others, legally recognize the collective property of the Kaliña and Lokono peoples to their traditional lands and resources, and their legal personality before the law in Suriname. In addition, the judgment also affirms the rights of the Kaliña and Lokono over the protected areas that were established in their territories and ordered a process for



restitution or compensation for those lands. The Court decided in similar terms on third-party titles over Indigenous lands that have been given out without their consent. The State Suriname is also held to rehabilitate the area affected by bauxite mining in the Wane Kreek Nature Reserve.

The Kaliña and Lokono case was similar to the Saramaka⁴ and relevant parts of the Moiwana⁵ cases, and because of this repetitious nature of Suriname's violations of Indigenous and tribal peoples' rights, the Court ordered similar measures for all Indigenous and tribal peoples of Suriname.

The victory was celebrated throughout Indigenous villages across the country. VIDS, the Association of Indigenous Village Leaders, and the village leaders of the Kaliña and Lokono peoples of the Lower-Marowijne area united in their organization KLIM, organized information sessions about the content of the judgment in villages across Suriname. In March 2016, also the paramount chief of the N'Dyuka tribal Maroon people was visited to share this information, since the

N'Dyuka lands border with the Kaliña and Lokono territories. During this visit, the historic bond and traditional agreements between Indigenous and tribal Maroon peoples and respect for each others' territories were reiterated. KLIM similarly signed a joint statement with the Moiwana settlement to also reiterate these traditional agreements, and to declare their cooperation in jointly pursuing the implementation of their respective judgments by the Inter-American Court.

The Presidential Commissioner on Land Rights, who was also the lawyer for the State Suriname in the K&L case, was dismissed by the President. Rather than appointing another commissioner, the president installed a presidential commission on the rights of Indigenous peoples to formulate proposals for addressing the issue of land rights. At the time of writing this article, the commission had not met for the first time yet.

REDD+

The REDD+ readiness preparation project that started in Suriname in July 2014 with 3.8 million US dollar financing from the Forest Carbon Partnership Facility (FCPF), completed another year of implementation without Indigenous peoples' participation in its decision-making structures. VIDS and the *Vereniging van Saramakaanse Gezagsdragers* (VSG, Association of Saramaka Authorities) presented various protests, demanding to be included in their own right as representative traditional authority structures and respect for self-selection. The implementing agencies of the project however, continued to consider individuals that they had appointed as "REDD+ Assistants" as the "representatives" of Indigenous and tribal peoples. Also, various consultancies were undertaken on sensitive strategies and future implementation of REDD+ projects in Suriname without any meaningful participation and input. New project staff appointed late in 2016 seemed to have change the environment, and more constructive dialogue resumed in December 2016.

In spite of a contentious start in Suriname, a REDD+ related project by Conservation International (CI) resulted in a valuable "Community Engagement Strategy", with detailed guidelines for government (and other actors) when engaging with Indigenous and tribal communities. The project was criticized by VIDS and VSG because it had "hijacked" their demand for training of government authorities on indigenous and tribal peoples' rights. Such training was a condition stipu-

lated by the FCPF Partners Committee when approving the Suriname grant for a REDD+ preparatory project. This would be overseen by the indigenous and tribal peoples themselves but instead, CI obtained a grant from the US State Department to implement its “Widening Informed Stakeholders Engagement in REDD+” (WISE-REDD+) to do so, in a rather top-down, consultant-driven manner and unknowing to VIDS and VSG. Only when notified of the start of its implementation, discussions between VIDS, VSG and CI started, and resulted in a contract to VIDS and VSG to undertake the necessary work in this regard. In addition to the engagement strategy, VIDS and VSG also delivered a training workshop to government officials which was evaluated strongly positive by the attendees. A spin-off of the project was the initiation of a process among the representatives of the different Maroon traditional authorities towards a coordination structure, to be called “KAMPOS” in accordance with the tribal Maroon peoples’ names (Kwinti, Aluku, Matawai, Paamaka, Okanisi, Saamaka).

Other developments

VIDS launched a national awareness programme on Indigenous peoples’ rights, in order to gain more understanding and sympathy among the general public on Indigenous peoples’ rights. The EU-funded project foresees in, among others, the development and distribution of information on Indigenous peoples’ rights, public debates and awareness sessions in various villages.

In response to remarks and suggestions by VIDS about an agrobiodiversity project of the Centre for Agricultural Research in Suriname (CELOS), the institute asked VIDS to support with consultations of the involved villages. The project aims to document the traditional agricultural methods of indigenous and tribal farmers, and an FPIC protocol on the sharing of traditional knowledge and access to (plant-genetic) resources is to be developed. VIDS has been asked to undertake consultations and develop such an agreement. Work towards this has started in 2016 and will continue in 2017.

The research by cultural experts of the Kali’na people of the so-called “Pe-nard manuscripts” continued in 2016. These manuscripts were made by two Dutch brothers in the 19th and early 20th century based on information obtained from Kali’na persons, including shamans, with the intention of publishing an encyclopaedia. The publication never materialized and the original manuscripts were

apparently lost, but re-found in the Rijksmuseum of Leiden in the Netherlands in 2011. The museum and VIDS decided to cooperate, initially by making an inventory of the rather voluminous manuscripts that contain a wealth of cultural information such as stories, songs and drawings. This inventory has been completed in 2016, with funding from the Dutch government. New funding will need to be sought to continue the research and outreach to the communities where the information came from.

VIDS implemented a project on community-based health education, by way of setting an example for such information. The initiative was funded by the Pan-American Health Organization (PAHO) as an example of a different approach to health promotion, which VIDS criticized to be usually top-down, consultant-driven and urban-focused, in languages and forms that are not readily understood by remote communities, and therefore not effective. The project resulted in, among others, a methodology for designing bottom-up, community-based health education, and two short video clips in which villagers in their own language provide information about diabetes and hypertension in role-plays. ○

Notes and references

- 1 The population is highly ethnically and religiously diverse, consisting of Hindustani (27.4%), Maroons (“Bush negroes”, 21.7%), Creoles (16%), Javanese (14%), mixed (13%), Indigenous peoples (“Amerindians”, 3.8%) and Chinese (1.5%) (*census 2012*). At least 15 different languages are spoken on a daily basis in Suriname but the only official language is Dutch, while the *lingua franca* used in less formal conversations is *Sranan Tongo* (Surinamese).
- 2 <http://www.oas.org/es/cidh/decisiones/2013/SUAD1621-09ES.doc>
- 3 http://www.corteidh.or.cr/docs/casos/articulos/seriec_309_ing.pdf
- 4 http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf
- 5 http://www.corteidh.or.cr/docs/casos/articulos/seriec_124_ing.pdf

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ECUADOR

The indigenous population of Ecuador numbers some 1.1 million out of a total country population of 16,464,448 inhabitants. There are 14 indigenous nationalities living in the country, grouped into local, regional and national organisations.¹ 24.1% of the indigenous population live in the Amazon, divided into 10 nationalities. Of the Andean Kichwa population, 7.3% live in the Southern Mountains and 8.3% live in the Coastal region and on the Galapagos Islands. The majority of them, however, 60.3%, live in the six provinces of the Central-North Mountains. Of these, 87.5% still live in rural areas and 21.5% in the urban sector. The Shuar, who form a nationality of more than 100,000 people, have a strong presence in three provinces of the Amazonian Centre-South, where they account for between 8% and 79% of the total population; the rest are spread in small groups across the country. There are different nationalities with very little population who are in a highly vulnerable situation: in the Amazon, the A'i Cofán (1,485 inhabs.); the Shiwiar (1,198 inhabs.); the Siekopai (689 inhabs.); the Siona (611 inhabs.); and the Sapara (559 inhabs.); and on the coast, the Épera (546 inhabs.) and the Manta (311 inhabs.). After more than eight years of a new Constitution and 20 years of having ratified ILO Convention 169, there are still no specific public policies in place to prevent and neutralise the risk of disappearance of these peoples.

Ecador suffered a serious economic setback in 2016 with the fall in oil prices, the appreciation of the dollar, the payment to the US oil company Occidental (Oxy) and the coastal earthquake on 16 April. All this added to the forthcoming presidential elections in February 2017, and has had a decisive impact in shaping the national political stage, resulting in a new phase in the ongoing tensions and disagreements between the central government and various factions of the indigenous organisations, led by the Confederation of Indigenous Nationalities of Ecuador (CONAIE).

On the first point, the international price of oil fell for the second consecutive year: Ecuadorian crude fell to an average price of around 35 dollars a barrel (as

opposed to 42.2 dollars in 2015, and in contrast with the high prices of 2007 to 2013 when it reached an average 80 dollars a barrel). Faced with a consequent decline in state income, Ecuador chose to finance this deficit not through an equivalent reduction in expenditure but by taking on greater foreign debt.²

With regard to the second point, as a result of the judgement handed down by the arbitration court of the World Bank's International Centre for Settlement of Investment Disputes, the state was forced to pay off the North American oil company Occidental (Oxy). Back in 2006, Ecuador cancelled the oil company's contract for Block 15 and the Edén Yuturi and Limoncocha unified fields. The state argued that Oxy had sold 40% of its shares in this block to the *Alberta Energy Company Ltd* (AEC) without the authorisation of the Ministry of Energy, the penalty for which (in the Hydrocarbons Law) was annulment. Ecuador's vulnerable foreign policy was unable to prevent the legal ruling handed down in Washington when the US transnational took the Ecuadorian state to court. According to Diego Martínez, manager of the Ecuadorian Central Bank, "The US\$ 1 billion paid by Ecuador to Oxy between November 2015 and June 2016 is one of the reasons for the delays in our payments to suppliers and other sectors who, at the moment, are owed some US\$ 2 billion".³

The earthquake on 16 April, which measured 7.8 on the Richter scale, had its epicentre in the northern part of Manabí and the south of Esmeraldas, on the country's central coast. It resulted in more than 670 deaths, 12 disappearances and 6,274 injuries, while leaving 28,678 people homeless. A further 113 people were rescued safely from the ruins. The damage to infrastructure is estimated at more than US\$ 3 billion but, due to the affected area's low participation in aggregate output, it only had a marginal effect on gross domestic product (GDP).⁴

Given all of these factors, bodies such as the Economic Commission for Latin America and the Caribbean (ECLAC) and the International Monetary Fund (IMF) indicate that GDP contracted by 2% during the tax year, as a consequence of the weak domestic demand in both household investment and consumption. This recession was reflected in a decline in adequate jobs in urban areas and a fall in inflation, to 1.12% in December.⁵ Furthermore, between January and September 2016, non-financial public sector revenues contracted by 17.8%. The global deficit consequently reached US\$ 3.33 billion by September 2016, a figure that had stood at only US\$ 618 million a year earlier.⁶

This deficit was financed almost totally from external sources, and public sector external debt increased to 25.5% of GDP in September 2016, 5.2 % points



more than in September 2015 but still far off the limit of 40% imposed by the Constitution.⁷

All this resulted, in the first half of the year, in a notable reduction in credit and liquidity, which changed in the second half of the year with the slight recovery in petroleum (1.58%) and non-petroleum (1.39%) exports, according to the Ecuadorian Central Bank.⁸

This did not, however, have a decisive effect in terms of reversing the main impacts of the last decade of state policy: between 2007 and 2015, the percentage of income-poor people fell from 36.7% to 23.3% and extreme poverty over the same period fell from 16.5% to 8.5%, according to the National Institute for Statistics and Census (INEC).⁹ Inequality, measured using the Gini coefficient, also fell six points (from 0.55 to 0.49), while for the same period Latin America overall only saw a two-point reduction (0.52 to 0.50).¹⁰ In education, the net enrolment rate increased from 92% to 96% and the total number of pupils enrolled in the state system increased from 2.6 to 3.5 million. Enrolments among the poorest population increased from 89% to 95.4%.¹¹ As far as health is concerned, the

World Health Organization (WHO) noted a drop in malnutrition from 1.1% in 2007 to 0.4% in 2014.¹²

According to the historian and lecturer, Juan Paz y Miño, “The Correa government heralded in a new historical era, turning its back on the business/neoliberal model: the state was re-established around the people and the state’s regulatory powers were reaffirmed over the economy: through the 2008 Constitution, wider rights were guaranteed; priority was given to the people’s standard of living and work over and above the interests of capital”.¹³

Although this progress has resulted in improvements in the living conditions of a large proportion of the popular sectors, it has not necessarily resulted in public policies ensuring automatic or full guarantees of indigenous rights, particularly civil and political, cultural and territorial. Indigenous rights are facing a state rationale that is effective in terms of redistribution and reducing inequality but ethnocentric, trapped in multiculturalism and ill-suited to handling difference and discrimination. This results in frustration for many indigenous organisations, whose primary expectations revolve around the building of a plurinational state and another model of development, and thus a consequent unleashing of conflict.

Woorani, Tagaeri and Taromenane under siege

In January, the Woorani Caiga Lincaye Baihua and his companion Tweñeme were attacked while travelling by canoe along the Shiripuno River, near Bahameno. The man died and the woman was injured. The attack was apparently carried out by a group of Tagaeri-Taromenane living in voluntary isolation in the Yasuní intangible (“no go”) area. Nadia Ruiz, Under Secretary for Human Rights and Religion in the Ministry of Justice, confirmed that the pair, both members of the Boanamo Woorani community, were ambushed and attacked with spears. Once the event became known, the security protocols within which the police, armed forces and prosecution service are able to act were triggered. An army helicopter flew in and evacuated the injured woman to the El Coca hospital. Doctors noted that she had two wounds, one on her right leg and the other above her waist, apparently caused by spears. Moi Enomenga, President of the Woorani Nationality of Ecuador (NAWE), noted that the incident had taken place on the Cononaco Chico River, near the Shiripuno bridge, as the pair were travelling by canoe. On reaching a stretch of low water, the husband had jumped out to cut

back some vegetation so that they could continue. To do this he took out his chainsaw to cut back the necessary branches. At that moment, stated the survivor, a number of Taromenane-Tagaeri men, including youths, burst upon them. The wife shouted at her husband to warn him but he was quickly surrounded and attacked with spears. The woman managed to escape by jumping into the water when they began to throw spears at her. Hours later, relatives went to the site to retrieve the body of the man and take it back to the community for burial. Moi Enomenga indicated, in a press release, that the site where the attack took place was a protected area, as it was an area frequented by peoples in isolation: "This is why we are concerned that such unfortunate events can occur." The last time something similar happened in this area of Ecuador was on 5 March 2013. Then, the Taromenane attacked an elderly Waorani couple, Ompure and Buganey, near Yarentaro, in Orellana (See *The Indigenous World 2014*, p.151). The cause of the attack has still not been established.¹⁴ The peoples in voluntary isolation (Tagaeri-Taromenane) are a protected indigenous population in Ecuador. The Comprehensive Criminal Code (COIP) punishes ethnocide with 16 to 19 years in prison and Article 57 of the Montecristi Constitution states:

"The territories of the peoples in voluntary isolation are of untouchable and inalienable ancestral ownership and all kinds of extractive activity are prohibited therein. The state will adopt measures to guarantee their lives, ensure respect for their self-determination and desire to live in isolation, and make sure that their rights are observed. Violation of these rights will constitute the crime of ethnocide, which will be classified by law."

According to Alicia Cahuiya, Vice President of NAWA, "If the Ecuadorian state does not resolve the conflict this has caused, the Waorani nation may end up attacking the Taromenane. This is not the intention of our people, quite the contrary; we want to share the forest with them peacefully, so that families from both populations can grow up in peace."

The key problem for the Waorani, however, revolves around the state's persistent promotion of the (over) exploitation of oil on their territory. Such is the case of Block 21, which affects an area of 27,831 hectares, in addition to another six blocks existing in what is known as the Waorani Reserve and the Yasuní National Park. This oil block was originally awarded to the US company Oryx during Sixto Durán Ballén's government, in the VII Round of Oil Tenders.¹⁵

This block is currently being operated by a company called Sinopec, part of the *China National Petroleum Corp.*, in cooperation with *Andes Petroleum*. At the end of 2015, they signed an agreement with NAWE for nearly US\$ 500,000 in exchange for their facilitation of exploratory work. According to Moi Enomenga, NAWE bought engines, canoes and chainsaws for 48 communities with this money. The five communities had been opposing the arrival of the oil companies for 22 years, focusing instead on tourism. Enomenga himself was an icon of conservation through a community ecotourism project entitled “*Huaorani Ecolodge*”, founded by the Tropic tour company and the Quehueriono Association. This was even recognised by *National Geographic* in 2015.¹⁶ Two decades later, representatives of the association and NAWE have signed an agreement to facilitate incoming exploration projects. Paradoxically, Huaorani Ecolodge has now closed for lack of tourists, driven off by the exploratory work of the Chinese oil companies.

The aggressive presence of large-scale mining on Shuar territory

On 11 August, police officers and soldiers arrived in the hamlet of Nankints (parishes of San Miguel de Conchay and Santiago de Panantza, San Juan Bosco y Limón Indaza canton, Morona Santiago province) in the south-east of Amazonia, on the border with Peru. According to Luis Tiwiram, a union leader in the area, “They arrived at around 10.00 and evicted them from the land. Eight families and 32 Shuar individuals, adults and children, had to leave this area and were taken in by ‘friendly mestizos’ in Panantza parish.” Tiwiram recounted how they had no time to collect their belongings or animals and that their whereabouts was now unknown.¹⁷

Nankints is a hamlet under dispute, in which the mining company China Explorocobres S.A. (EXSA) is implementing the project known as San Carlos Panantza. This project covers an area of 41,760 has, has a lifespan of 25 years, and is currently at the advanced stages of exploration.

In the middle of December, according to Domingo Ankuash, former President of the Confederation of Indigenous Nationalities of the Ecuadorian Amazon (CONFENIAE), community members from the area and grassroots members of the Interprovincial Federation of Shuar Centres (FICSH) “occupied the site peacefully without encountering any resistance from the company employees”.¹⁸

In the afternoon of 14 December, however, violent clashes occurred, resulting in the death of one police officer, José Luis Mejía, and injuries to another five plus two soldiers. The government accused the Shuar groups of using firearms and dynamite with which to, allegedly, “cause the death of the police office (...) There were approximately 60 citizens belonging to illegal armed groups of the Shuar indigenous nationality who attacked the La Esperanza mining camp”.¹⁹

Following the incidents, the government declared a 30-day state of emergency across the whole of Morona Santiago province, involving the presence of the army, police and prosecution service.²⁰ It was in this context that the Shuar leader, Agustín Wachapá, President of the FICSH, was detained in the early hours of Wednesday 21 December. Jorge Herrera, President of CONAIE, called on the government to release Wachapá and another five people detained in Morona Santiago. In addition, he insisted on an immediate end to the state of emergency in the province, which they considered a “provocation”. According to CONAIE, Wachapá was arrested in fulfilment of an order issued by Angie Mercy Troya, judge of the Multipurpose Police Unit of Sucúa. In addition, the Confederation stated that the central offices of the FICSH had also been raided in that city, by judicial warrant.

Jorge Acacho, Shuar assembly member, said that the Shuar’s demands were aimed at bringing about dialogue and insisted on the “peaceful and immediate” withdrawal of the forces of law and order. On behalf of CONAIE, Herrera called for dialogue between the authorities and the Nankints community involved in the events: “We are calling on the government and the Ministry of the Interior to seek peaceful mechanisms by which to respect the rights of our nations on this territory, as there was no prior consultation and international treaties were not respected”.²¹ ○

Notes and references

- 1 National Institute for Statistics and Census, INEC, <http://www.ecuadorencifras.gob.ec/>
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PERU

According to the 2007 census, Peru has 28.2 million inhabitants. The indigenous population accounts for 14% of the national population, meaning there are more than 4 million indigenous persons in Peru, divided between some 55 peoples: 83.11% are Quechua, 10.92% Aymara and 1.67% Asháninka, with other Amazonian indigenous peoples making up the final 4.31%. This remaining 4.31% comprises 51 or more different ethnic groups living in the Amazon forest across 1,786 communities. However, “given that some ethnic groups no longer form communities as they have been absorbed by other peoples and, although others exist, they are, due to their isolation, very difficult to reach”, the census did not include a further nine ethnic groups.

Art. 48 of Peru’s Constitution stipulates that “the official languages are Spanish and, in areas where they are predominant, also Quechua, Aymara and other aboriginal languages, in line with the law”. According to the Ministry of Culture, there are 47 indigenous and native languages in the country. Almost 3.4 million people speak Quechua and 0.5 million Aymara. Both languages are predominant in the Coastal Andes area. The country’s continental area is 1,285,215 km², broken down into coastal region (10.6%), Andean region (31.5%) and Amazonian region (57.9%). This means it is home to a huge variety of ecosystems and a great wealth of natural resources. Currently, however, 21% of the national territory is covered by mining concessions, and these overlap with 47.8% of the territory of peasant communities. Hydrocarbon concessions cover some 75% of the Peruvian Amazon.

This overlapping of rights to communal territories, the enormous pressure being exerted by the extractive industries, the lack of territorial cohesion and absence of effective prior consultation are all exacerbating territorial and socioenvironmental conflicts in Peru, a country which has signed and ratified ILO Convention N° 169 and which voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007.



The most significant event on the Peruvian agenda for 2016 was the electoral campaign, which ended with the election of Pedro Pablo Kuczynski as the country's new president. Although his career has been characterised by a detachment from environmental issues, the population decided to support him over his opponent in the second round, Keiko Fujimori, current leader of *Fujimorismo* and daughter of former dictator Alberto Fujimori. Kuczynski's background is not the most inspiring in environmental terms. One only has to recall Law N° 23231, known as the "Kuczynski Law",¹ enacted when he was Minister of Energy and

Mines in the early 1980s and which exempted foreign oil companies operating in Peru from paying taxes. And although, come 2016, now as the country's Head of State, he devoted several lines of his government's plan² to issues such as the availability of water, solid waste management and forestry potential, these three areas presented significant difficulties during his first six months in office.

A few days prior to assuming the presidency, Kuczynski spoke to the international press about the two most complex socioenvironmental conflicts he had inherited from Ollanta Humala's presidency. These are the Conga (Cajamarca) and Tía María (Arequipa) mining projects. "The latter can be resolved by increasing the Cocachacra irrigation water so that the Tambo Valley can be agricultural throughout the year. And the Conga project is on ice,"³ indicated the president in what was a declaration of intent in relation to both mining initiatives. In this regard, Kuczynski's administration requested legislative powers to "unlock the investment projects". This was offered as an alternative way of resolving the environmental conflicts although, in reality, this has ended up speeding up the capital flows from the large extractive companies. One of the first measures announced by the administration was the elimination of the National Public Investment System (SNIP) by means of Legislative Decree N° 1252.⁴

Drought, fires and deforestation

2016 was marked by the presence of a climatic phenomenon that damaged the whole country, and which is anticipated to continue to do harm in 2017: drought. Although the National Drought Observatory⁵ had warned of serious consequences at the start of the year, 2016 showed how unprepared the country was. Forty-three forest fires were recorded in the last quarter of the year, highlighting the authorities' lack of preventive action in relation to this kind of environmental disaster. In all, 10 regions were affected by forest fires, Cajamarca suffering the most. The final balance, according to the National Forestry and Wildlife Service (Serfor) was more than 50,000 hectares burned throughout the country.⁶

The lack of political will remained clear in the Law on Public Sector Budget 2017 – N° 30518.⁷ This document, approved by the Congress of the Republic, sets aside S/ 2 million soles for the remediation of environmental mining liabilities and S/ 56 million to prevent and deal with fires and disasters, while other activities

such as public security gobbles up S/ 4,120 million and S/ 4,844 million goes to consolidating the country's military capacity.

Political context

Pedro Pablo Kuczynski had made it clear that economic growth was one of his main concerns even before assuming the presidency in July 2016. His lack of attention to the environmental sector does, however, result in some economic losses. This was demonstrated by the Ministry of Agriculture and Irrigation when it published a report in November entitled "Production Trends in the Forestry Sector", confirming that Peru had lost 120,782 hectares of forest every year for the last five years. The government's apathy in 2016 was in contradiction even with the recommendations of the OECD, an international body that Peru has been seeking to join for several years.

Another outstanding issue during 2016 was the crisis in PetroPerú caused by the various spills that have occurred in the forest and by its uninspiring restructuring plan. Since taking office, Kuczynski has stated his interest in restructuring the state oil company. This latter has, however, become gradually enveloped in an institutional crisis as the Nor Peruana pipeline, operated by the company, suffered three oil spills during 2016. In all, some 6,000 barrels of oil spilled into the Peruvian forest, primarily the Loreto and Amazonas regions.

Coastal Andes Area

Hydraulic stress

Forest fires are not the only consequence of a lack of rain. This can clearly be seen in the clashes that have occurred in the Arequipa and Moquegua regions over the use of the water stored in the Pasto Grande dam.⁸ The lack of rain has also affected the farmers in these regions, concentrated largely in the Tambo Valley. Because of the scarcity of water, the dam level fell to 64 million cubic metres during 2016, an amount that would cover no more than the Moquegua region, and a water deficit emergency was thus declared at the end of the year. It should be noted that the Pasto Grande dam has the capacity to hold 180 cubic metres so, in other words, the drought meant that it was at little more than 35% capacity.

As can be appreciated, climate change in Peru has already resulted in local conflicts. Given the refusal of members of the Pasto Grande Region Special Project (PERPG)⁹ to share water with the farmers in the Tambo Valley, the situation became tense when the Arequipa Regional Governor, Yamila Osorio, intervened to demand that the National Water Authority (ANA) rule in favour of their region. After a brief period of rains, drought reappeared in the south of the country. The Moquegua Regional Governor, Jaime Rodríguez Villanueva, has stated that the water level in the reservoir remains low and, that by the end of 2017, there will be insufficient capacity to supply the Arequipa farmers.

Las Bambas in conflict

Since the transnational mining company Xstrata sold the assets of the Las Bambas mining project, in the provinces of Grau and Cotabambas, Apurímac region, a long tale of conflicts, abortive discussions, paralysis and repression has occurred around this mine. The most dramatic episode was on 14 October 2016 when a clash between local residents who had established a road block and the police ended with one demonstrator dead: Quintino Cerceda Huilca, 42 years of age, from the Choquecca community, who died following a shot to the head fired by one of the police officers. This was the first death in a social conflict under Kuczynski's administration.

Unlike most of the social conflicts around mining projects in Peru, the population in the area of influence are not opposed to the Las Bambas project. It consists of a deposit of some 6.9 million tonnes of copper and the previous operator, Xstrata, had undertaken to make significant investments in infrastructure for the population. However, following the change in operator and the arrival of the Chinese consortium, MMG Limited¹⁰ -which holds some 62.5% of the project-, conflicts have reappeared due to a series of decisions taken by the new concession holder.

The first point relates to the changes made to the environmental impact study. The local population are demanding that this document be submitted for prior consultation given the changes it has gone through. Along the same lines, the new operator has refused a series of investments that were agreed initially between the mining company and the local population. One of these relates to the refusal to build a pipeline, which will lead to increased risk from the overland transportation of minerals.

The return of Río Blanco

Behind the Río Blanco mining project lies a controversial history of disappearances, abductions, torture and murder, as well as constant conflict with the peasant communities of Huancabamba and Ayabaca, both provinces in the upper heights of the Piura region. Despite this background, the current government administration, through the Minister for Energy and Mines, Gonzalo Tamayo, has signed a promotional agreement with the Chinese consortium, Xiamen Zijin Tongguan Investment Development Corporation. Yet again, Pedro Pablo Kuczynski's government is supporting Chinese investment despite the clear environmental and social risks that this project implies. In environmental terms, giving the project the go ahead would endanger two important headwaters in the north of Peru that support fragile ecosystems and cloud forest in Piura.

Amazonian Area

Indigenous autonomy

Despite the fact that indigenous peoples were not at the heart of the broader issues of public debate in 2016, some encouraging news came in the form of the consolidation of the Autonomous Territorial Government of the Wampis Nation (GTANW). This project first saw the light of day in November 2015 with a collective demonstration for autonomy from the Peruvian state on the part of the Wampis people. Having consolidated their structure throughout the year, the Wampis nation achieved jurisdictional sovereignty over their territory of 1,300,000 hectares of land located in the Loreto and Amazonas regions. This area, which they are protecting from outside interest in their natural resources, is equivalent to one-third the size of Switzerland. Until the middle of 2016, it was estimated that some 11,000 people were living in the Wampis territory. This case formed a milestone in indigenous sovereignty as the constitution of this autonomous government forces the Peruvian state to recognise their independence within their own territorial boundaries.

Without expressly intending to do so, the Wampis nation has inspired other indigenous peoples such as the Kandozi and Chapra, who have announced similar plans. The Wampis government model is being applied through the so-called Wampis Nation Strategic Plan, which handles internal social, cultural, economic

and educational affairs, as well as external affairs in terms of their relationship with the Peruvian state and the different levels of government. The consolidation of the Wampis project is largely a result of their collaboration with the Regional Coordinating Body of Indigenous Peoples of San Lorenzo Region (CORPI SL), the regional organising body of the Inter-ethnic Association for the Development of the Peruvian Forest (AIDSEF). CORPI SL helped them establish the initial technical files¹¹ that formed the legal and anthropological basis for the constitution of the autonomous government. This does not imply any threat to the indivisibility of the Peruvian territory but rather gives this indigenous nation territorial autonomy and historical recognition of their presence in the Amazon.

In terms of defending and protecting indigenous peoples in isolation, 2016 was a year of serious contradictions. During the period of transition from Ollanta Humala's administration to that of Pedro Pablo Kuczynski, Supreme Decree No. 008-2016-MC was published, creating the first three indigenous reserves for peoples in isolation and establishing the inviolability of 1.5 million hectares of the Ucayali region in which they and people in initial contact live. However, an analysis produced by the Legal Defence Institute (IDL) and the Law, Environment and Natural Resources Association (DAR) highlighted the fact that this decree was limiting the Vice Ministry of Interculturality's ability to issue technical opinions on environmental impact assessments in these reserves.

Oil spills and protests in Loreto

Oil spills were a constant problem in the Peruvian Amazon in 2016, and occurred the length of the Nor Peruano pipeline (operated by the state company, PetroPerú). One consequence of these incidents – apart from the environmental impact on the forest ecosystems – was the insurgency of more than 50 indigenous communities from Saramuro and Saramurillo. At the end of September, they announced a blockade of the Marañón River. This measure lasted for more than two months, during which time a long-drawn-out and tense dialogue process was established between the indigenous authorities and the central government.

With the Marañón River blocked, the *apus* or community leaders travelled to Lima to make their demands known to the government. They were demanding a solution to the technical problems that were causing the spills, as well as reparation for the environmental damage and compensation for the villages affected by the oil contamination. They were also demanding reparation for the historic Lot

192, located in Loreto region. During the first week of December, when it appeared that there was at last an understanding being reached with the central government, an impasse emerged with the Minister of Energy and Mines, Gonzalo Tamayo, which seemed on the point of derailing the negotiations. After tense negotiations, a consensus was reached in mid-December following the signing of a memorandum of understanding between the indigenous communities and the Presidency of the Council of Ministers.

The problem of the oil spills harks back to one of the state's historic debts in the Peruvian forest: Lot 192, the largest oil deposit in the country. Since the withdrawal of the controversial Pluspetrol Norte, which left the plant after 15 years of exploitation without establishing any reparation measures for the communities of the four basins (Corrientes, Tigre, Pastaza and Marañón), the uncertainty has rumbled on. Ollanta Humala's term in office ended with an intense political dispute with Congress over the fate of the Lot, despite having approved Law No. 30357¹² requiring PetroPerú to operate it. What is clear is that this deposit remains in the hands of foreign private capital.

Energy and deforestation

One of the energy mega projects most promoted by the government in the forest is the construction of the Moyobamba-Iquitos Transmission Line (LTMI).¹³ This is intended to provide the urban areas of Loreto with the necessary infrastructure to form part of the National Electricity Grid (SEIN). However, the nature of this work, the first two environmental impact studies for which were rejected, will involve unprecedented deforestation in order to build the line through the Peruvian forest. The LTMI will be 600 km long and have a width of 50 metres. Its construction will result in the removal of at least a million tonnes of Amazonian timber. To this must be added the negative impacts once it is actually up and running. In the first place, it will cause 424,000 tonnes of carbon to be emitted in the middle of the forest. Moreover, the project's estimated cost is US\$ 1 billion, which will be added to the accounts of electricity consumers in Loreto over an estimated 30-year period. Bearing in mind that it still does not have an approved environmental impact study, the request of the Regional Organisation of Indigenous Peoples of the East (ORPIO) for prior consultation remains unanswered.

One of the greatest threats facing the Peruvian Amazon is increased oil palm cultivation. The large-scale cultivation of this tropical plant causes deforestation

and the destruction of natural habitats. As of the middle of 2016, according to Oxfam, 60,000 hectares of tropical forest had been devastated by oil palm plantations in Peru. And there is a long list of agroindustrial projects in the pipeline, including oil palm cultivation, putting more than 150,000 hectares at risk.

The local investor with the greatest interest in growing oil palm is the Romero Group, which already has 22,500 hectares of oil palm and is negotiating the allocation of 34,000 hectares more. Although oil palm plantations are a global phenomenon, Peru has become the target of different foreign investors interested in producing this product. A clear example of this situation was the Melka Group's venture into the Ucayali region, where it has purchased a series of plots from the state in order to grow oil palm. In October 2016, the Ministry of Agriculture estimated that this group had deforested 99% of the plots allocated to it, covering an area of nearly 7,000 hectares.

Outlook for 2017

Extractive activities and climate change were the main threats to native communities and the environment in 2016. The outlook for 2017 seems little different given the recent announcement of the Kuczynski government aimed at reopening the controversial Tía María mining project in Arequipa. Operation of this mine would endanger the livelihoods of the Tambo Valley farmers, already suffering from a complicated situation caused by an historic drought. To this must be added the growing Chinese investment in Peru, which is being promoted directly by the current administration. Chinese capital in Peru now exceeds US\$14 billion and is concentrated primarily in mineral extraction, forestry resources and energy resources.

On the other hand, civil society remains alert to the possible impacts of the legislative decrees being issued by the current administration. These include removing the procedures for expropriating lands, to the benefit of energy projects or public/private investment. Significant changes have also been made, without prior consultation, to laws that were the product of a long-drawn-out period of negotiation, such as the Forestry and Wildlife Law, and these amendments have paved the way for future deforestation. Kuczynski's growing interest in simplifying procedures and speeding up work is endangering the communities' right to private

property as well as the environmental protection of different areas, and even compromising protected natural areas. ○

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BOLIVIA

According to the data from the most recent National Census of 2012, 2.8 million people over the age of 15 (41% of the total) are of indigenous origin. There are 36 recognized peoples, with the Quechua and the Aymara comprising the majority in the western Andes. The Chiquitano, Guaraní, and Moxeño are the next most numerous, forming a part of the 34 indigenous peoples living in the lowlands of the country's Eastern region. To date, they have consolidated collective ownership of almost 20 million hectares as Community Lands of Origin (Tierras Comunitarias de Origen; TCO). With the enactment of Decree No. 727/10, the TCOs were constitutionally given the name of Native Indigenous and Peasant Territory (Territorio Indígena Originario Campesino; TIOC). Since 1991 Bolivia is a signatory of ILO Convention 169. The United Nations Declaration on the Rights of the Indigenous Peoples was approved through Law 3760 on November 7, 2007. With the entrance into force of the new Constitution, Bolivia took adopted the name of Plurinational State.

Referendum for a new opportunity to run for the presidency

On February 21 the Constitutional Approval Referendum was held to amend Article 168 of the Constitution.¹ If the referendum had won, it would have allowed the presidential slate in office since 2005, Evo Morales Ayma and Álvaro García Linera, to run once again in the elections for the period of 2020-2025.² Law N° 757/15³ allowed the referendum to be voted upon. Yet that election was not exempt from criticism by several different sectors of civil society, who questioned its legality and timing, since the administration had then been in office for slightly less than one year. In the referendum, NO won 51.3% of the votes, and YES won 48.7%.

The political opposition to Evo Morales's administration characterized the attempt to seek another term as a dictatorial attempt to continue holding the Presidency and as an attack on democracy and the Republic's institutions. The party in office, on the other hand, argued that continuity of the successful cycle of what



was called the “Democratic and Cultural Revolution” indispensably depended upon the current president remaining in office. Nonetheless, the controversy radically shifted its focus when Evo Morales’s affair with a young woman named Gabriela Zapata Montaño and the birth of a baby boy he fathered with her became public. As a mere sex scandal, that wouldn’t have had major repercussions. But it turns out that Zapata was the business manager of the Chinese company named CAMC,⁴ and CAMC, along with three of its subsidiaries, had allegedly benefited by being awarded public works contracts in an amount of nearly 570 million USD.⁵ If that were true, it potentially meant that a crime had been committed of undue use of influence and unlawful enrichment on the part of President Morales, among others.

The hotly debated scenario played out in the media, congress,⁶ and the judiciary, and concluded with the arrest of Miss Zapata, accused of several crimes of corruption. Also arrested were certain low-ranking officials of the Ministry of the Presidency. Zapata's attorney, Eduardo León, was taken into custody as well,⁷ and was barred from practicing law, accused of having colluded with his client in attempting to falsely pass a minor off as the president's son.

In addition to this much talked about and widely reported case, other causes can be noted that led to the demise of the party's attempt to run its official leader for another term. One of them was the case of the Indigenous Fund, in which several leaders of the administration's party were involved, as well as the prosecution of indigenous leaders, who in some cases were irregularly detained.⁸ In said case the irregular use was investigated of more than 50 million dollars in hydrocarbons revenues allocated to the Fund. Another factor was the estrangement of several social and intellectual leaders from the left who had once been political allies of the government, but who severely questioned the energy development policy's increasing prioritization of development and extraction of natural resources, and alleged that the Constitution was being violated in order to remain in office.⁹ The referendum polarized positions and -at least for the meantime-brought together an opposition that was not ideologically or politically unified.

At one point Evo Morales agreed to respect the referendum's result.¹⁰ But several leading members of the allied social movements challenged the process, arguing that it was taking place in a context where the public was being deceived and the news was being manipulated, above all with respect to the Zapata scandal.¹¹ At events held that year, they proposed a legal strategy to qualify the presidential slate of Evo Morales and Álvaro García.¹² In their opinion, at present no one was capable of uniting the opposition's ranks; the opposition's political and ideological differences were too great and it lacked the structure and resources to challenge a government that generally makes all its resources available in each election process. Nonetheless, it is practically impossible to overcome the legal obstacles for the current presidential slate to seek reelection.

Progress and setbacks in the process for indigenous autonomy

According to the Bolivian Constitution there are three ways for indigenous peoples to attain autonomy. One is to demand self-governance within the collective

lands granted title as territorial property by the State. When that approach is used, the jurisdictions tend to be spread out over one or more municipalities or departments, and special procedures are required to consolidate the territory throughout its extension and surpass those boundaries. A second form consists of declaring self-governance in municipalities. There, even though the territorial jurisdiction does not change, the institutional structure and public management system adapts to the eventually approved charter. A third option is an Indigenous Region, which brings together indigenous autonomous units (municipalities or territories). The general procedure for access to autonomy, according to the Constitution and the Autonomy Act, consists of the following stages: referendum for access;¹³ certification of ancestry and viable governance;¹⁴ participatory development of the Charter and control of its constitutionality before the Constitutionality Court; definitive approval of the Charter by referendum; and the forming of the autonomous government.

Charagua-lymbae: First indigenous government

On September 20, 2015 the Guaraní Charagua-lymbae (EAGCH-I) Autonomy Charter was finally approved by referendum. This approval opened the final stage for full access to self-governance: the election, using their own rules and procedures, of representatives to the various governmental bodies.

In keeping with the Charter, the three bodies of the Guaraní government were elected, applying what is called community democracy, recognized in the National Constitution (Article 11(II)(3): The Ñemboati Reta (Collective Decision-Making Body); the Mborokuai Sibika Iyapoa Reta (Legislative Body); and the Têtarembiokuai Reta (Executive Body). In each of the six zones that territorially comprise the Charagua-lymbae Autonomous Unit,¹⁵ representatives were elected to each of these bodies. In January 2017 Bolivia's first indigenous autonomous government in the country's nearly 200 years of existence is expected to definitively take office.

Other referendum processes in the Chaco and the Andes

On November 20 referendums were held to approve the indigenous charters in the Andean zone and the Chaco. In the Andes, the Uru and Chipaya peoples (in

the high plateau department of Oruro) obtained a 77.4% vote of approval for their Autonomous Charter, with which they qualified to form an indigenous government replacing the current municipal government.

In the Upper Cochabamba Valley, the peasants of Raqaypampa also obtained a solid 91.5% in the referendum that approved their Charter. Raqaypampa is the first collective territory that won access to autonomy under the territorial basis mode (rather than conversion of a municipality, as occurred in Charaguaymbae, Mojocoya, and Gutiérrez, among others). The territory of Raqaypampa is located in the province of Mizque, in the southeast of the department of Cochabamba, and it is organized through the Unified Regional Labor Confederation of Indigenous Peasants of Raqaypampa (Central Regional Sindical Única de Campesinos Indígenas de Raqaypampa; CRSUCIR).

In the case of Mojocoya, located in the province of Zudáñez in the department of Chuquisaca, the referendum for final approval of its charter resulted in a rejection, with a 59% NO vote, thus halting the advance of the process. According to the Framework Law on Autonomy, a new referendum may be convened after 120 days. Changes in leadership and the stance taken against giving up the seats of the new municipal authorities who had taken office in June 2015 are some of the factors explaining the defeat of the indigenous autonomy effort, even though it had strong backing from the government.

On November 20 a referendum was also held to consult with the population of the municipality of Gutiérrez, located in the south of the department of Santa Cruz, over whether they wished their municipality to become an Indigenous Autonomous Unit. The vote in favor by the Guaraní people —of the Ava jurisdiction— was 63.12%.¹⁶ Now the Autonomous Charter needs to be drawn up through a participatory process and revalidated in a referendum, as was done in Charagua.

Indigenous autonomous units in the northern and southern Amazon

One of the pioneer peoples in the demand for autonomy are the Chiquitano people of Lomerío, who in 2009 submitted the first autonomous charter, prior to the enactment of the Framework Law on Autonomy of 2010. Nonetheless, they ran up against a procedural hurdle with the Electoral Agency and the Constitutionality Court, given that that they had to perform a time consuming task of adapting to the new law.¹⁷ This year, their process was completely re-channeled, and it is

expected that the Charter will be declared constitutional in 2017 in order to move ahead with the long awaited final-approval referendum.

Multiethnic Indigenous Territory I (Territorio Indígena Multiétnico I; TIM I) is inhabited by the Mojeño-Ignaciano, Yuracaré, and Movima peoples, who share more than 400,000 hectares in what is called the Chimanes Forest in Bolivia's southern Amazon. TIM I is represented by the Sub-central TIM, and since 2010 these peoples have gradually been fulfilling the long list of requirements under the Framework Law on Autonomy to constitute self-governance in their territory. At the 5th session of the Territorial Legislative Assembly (deliberative body) held in San Ignacio de Mojos on December 10, 11, and 12, they approved their Autonomous Charter under the supervision of the Electoral Body. They now have the Certificate of Ancestry, the Certificate of Viable Governance, and the population base required by law. All that remains is to submit the Charter to the Constitutionality Court for its constitutionality control.¹⁸

Isolated indigenous peoples in danger of forced contact¹⁹

In October 2013, Yacimientos Petrolíferos Fiscales Bolivianos Corporation (YPFB) signed hydrocarbons services contracts with the Chinese companies BGP and Sinopec to conduct seismic work in search of new oil and gas reserves in the Río Madre de Dios river basin of the Northern Amazon in the department of La Paz.

The directly impacted territory of this project is Tacana II, title to which is held by the Indigenous Tacana II-Madre de Dios Confederation (Central Indígena Tacana II-Madre de Dios; CITMRD), which is the counterpart organization in the Environmental Impact, Analytical, and Strategic Assessment Study for this project. Its leaders were those who expressly made the respective Environmental Authority include the issue of the presence, in the area of operations, of peoples in voluntary isolation (who are probably segments or families of the Toromona people in voluntary isolation).²⁰

Almost immediately after the BGP company started moving its equipment and personnel into the forest, and especially once it set up its advance camps along the lines outside the area of the Tacana II Territory, indications started appearing of the presence of isolated peoples. The data were quickly provided, thanks to timely follow-up by the Social and Environmental Indigenous Monitoring Unit bri-

gades of the CITRMD. As the work progressed, these brigades interpreted the repeated indications found, which the non-indigenous technicians could not make sense of.

The first indications, recorded between August 20 and 23, 2016, consisted of footprints, cut branches, and crossings along Seismic Line 19.²¹ Then, on September 18, 2016, the workers at camp Cvw-1 reported shouting and a series of noises made by a group of people who, according to them, surrounded the camp at a very close distance and who were probably indigenous peoples in isolation. The noises were made by banging the helicopter port's water drums. In response to this incident, the workers requested authorization to keep the electricity generators on all night, and the following day they were evacuated by the company. On September 19 the BGP company abandoned camp. On October 27 a similar incident occurred, which was reported by the line crews near the same lines as those reported during the month of September. Despite all these events, the BGP company authorized the advance of 7 crews for drilling, topography, and advance activities on a number of lines heading towards the zones where, in the project's Integral, Strategic Environmental Impact Assessment Evaluation, the presence had been reported of indigenous peoples in isolation.²²

Finally, the Social and Environmental Monitoring Unit of the Tacana II TCO denounced that the BGP company was making flights over areas with a possible presence of peoples in isolation, leaving provisions and food with the intention of forcing contact with those populations.

The BGP Company, in coordination with YPFB, reassigned the workers involved, withdrew the camps, and proposed several new activities in the areas where contacts with the segments of the Toromona people had occurred. As such, the company admitted the situation resulting from the presence of peoples in voluntary isolation. But publicly, the government-owned YPFB denied the situation. In fact, YPFB's president, Guillermo Achá, in his public statements on October 17, denied that any indications of peoples in isolation were involved.

In an event held in Santa Cruz de la Sierra on October 31, 2016 at the urging of the Office of the United Nations High Commissioner for Human Rights and the People's Ombudsman's Office, a commitment was undertaken by the Assistant Minister of Native Indigenous Peasant Justice and IWGIA to conduct a detailed investigation on the incidents denounced by the leaders of the Tacana people. Likewise, the Ombudsman's Office undertook a commitment to conduct a study

in said regard prior to taking any decision, thus leaving families of the Toromona people defenseless and subject to new contacts.

The BGP company responded as well to the actions of the Tacana people in defense of their territory and of their Toromona brothers and sisters in voluntary isolation. In December 2016, BGP's Operations Manager, Alfredo Emilio Salvador Aban, filed a denunciation with the Prosecutor's Office of Puerto Rico (Pando) against the coordinator of the Indigenous Monitoring Unit, Adamo Américo Diego Cusi, accusing him of kidnapping, false imprisonment, and other crimes. The Prosecutor then issued an arrest warrant against that indigenous leader. The case was in the process of being rejected by the Prosecutor's Office for such matters in Puerto Rico.²³

Even though the attempts at contact were known, the company's strategy - approved of by the respective authorities - is to move forward with the operations without any significant changes.

Resistance to the Chepete and El Bala dams

Bolivia has commenced preliminary studies for construction of the Angosto Chepete and Angosto Bala dams (phases 1 and 2), as a part of the La Bala hydroelectric project on the Bala River. This project will impact Madidi National Park and the Pilón Lajas Biosphere Reserve and Indigenous Territory in the northwest of the department of La Paz. It is a megaproject that would flood more than 600,000 km², affecting nearly 4,000 local inhabitants residing in the surrounding areas, most of whom are indigenous peoples and peasants.²⁴ The project is expected to generate approximately 3,600 MW between the two dams, to be injected into the National Interconnected Grid, at a cost of approximately 9.0 billion dollars.²⁵ Decisive environmental, social, economic, archeological, and cultural impacts are expected in the lives of these populations, which, according to the State, will be addressed through relocation of the affected communities, indemnifications, development of plans and projects for the release and rescue of archeological heritage, the construction of new infrastructure, etc.²⁶

These aspects were going to be supplemented with geological studies conducted by Geodata, an Italian company contracted by Empresa Nacional de Energía (ENDE), which was in charge of the technical pre-investment design.²⁷ In November, a group of inhabitants of Rurrenabaque and activists organized for

defense of the environment held a protest, impeding the work. On November 12, one of the companies subcontracted by Geodata (Servicoms) was forced to abandon the zone when surrounded by protesters in the river and on land in a great popular mobilization, bringing the activities to a halt that day.²⁸ To date the company's activities have not been resumed. ○

Notes and references

- 1 "Article 168. The term in office of the President and Vice President of Bolivia is five years, and they may be reelected for an additional continual term one time only."
- 2 Evo Morales and Álvaro García won for the first time in the elections of 2005-2010. However, with the entry into force of the new Constitution in 2009 and a call for new general elections, this first uncompleted term was not taken into account in computing how many times they could run for office. In 2010 a new term in office commenced, which concluded in 2015. In actuality, it would be their second term, but as of now it is considered their first.
- 3 The question submitted to the electorate for consideration on the ballot ordered by Law No. 757/15 was: "Article 4. (Question) The question to be asked in the Constitutional Approval Referendum shall be the following: 'Are you in agreement with the reform of Article 168 of the Constitution of Bolivia so that the President and the Vice President of Bolivia may be reelected for continuous terms two times?' By an Interim Provision of the Law on Partial Reform of the Constitution of Bolivia, a first reelection is considered to be the period of 2015 – 2020 and a second reelection is considered to be 2020 – 2025. YES / NO."
- 4 According to its webpage, <http://www.camce.com.cn/sp/spAC/spCO/> China CAMC Engineering Co., Ltd. (CAMCE), is a corporation that is an affiliate of China National Machinery Industry Corporation, founded in 2001. The company's principal activities are the contracting of international projects, commerce, and national and international investment. It specializes in "turnkey" projects, that is, on direct invitation from the contracting parties and without a bidding competition. This aspect was one of those that most aroused suspicions among public opinion, given that the projects carried out by the company in Bolivia were contracted by the State under that mode, according to denunciations that were made public.
- 5 Among other projects, the companies were reportedly awarded the construction of the San Buenaventura (La Paz) Sugar Refinery; the construction of the Montero-Bulo Bulo (Santa Cruz – Cochabamba) railroad, rescinded by the State; and the purchase of oil drilling equipment for the YPFB government-owned company. Of the three companies awarded, only one reportedly has a business registration. http://correodelsur.com/economia/20160314_caso-camc-de-las-tres-empresas-chinas-solo-una-cuenta-con-registro-de-comercio.html
- 6 A mixed commission, created in the Plurinational Legislative Assembly, conducted an investigation of the loans taken out as well as projects over which the CAMC Company was in charge. The commission, comprised in its majority by legislators from the party in office, exonerated the Bolivian President from any liability involving the contracted projects and determined that they had been awarded through transparent public tender processes. The commission took 80 days to evaluate all the documentation, visit the projects, and inspect the equipment acquired. The report

- of the legislators of the opposition party, contrary to these conclusions, was not addressed or considered.
- 7 http://www.la-razon.com/nacional/Comision-legislativa-influencias-contratos-CAMC_0_2484951532.html
- 8 http://www.la-razon.com/index.php?url=/nacional/Aprehenden-tia-abogados-Gabriela-Zapata_0_2492150821.html
- 9 See Mundo Indígena 2016, pages 171 -179.
- 10 http://www.bbc.com/mundo/noticias/2016/02/160222_significado_derrota_evo_morales_referendo_reeleccion_bolivia_bm
- 11 http://elpotosi.net/nacional/20160219_evo-se-compromete-a-respetar-los-resultados-del-referendum.html
- 12 Which concluded with the inexistence of the President's son being demonstrated in court and publicly admitted by the supposed mother.
- 13 <http://www.eldeber.com.bo/bolivia/Evo-dice-que-el-21F-gano-la-mentira-y-justifica-pedido-de-anular-referendum-20161222-0105.html>
- 14 Only for the case of a municipality or region. In the case of autonomy by reason of territory, the only thing required is the consultation through one's own rules and procedures.
- 15 This is a requirement of Framework Law on Autonomy 031/10, under which the indigenous peoples must demonstrate, using certain procedures considered highly questionable by their organizations, that the territory they ancestrally inhabit for which title is granted by the State just a few years ago is ancestrally theirs.
- 16 According to Article 16 I. of the Guaraní Charagua Iyambae Autonomy Charter, its territorial organization is as follows: 1. Charagua North Zone; 2. Parapituguasu Zone; 3. Upper Isono Zone; 4. Lower Isono Zone; (these 4 zones are rural zones, comprised by indigenous territories; 5. Charagua Station Zone; and 6. Charagua Pueblo Zone, in the urban zone of the city of Benemérita de Charagua and its area of influence.
- 17 <http://www.cipca.org.bo/index.php/noticias/noticias-2016/3853-el-municipio-de-gutierrez-decidio-ir-a-la-autonomia-indigena>
- 18 At the International Seminar on Indigenous Autonomy held in Charagua-Iyambae on October 28 and 29, authorities of the State who were present indicated that the file on the autonomy process for Lomerío had been intentionally "lost" during the 2010-2015 term of government, and was recently recovered through the action of the new officials, who have taken charge of reactivating it.
- 19 <http://cejis.org/el-territorio-indigena-multietnico-aprueba-su-estatuto-autonomico-para-la-autonomia-indigena-de-base-territorial/>
- 20 Part of this document has been cited in the Report on the Human Rights Situation of Indigenous Peoples (Informe de la Situación de los Derechos Humanos de los Pueblos Indígenas; ISDHPI) 2016, publication pending.
- 21 According to studies, the Toromona have a presence in the Madidi National Park and in government-owned lands in the basin of the Colorado and Heath Rivers. The Madidi park rangers and Peruvian investigators also so attest, and have gathered testimony of indigenous trackers and hunters who also have reportedly run into clear indications of the presence of peoples in isolation. Camacho N. Carlos, Entre el etnocidio y la extinción. Pueblos indígenas aislados, en contacto inicial e intermitente en las Tierras Bajas de Bolivia. IWGIA Report 6. Copenhagen, July 2010. Page 19
- 22 Amazonía Amenazada: Extractivismo petrolero en Amazonía boliviana invade territorio que ocupa pueblo en aislamiento voluntario y amenaza su existencia. CEDIB TEAM 2016. Ppt.

- 22 Tacana II TCO, maps and reports of the Social and Environmental Indigenous Monitoring Unit, 2016.
- 23 Case No. 1602636
- 24 This dam was the subject of a long conflict during the 1990s involving environmentalist organizations, indigenous peoples, and social sectors of what is now the MAS party, which strongly promoted its construction.
- 25 <https://fundacionsolon.org/?s=El+Bala>
- 26 <http://www.lostiempos.com/actualidad/economia/20160805/estudio-represa-chepete-bala-afectara-4-mil-habitantes>
- 27 These studies reportedly have a cost of approximately 14 million USD, <https://fundacionsolon.org/2016/10/25/fichas-ambientales-completas-de-el-bala-y-chepete/>
- 28 <https://fundacionsolon.org/2016/11/24/primera-victoria-en-el-bala-chepete/>

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BRAZIL

According to the 2010 census of the Brazilian Institute for Geography and Statistics (IBGE), Brazil is home to 240 indigenous peoples, accounting for 0.47% of the country's total population (i.e. 896,917 individuals). Of these, 324,834 live in the cities and 572,083 in rural areas, of which 433,363 in the Amazon. There are 274 different recorded languages spoken among the indigenous population.

Indigenous peoples are found throughout the whole country but most of them live on 704 collective lands known as Indigenous Lands (TIs) in the Amazon region.

Brazil has the largest known number of indigenous peoples living in isolation in South America, primarily in the states of Amapá, Acre, Amazonas, Goiás, Maranhão, Mato Grosso, Pará, Rondônia, Roraima and Tocantins. There are currently some 107 records of the presence of isolated indigenous groups in the Amazon region.

The 1988 Constitution recognises indigenous peoples as the first and natural owners of the land and guarantees their rights in this regard. The search for and extraction of mineral wealth on indigenous lands can only be done with the authorisation of the National Congress after having first heard the communities involved, who must be guaranteed a share of the benefits from such activity. The eviction of indigenous groups from their lands is prohibited. Brazil has signed the main indigenous rights protection mechanisms, including ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples (2007) and the American Declaration on Indigenous Peoples (2016).

2016 was a year of great political instability as a result of the impeachment of President Dilma Rousseff of the Workers Party (PT) on 31 August 2016. The legitimacy of the accusations was contentious. A charge of crimes of fiscal responsibility marked the end of her term in office and she was replaced by her Vice President, Michel Temer, from the Brazilian Democratic Movement Party (PMDB).

The current situation of Brazil's indigenous peoples has to be seen against this backdrop of transition and political instability.

Dilma Rousseff's government, like that of her predecessor, Luis Ignacio Lula da Silva, was not a great defender of indigenous rights nor of the demarcation of their territories, as reports from the visits of the UN Special Rapporteur on the rights of indigenous peoples testify (James Anaya in 2008¹ and Victoria Tauli-Corpuz in 2016²). Among other things, the reports expressed concern at the lack of progress being made in protecting the rights of indigenous peoples and the institutional backsliding that was occurring in Brazil.

Territorial demarcation and legislative change

During the visit of Special Rapporteur Victoria Tauli-Corpuz in March 2016, a proposed constitutional amendment, PEC 215, was high on the national agenda. This proposal recommended that it should be the National Congress and not the Ministry of Justice that has final responsibility for the demarcation of indigenous lands (TIs). This would mean placing the final decision on these matters in the hands of the hegemonic rural and evangelical sectors, who are openly opposed to indigenous demands, especially with regard to the demarcation of TIs.

In spite of all this, neither of the two previous governments ever dared to amend the constitution or issue ordinances against the demarcation of indigenous lands without going through the democratic mechanisms.

The national institution responsible for indigenous policy, the National Indian Foundation (FUNAI) has gradually been losing power and, during 2016, suffered a budget cut of R\$ 110 million (US\$ 34 million).³ A succession of budget cuts has had a direct impact on the process of demarcating TIs. It has resulted in these processes taking longer and longer, culminating in violent eruptions between the indigenous and non-indigenous populations. According to the Indigenous Missionary Council (Cimi) some 900 indigenous persons have been murdered across the country in the last 13 years, a figure that is growing as communities wait for their land to be demarcated.⁴

In 1996, during the government of Fernando Henrique Cardoso, FUNAI was restructured, making it responsible for anthropological analysis of the TIs demarcation process. This included the submission of records and witnesses by parties interested in claiming ownership of these lands. To this day, FUNAI remains re-



sponsible for preparing these documents and submitting them to the Minister of Justice, who then delivers the documents to the Presidency for promulgation of the indigenous lands.

With Ordinance 80/2017, the Ministry of Justice now has the power to review the whole process undertaken by FUNAI, which will weaken the organisation yet further. Even the Minister of Justice himself will thus have the power to call a public hearing to debate the processes in each case. Moreover, this ordinance leaves space open for parties interested in territorial disputes to act, by establish-

ing other methods of participation. This enables greater pressure to be exerted on demarcation processes by the ruralist sectors.

In terms of the jurisprudence of the Supreme Court, the Minister of Justice is also opening a space for adoption of the principle known as the “temporal framework”. This means that indigenous peoples only acquire right to a territory if they held its property title in October 1988, the date of entry into force of the National Constitution. This approach completely ignores the nomadic lifestyle of most of Brazil’s indigenous peoples, as well as the forced displacements they have suffered when being violently evicted from their ancestral territories.

Brazil’s indigenous organisations rejected Ordinance 80/2017 outright.⁵ They described it as a measure aimed at weakening the federal indigenous organisation and giving greater power to sectors that publicly and historically have been recognised as enemies of the indigenous peoples and their demands. They also underlined the lack of dialogue with the National Indigenist Policy Council (CNPI) and the violation of the right to free, prior and informed consent (FPIC).

“We also reject the lack of dialogue with the National Indigenist Policy Council (CNPI) -linked to the Ministry of Justice itself-, the non-compliance with our right to free, prior and informed consent and the attempts to seriously roll back legislation that has regulated the process of indigenous land demarcation for more than 20 years. All these measures have the clear objective of delaying and preventing the completion of the demarcation process, and reveal the current government’s aim of burying indigenous land demarcation policies and other patterns of land holding, a policy that will only contribute to the expansion and perpetuation of existing conflicts.”⁶

In addition to this ordinance, major strategic changes took place within FUNAI itself over the year. After attempting to appoint two military officials as presidents of FUNAI, President Temer appointed the evangelical pastor Antonio Toninho da Costa from the Social Christian Party (PSC) to run the organisation. The replacements and appointments he is making, under the Temer government are marking out a highly conservative position, linked to the interests of rural and evangelical groups.

Clear backtracking in legislation for indigenous peoples

The measures taken by the Brazilian government are distorting and denying the spirit of the constitution (Articles 231 and 232), infraconstitutional laws and the international treaties signed by Brazil – ILO Convention 169 and the UN Declara-

tion on the Rights of Indigenous Peoples - particularly the obligatory nature of the right to free, prior and informed consultation of indigenous peoples on any initiatives that involve them and affect their territories.

The state's initiatives demonstrate an authoritarian attitude and a lack of respect for the rights acquired by indigenous peoples. It is for indigenous movements, national and international non-governmental organisations and civil society to expose these authoritarian acts and demand respect for and compliance with their acquired rights. ○

Notes and references

- 1 Report on the situation of human rights of indigenous peoples in Brazil, James Anaya, 2009, http://unsr.jamesanaya.org/docs/countries/2009_report_brazil_en.pdf
- 2 Report of the Special Rapporteur on the rights of indigenous peoples on her mission to Brazil, Victoria Tauli-Corpuz, August 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/17-4/05/PDF/G1617405.pdf?OpenElement>
- 3 La Fundación Brasileña del Indio recibirá el menor presupuesto de los últimos 10 años, Brasil de Fato, 6.10.2016, <https://www.brasildefato.com.br/2016/10/06/la-fundacion-nacional-del-indio-recibira-el-menor-presupuesto-de-los-ultimos-10-anos/>
- 4 *Informe indica que 137 indígenas fueron asesinados en Brasil durante 2015*, Brasil de Fato, 16.9.2016, <https://www.brasildefato.com.br/2016/09/16/informe-indica-que-137-indigenas-fueron-asesinados-en-brasil-durante-el-2015/>
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- 6 *Organizaciones repudian ordenanza que modifica la demarcación de tierras indígenas*, Articulação dos Povos Indígenas do Brasil (Apib), 23.1.2017, <https://mobilizaconacionalindigena.wordpress.com/>.

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PARAGUAY

Paraguay's indigenous population is estimated at 112,848 inhabitants, comprised by 19 indigenous peoples. These are: Mbya, Ava Guaraní, Nivaclé, Pa'atyterã, Northern Enlhet, Angaité, Southern Enxet, Sanaapaná, Toba Maskoy, Ayoreo, Guaraní Ñandéva, Western Guaraní, Qom, Aché, Maká, Ybytosó, Manjui, Tomaráho, and Guaná. These peoples represent a total of 531 communities, 241 villages, and 54 nuclear families. According to preliminary data from the National Indigenous Census on Population and Housing 2012, published in 2013, the largest portion of the indigenous population (52.3%) inhabits the Eastern region, while the Chaco region contains the greatest diversity of peoples. Although Paraguay's indigenous peoples form a part of the country's great diversity and cultural wealth, they are also victims of systematic, structural discrimination by the State and by non-indigenous society. In this regard, they represent the country's poorest, most excluded, most marginalized population, and all human rights of the indigenous peoples—civil, cultural, economic, social, and political—are violated and undermined on a constant basis. This situation principally plays out through the invasion, destruction, and expulsion from their traditional lands and ancestral territories, where they live their lives and where their worldview, survival, and cultural practices are deeply rooted. Paraguay has ratified the major instruments of International Human Rights law, such as International Labour Organization Convention 169 (Law 234/93). Nonetheless, the State does not promote, interpret, or apply it, or does so deficiently, and thus the fundamental rights of the indigenous peoples are constantly violated. This deficiency is seen in all three branches of government: executive, legislative, and judicial.'

During the past year, the State, under the current administration of Horacio Cartes, has intensified the structural discrimination faced by Paraguay's indigenous peoples, as has been expressly observed by the United Nations Special



Rapporteur on the Rights of Indigenous Peoples (the Special Rapporteur), the Committee on the Elimination of Racial (CERD), non-treaty bodies, and treaty bodies of the United Nations, as well as other international monitoring bodies.

This discrimination translates into violations of the rights of the indigenous peoples both by acts and omissions of the State. On the one hand, there is a notably intensified liberalization of commerce, promoting, expanding, and protecting the agro-export system based on agricultural, forestry, and livestock activity, all of which go hand-in-hand with concentration of land and the historic model of the *latifundio*. On the other, the intensification of this model violates the indigenous peoples' right to participation, consultation, and consent when projects are

involved that affect their territory. An example of the violation of these rights has been the forced removal of communities from their ancestral territories.

Structural discrimination

Paraguay's economic structure, which revolves around the agro-export model, generates profound inequality, poverty, and extreme poverty, principally affecting the indigenous peoples.¹ In said regard, the Report of the Special Rapporteur of 2015 establishes that "there are a series of structural factors in Paraguay, including corruption, vast inequality, a regressive tax structure, the concentration of landownership and environmental degradation, which, combined with institutional weaknesses, hinder progress in alleviating poverty".² All these aspects create obstacles for the indigenous population's dignified access to fundamental rights, such as water, education, and health, among others.

The report also points out that "the rates of poverty and extreme poverty among indigenous peoples are 75% and 60% respectively, far exceeding the national average".³ As for the situation of young children - under the age of five -, the rate of extreme poverty is 63% (as compared to a 26% national average) and the rate of chronic malnutrition is 41.7% (as compared to a 17.5% national average).⁴ These figures demonstrate the profound gap of inequality separating the indigenous peoples from the rest of the population.

Lands, dispossession, and violence

Paraguay continues to be marked by severe illegality and informality due to the lack of a technical, objective, true verification of land tenancy and ownership, especially with respect to indigenous lands. In that regard, the Special Rapporteur explained that "the privatization of large amounts of land and the lack of a proper land registry have given rise to the existence of overlapping ownership deeds that serve as a basis for multiple claims to the same parcels. Conflicting claims are often settled in favor of business enterprises, thus depriving indigenous peoples of their lands".⁵ Several cases illustrate this situation.

A clear example of lack of formal title to lands is seen in the case of the Puer-to Pollo community of the Yshir people, located in Bahía Negra, Department of

Alto Paraguay. Their lands, despite forming a part of their ancestral territory and being inhabited by indigenous families, were awarded and titled in the name of a rancher by the National Institute of Rural Development and Land (*Instituto Nacional de Desarrollo Rural y de la Tierra*; INDERT). Despite the denunciation to the Economic and Anticorruption Unit of the Government Attorney's Office, the case continues in impunity. Similarly, the ranching company still holds an environmental license from the Secretariat of the Environment (SEAM), and intends to bring cattle in where the families reside.

Another case is that of the Sauce indigenous community of the Avá Guaraní people, where, on September 30, 2016, police forces and state agents of various government agencies carried out a forced removal. In an absolutely disproportionate display of force, prosecutors, several patrol members, buses with agents from the Special Operations Group (*Grupo Especial de Operaciones*; GEO), mounted police, and the leading officials of the Paraguayan Indigenous Institute (*Instituto Paraguayo del Indígena*; INDI) went to the zone to conduct the removal. This community is one of many that was expelled during construction of the Itaipú hydroelectric project and was never indemnified. In addition, the State is liable for failing to protect indigenous rights from the acts of private parties, despite being aware of them.

Economic, social, and cultural rights

In the Paraguayan Chaco the cases of labor exploitation and violations against the rights of indigenous workers, who labor in a situation of subordination or piecework for persons and companies in the agro-business sector, persist. This situation was confirmed by the *CERD* in 2016.

In terms of wages of indigenous workers, the payments are generally below minimum wage or the sums are not in keeping with the services rendered. All this is accompanied by an almost universal violation of their right to enrollment in the Social Benefits Institute (*Instituto de Previsión Social*; IPS), which not only violates their right to health, but also to retirement. Another major grievance of indigenous workers is that, in the majority of cases, the contracts are not made in writing, and are thus difficult to enforce, even though oral contracts have the same obligatory force and effect. For their part, Indigenous farmworkers often live with their spouses on the agricultural estates. Even though the women cook for the

establishment, their labor is neither recognized nor paid. There are also several cases of delayed payment of what is due, with the excuse that the administrators only come to the agricultural estates at irregular intervals.

The violation of these rights and the situation of discrimination are indeed due to the asymmetry of economic power of agro-business in comparison with the indigenous peoples. Yet another fundamental factor is that the State is conspicuously absent in applying the control that ought to be provided by the Ministry of Justice and Labor.

Consultation and participation

Structural discrimination is also rooted in a blatant public failure by the Paraguayan State to recognize consultation, established in International Labour Organization (ILO) Convention 169, ratified by Paraguayan Law No. 234/93. Not only is there is no law regulating consultation, but the government authorities, whenever they refer to it, do so in a manner that violates the principles that should prevail of international human rights law: Good Faith, Representativity, and Adequate Procedure.

The Special Rapporteur also describes this situation when she states that “There is a widespread problem in Paraguay in terms of non-compliance with the State’s obligation to engage in consultation before it adopts legislative, political, and/or administrative measures that directly affect the indigenous peoples and their lands, territories, and natural resources.”⁶

International Cases

The Paraguayan State has the region’s largest number of judgments handed down against it in territorial matters involving indigenous peoples by the Inter-American Court of Human Rights (IACHR). These judgments are on the cases brought by the Yakye Axa (2005), Sawhoyamaxa (2006), and Xákmok Kásek (2010) communities. There were also two case settlements that have yet to be fully complied with in relation to the Kelyenmagategma community (2011) and the Y’aka Marangatu indigenous community.⁷ Even though eleven years have now transpired since the first decision was handed down and six years have tran-

spired since the last of them, neither has been fully complied with as regards the return and titling of lands.

The Yakye Axa community remains on the same route, next to their ancestral lands, as more than two decades ago, when they started their journey to reclaim their territory. The community is in the same conditions, waiting for the State to fulfill the point on restitution that was finalized 8 years ago. The 12,312 hectares, acquired in 2012 by the State for the community, have not yet been granted title. In addition, the acceptance of lands other than those originally claimed was conditioned upon the construction of an access road. With respect to the Sawhoyamaxa community, more than two years after enactment of the law on expropriation (forced expropriation with the re-occupation of the lands by the community), the excessive delay to proceed with the granting of title is inexplicable. The process is tied up in litigations, whose resolution depends upon government officials.

The Xákmok Kásek community has made progress. The second of the three payments owed has been made for acquisition of 7,701 hectares out of the 10,700 that the State must restore to the community. That final payment is expected to be made in early 2017. No progress whatsoever has been seen with respect to the other hectares.

In relation to the settled cases, declarative progress has been made, such as talks over the construction of housing and finalization of the work at the site for the surveying in the Kelyenmagategma case. There has also been joint work for submission of a legislative bill on expropriation in the case of the Y'aka Marangatu community. Furthermore, the petitioners in this final case indicate that the settlement reached is being complied with as regards food and healthcare.

Human rights defenders

In early 2016, the attorney of the Sawhoyamaxa community, Julia Cabello Alonso, (a member of Tierraviva) received a warning in the summary proceedings brought against her due to having criticized a delay tactic on the part of the court with respect to fulfillment of the community's territorial right. The warning includes an admonition: "if you engage in similar conduct, more severe penalties shall be applied" by the Supreme Court of Justice of the Republic of Paraguay. It is important to add that the attorney was placed in a position where she could not exert a

defense, inasmuch as she received that judicial warning from the same court that denounced her, and against which her criticism was directed.

Another part of that decision indicates that the law (but without stating which law) in such cases contemplates “corrections such as a fine and even arrest.” This process, which is unacceptable in any State under the rule of law, is an assault upon free criticism of judicial rulings, upon freedom of speech, and upon the work of this attorney, who has been defending the rights of the indigenous peoples in Paraguay for more than a decade.

Such persecution of human rights defenders is not isolated. In fact, it is a systematic practice Paraguay. And it especially affects those who defend rights to land and territory, as was the case of Carlos Mareco, a human rights defender and indigenous leader of the Sawhoyamaya community. Mareco was a victim of a death threat in 2015 made by the administrator of the former agricultural estate. That incident, despite being reported to the prosecutor’s office, as well as others, remains in impunity.

The impunity endured by indigenous peoples in Paraguay is not isolated. Rather, it is a pattern rooted in a discriminatory system. In this regard, the Special Rapporteur describes “the justice system’s failure to fully apply existing constitutional and international standards, which gives rise to a climate of impunity.”⁸

The Paraguayan Indigenous Institute (INDI) falls far short in fulfilling its function

The principle of equality and nondiscrimination established in Article 46 of the national Constitution is far from being fulfilled, as is reflected in the fact that the INDI (*Instituto Paraguayo del Indígena*, the official body for public policy in relation to the rights of indigenous peoples) continues to be the Paraguayan State’s weakest institution. The institute is lacking in sufficient infrastructure and human resources.

As mentioned in the Report of the Human Rights Coordinating Body of Paraguay (*Coordinadora de Derechos Humanos del Paraguay*; CODEHUPY) in 2015,⁹ the Congress of the Nation cut the INDI budget ¹⁰ by 43% for fiscal year 2016. This budget-cutting policy is expected to worsen in the coming year, bearing in mind that its allocations since 2015 have been drastically reduced.¹¹ ○

Notes and references

- 1 In said regard, 40.7% of the population is impoverished; 19% of the population is indigent. 77.8% of the population perceives the State as corrupt, and 90% of the population considers that there is an unjust distribution of wealth, according to *Privileges that Deny Rights. Extreme Inequality and the Hijacking of Democracy in Latin America and the Caribbean*. Oxfam, 2015, page 183.
- 2 Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, Situation of Indigenous Peoples in Paraguay, Human Right Council, 30th session, Agenda Point 3, 13 July 2015, paragraph 48.
- 3 Ibid. Paragraph 49.
- 4 Ibid. Paragraph 49.
- 5 Ibid. Paragraph 20.
- 6 Report of Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, Situation of Indigenous Peoples in Paraguay, Human Right Council, 30th session, Agenda Point 3, 13 July 2015, paragraphs 27 and 28.
- 7 The issue of the injunction against the Totobiegosodoe will be discussed in a special article of the Codehupy Report.
- 8 Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, Situation of Indigenous Peoples in Paraguay, Human Right Council, 30th session, Agenda Point 3, 13 July 2015, paragraph 22.
- 9 Ayala, Oscar “*Recuento de un año con reminiscencias autoritarias, donde lo indígena parece no contar*” in Codehupy (2015), *Yvypóra Derécho Paraguáipe - Derechos Humanos en Paraguay*. Asunción, Codehupy, 55 – 62.
- 10 INDI is a self-governing entity with its own legal personality and assets, whose relations with the Executive Branch ought to be maintained through the Ministry of Education and Culture with the mandates of fulfilling, ensuring, and safeguarding by the faithful fulfillment of indigenous rights, harmonizing the legal mandate with participation by the indigenous peoples, in an articulated, coordinated manner with other institutions.
- 11 *Gente, Ambiente y Territorio* (GAT), September 2016, <http://gat.org.py/boletin/2016/Setiembre/1463>.

Article written by Maximiliano Mendieta and Julia Cabello Alonso, attorneys, investigators and human rights defenders at the institution Tierraviva a los Pueblos Indígenas del Chaco, Paraguay.

ARGENTINA

Argentina is a federalized country comprised by 23 provinces with a total population of nearly 40 million people. According to the results of the Supplementary Survey on Indigenous Populations, published by the National Statistics and Census Institute, a total of 600,329 persons identify themselves as descendants or members an indigenous people. The most recent national census of 2010 counts a total of 955,032 persons self-identified as descendants or members of an indigenous people. There are 35 different officially recognized indigenous peoples. Legally, they have specific constitutional rights at a federal level as well as in several provinces. In addition, ILO Convention 169 and other universal human rights conventions such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are in effect, with constitutional stature. Argentina voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples.

Setbacks in the human rights of indigenous peoples

Argentina is currently facing a generalized context of regressive policies on human rights. Now, more than one year after the Mauricio Macri administration came into office, the policies of redress and of compliance with human rights in general are in a phase of setbacks. This particularly applies to indigenous peoples, even though in their case, the State had previously implemented such redress policies. The retrogression has been reflected, on the one hand, by a lack of consistent legislation. It has been eleven years since the enactment of Law 26,160,¹ yet the congress has yet to pass a law on the granting of title for indigenous territories. On the other hand, it is reflected in a failure to apply laws already in existence. Such is the case of Law 26,160, which, despite all its defects, is the country's only national measure for protection of the indigenous communities' territorial rights. Added to this dynamic is the passage of certain measures (laws



or decrees) that undermine the system for protection of indigenous peoples' human rights as well as an intensification of persecution, stigmatization, and criminalization of indigenous leaders and community members.

One of the most prodigious signs of regressive measures is Presidential Decree 820/2016, which leaves native communities devoid of protection, further

exposing them to third-person encroachment on their territories by eliminating the limits previously imposed under Law N° 26,737² regarding forced sales of lands to foreigners.

Increased persecution of indigenous and social movement leaders

2016 saw an increase and even a new outbreak of persecution and criminalization in response to indigenous claims. According to a report of the Ministry of Security,³ the national government does not consider the claims of the indigenous peoples for their ancestral territories - especially those of the Mapuche people - to constitute a right guaranteed by the Constitution. Rather, it treats such claims as a federal crime. Cataloged as “violent and trying to impose their ideas by force” and turned into “a national security problem,” the Mapuche people have been the victims of virulent police repression and constant persecution of their leaders by the Ministry of Security, which ordered the Airport Security Police (PSA) to centralize “investigation tasks.”⁴ For the Ministry, the “Mapuche problem” is that “communities are arming” (sic) and “taking lands in gas or oil zones, constantly impeding normal exploitation of the wells.” This clearly evidences the national government’s decision to foment the exploitation of indigenous territories and of their natural resources in favor of the companies and to the detriment of the rights of indigenous communities. In response, the Mapuche people released a communiqué, joined in by social movement organizations,⁵ repudiating that governmental decision.

These acts of persecution in response to indigenous claims are justified and legitimized in discriminatory discourse, as is seen in the statements made by Mario Das Neves, governor of the province of Chubut. At a press conference on November 14, Das Neves demanded the resignation of Federal Judge Guido Otranto⁶ and stated that “we don’t want federal judges who act in collusion with criminals.”⁷

In the province of Jujuy the judiciary and the provincial government of Gerardo Morales have developed a widespread, active governmental strategy of harassment and criminal persecution of leaders from the *Tupac Amaru* Neighborhood Association (in which there are several indigenous organizations) and from the *Red de Organizaciones Sociales de Jujuy* [Network of Social Organizations of Jujuy], with the aim of preventing the development of social protest among grass-

roots sectors. Among the acts taken was the arbitrary arrest in January 2016 of Milagro Sala,⁸ a *Tupac Amaru* leader and member of the Mercosur Parliament, along with the political, extortive use of that arrest to vacate the encampment of the organizations, which encampment is a principal tool for exerting their claim. The arrest and the order to vacate are a product of a penal prosecution orchestrated to criminalize the protest. These actions restrict democratic liberties by creating obstacles for and criminalizing the right to protest, thus creating a severe, urgent, irreparable situation. Given this state of affairs, ANDHES (Attorneys of the Argentine Northwest for Human Rights and Social Studies), the CELS (Centers for Legal and Social Studies), and Amnesty International requested a precautionary measure from the Inter-American Court of Human Rights (IACHR Court), which was responded to in February 2016, requesting updated information on the legal situation of Milagro Sala. As of the date of this report, that information is still being awaited.

In October 2016 the United Nations Working Group on Arbitrary Detention determined that the detention of Milagro Sala was arbitrary and called for her “immediate release.” This decision was then supported by the Secretary General of the OAS, the Committee on Elimination of Discrimination against Women (CEDAW), the Committee on the Elimination of Racial Discrimination (CERD), and the IACHR itself.⁹ Despite the international condemnation, Milagro Sala has now been incarcerated for more than a year, and in recent months the executive and judicial branches have intensified persecution against the *Tupac Amaru* association.

Provincial Law No. 5.915: Unconstitutional, enacted without consultation, and illegitimate¹⁰

In May 2016, the Legislature of the province of Jujuy enacted Law N° 5,915,¹¹ created with the purpose of fomenting the production of electric energy through renewable resources and contributing to economic development. This law is a tool through which the provincial government seeks to develop a “solar farm” project. The law calls for the creation of easements throughout the province’s territory for the installation of power lines in order to facilitate all installations necessary to implement renewable energy sources.

Indigenous communities throughout the province denounced that law as unconstitutional, enacted without consultation, and discriminatory. They stated that

said law facilitates dispossession of the communities' territory. Through open assemblies throughout the regions, the communities systematically stated their opposition, seeking to prevent the formulation of regulations to the law. For their part, indigenous leaders Carlos Colque (president of the native community of Molulo) and Raúl Sajama (member of the indigenous community of Angosto de Perchel de Tilcara) indicated that this law is detrimental to indigenous peoples, since it authorizes private companies to make use of their lands without any type of consent or consultation: *"We have been left completely defenseless with this law. One of its points establishes that when the State approves a project, the concessionaire can automatically enter into the communities using any route it sees fit, without even consulting the communities as to which road is best".*¹²

In December 2016, the Government of the Province of Jujuy convened representatives of various indigenous communities to address this law in a false consultation procedure (since the law had already been enacted) to the detriment of nationally and internationally recognized rights. During the assembly, the communities expressed their opposition and their request to repeal the law. Despite overwhelming rejection by the indigenous communities, as of the date of this report, the law has not been repealed.

United Nations Periodic Review of the Argentine State

In December 2015 Argentina submitted its periodic report on the application of the International Convention on the Elimination of All Forms of Racial Discrimination and on the recommendations made by the Committee in the prior review, conducted in 2010. In October 2016 shadow reports were submitted by civil society.¹³ Based on that, the Argentine State was evaluated by the CERD in its 2490th and 2491th meeting, held on November 22 and 23, 2016 in the city of Geneva.

The shadow reports submitted focus on the situation of territorial rights; the criminalization of indigenous protest; the right to participation and to free, prior, and informed consultation; access to justice; and the situation of economic, social, and cultural rights over the past 6 years. Through the use of leading cases, the shadow reports reflect and place emphasis on the situations of discrimination and violation of rights, as well as certain public policies of the new national con-

text that, far from complying with ensuring protection of the indigenous peoples, are intensifying those violations.

In relation to the report submitted by ANDHES, we now provide a summary of the situation regarding violations of the rights of indigenous peoples.

Situation regarding territorial rights and violent evictions

Argentina in 2006 enacted Emergency Law No. 26,160. This law orders suspension of the execution of judgments and of procedural or administrative acts whose purpose was the eviction or vacating of lands traditionally occupied by the indigenous and native communities of the country. It also orders the conducting of a legal and technical cadastral survey¹⁴ with the aim of systematizing the information of each of the communities, to be followed by the regularization of indigenous community ownership. Nonetheless, now, more than 10 years since this law's enactment, the underlying problem has not been resolved. In most of the provinces, the survey was not finalized and there is no clear government policy ordering instrumentation of indigenous community ownership. In practice, this means that there is a constant lack of legal certainty for indigenous peoples in their territories.

What is paradoxical is that even though Law 26,160 orders a stop to the evictions, precisely following its entry into force the number of evictions sharply increased, as did the violence with which the evictions were carried out. This evidences that the absence of a clear mechanism for the granting of title encourages other players from the business sector to try and appropriate indigenous territories and carry out violent evictions. Far from improving, this situation has gained new momentum with the coming into office of the new national authorities. In the province of Tucumán alone, during December 2015 and April 2016, the justice of the peace initiated and ordered the eviction of three indigenous communities of the Diaguita people: the indigenous communities of Chaquivil, Potrero Rodeo Grande, and Quilmes (just one of them is pending a decision by the civil justice system). All of those evictions took place in a framework of extreme violence, without applying the standards of protection for the rights of indigenous peoples ordered by Convention 169. Such acts are repeating in other northern Argentine provinces.¹⁵

Criminalization and impunity

Criminalization of the indigenous struggle has become the predominant response on the part of the judiciary. Frequently, community members are accused of encroaching upon their own territory and the claims of landlord groups are upheld. This situation becomes even more alarming, considering that the cases brought by the community are not obtaining a fitting response or are systematically dismissed.

In the province of Tucumán, it can be seen that out of the 50 court cases of six indigenous communities ANDHES has filed over the past 8 years, only one obtained a favorable judgment. This occurred in 2012, but it lost on appeal in 2014. In other words, so far, no effective response has been received from the provincial judges.¹⁶

The Chocobar case. With respect to the tragic chain of events that resulted in the death of community member Javier Chocobar and in the wounding of two members of the indigenous community of Chuschagasta of the Diaguita people, the CERD made recommendations in the year 2010. Continuous claims have also been made by the community, its defense counsel, and various social movement organizations. Yet to date those responsible for his death remain in impunity and the community has not received any redress whatsoever. The oral trial phase gets put off year after year, and as of today there is no certainty that a trial will ever be held. Seven years after his death occurred, the courts, even with the case open and underway, provide no response. Given this lack of action by the judiciary, the members of the community are left completely devoid of protection and in a constant state of legal uncertainty. Adding to this situation is the sanction imposed in November 2016 by the judges of this case upon the attorneys who filed the criminal charges in a civilian capacity. This irrational and unconstitutional sanction represents a new obstacle for access to justice on the part of victims, since it directly affects their counsel, restricts freedom of speech, and limits mobilization and social protest, especially over claims related to the struggle of native peoples. This limits the participation by defense counsel for the community of Chuschagasta in those activities.

Discrimination in access to justice for indigenous peoples

The national government undertook a commitment to ensure access to justice for indigenous communities through the implementation of specific programs. Nonetheless, there is no official information and no indicators evaluating whether implementation of the programs actually resolved the obstacles in form and in substance for access to the justice system by indigenous communities.

In the province of Tucumán, in indigenous territories, there is a clearly increasingly conflictive atmosphere and growing discrimination in access to the justice system for the communities. With respect to this issue, ANDHES together with the Union of Peoples of the Diaguita Nation is conducting a study based on data from the past 8 years, whose preliminary results are as follows: there are approximately 40 conflicts¹⁷ involving 10 indigenous communities (out of the 17 indigenous communities in this province). On an average, that represents 4 conflicts per community. 85% of the conflicts directly involve the interests of third persons over Community Territory; 22.5% involve interests over natural resources, among them the case involving the murder of Javier Chocobar; 17.5% of the conflicts involve adverse impacts to community cultural heritage, an issue that has great significance for indigenous communities. Only 50% of those conflicts have been litigated, amounting to approximately 60 court cases, of which 47.5% have resulted in an unfavorable result for the community (detention, eviction, closing of the case, consignment to trial); 49% have seen no type of resolution and 3.5 % have seen a resolution that in some way favors the community (not necessarily application of the legislation, but rather a closing of the case due to lack of evidence from the other party). In none of these cases has a protective measure been applied based on Law 26,160. Neither has there been a judgment, decision, or motion from the prosecutor's office classifying the case as a situation of violation of territorial rights of indigenous peoples.

If these quantitative data are compared with the scant number of decisions where the Supreme Court of Justice of the Nation has applied the rights of the indigenous peoples,¹⁸ and if we also consider that the provincial courts likewise fail to apply the limited case law of the Court, the evidence of discrimination in access to justice is overwhelming.

Systematic failure to comply with the right to participation, consultation, and free, prior, and informed consent

The reports submitted by civil society to the CERD stated that the National Institute of Indigenous Affairs (INAI) continues to be a centralized entity without direct outreach to the provinces and without sufficient indigenous representation. Very few provinces have government bodies working on indigenous issues, and those that do work in an uncoordinated fashion. The INAI is still presided over by a nonindigenous person, elected without consultation or representation of the indigenous peoples, who has final decision-making power on matters involving indigenous peoples. Definitively, the participation of the indigenous communities in the entities and decisions involving them is not a public policy of the State.

Following this same logic, the Indigenous Peoples Consultation and Participatory Council was recently created through Decree No. 672/2016. That new body was superimposed over the Indigenous Participation Council; the peoples were not consulted and the formerly created body was not recognized. This severs continuity with the isolated policies implemented by the prior administration, in clear opposition to the various indigenous organizations.¹⁹ Another emblematic case where the right to consultation and to free, prior, and informed consent was violated is the situation being faced by the 33 indigenous communities of the basin of Guayatayoc and Salinas Grandes (Salta and Jujuy), based on the exploitation of lithium in their territory by international companies. The exploitation concessions are authorized by the provincial governments based on environmental impact studies prepared by the interested companies themselves, in which clearly no prior consultation procedures with the affected indigenous peoples are conducted. Given this situation, the communities denounced the violation of their rights, but to date have not obtained clear and effective responses from the provincial government.

The situation of economic, social, and cultural rights

With respect to the situation of economic, social, and cultural rights, the Argentine State has an enormous debt pending with the indigenous communities. The ongoing, systematic situation of malnutrition and poverty in which numerous indig-

enous peoples of the country live is the vector that describes the State's responses to its internationally assumed obligations.

One of the principal claims made by indigenous communities involves a lack or shortage of water. The government's unconstitutional requirement of having to be holders in ownership²⁰ in order to access public plans for the provision of water infrastructure impedes effective access to such infrastructure for hundreds of indigenous families. It also violates the right to a life with dignity. In addition, the absence of public health policies with an intercultural approach²¹ further aggravates the situation of chronic malnutrition among members of the indigenous communities and creates a new barrier, making the health system inaccessible in geographic, economic, and cultural terms.

The lack of access to water and the absence of adequate public health policies has had alarming consequences in the life of the Communities. Its worst manifestation was reflected in the death of six indigenous children in January and February 2015, according to the investigation carried out by journalist Darío Aranda. The situation of chronic malnutrition is a vicious cycle; it is aggravated in this context of inaccessibility and has not been adequately attended to by the State.

Recommendations and observations of the CERD to the Argentine State

Based on the reports submitted, the CERD, in November, published its recommendations to the Argentine State. Those recommendations expressed particular concern over the constant evictions faced by communities; impunity over the murder of Community member Javier Chocobar; the cases of criminalization of indigenous leaders, especially the case of the India Quilmes Community, the case of Félix Díaz, and the arbitrary arrest of community leader Milagro Sala; the lack of a clear title-granting policy; the inefficient application of Law 26160; and failure to complete the legal and technical cadastral survey ordered by law.

In response to the information provided, the CERD made the following recommendations to Argentina:

- That it take steps to ensure the safety of indigenous peoples who are subjected to threats, persecution, and other violent acts, and to prevent, investigate, and punish such acts;

- Early completion of the process for surveying ancestral territories and lands;
- That it ensure the full effectiveness of Law 26160; the adoption of legislative and administrative measures; as well as appropriate, effective mechanisms to facilitate the ownership and titling of said lands and territories;
- The taking of all necessary steps to protect human rights defenders, including the leaders and members of indigenous communities, against all acts of intimidation and violence or any arbitrary act by public authorities or private entities as a consequence of a human rights defender's performance of his or her functions;
- It called for ensuring effective access to justice and respect for fundamental rights and due process guarantees in proceedings against human rights defenders and members of indigenous communities, including the cases of Milagro Sala and Félix Díaz;
- In the case of Milagro Sala, it invited the State to implement the measures requested by the United Nations Working Group on Arbitrary Detention.

With respect to the right to participation, it called upon the State to adopt appropriate regulations and mechanisms throughout the country with a view toward obtaining free, prior, and informed consent, so that prior consultation will be carried out systematically and in good faith, with representative authorities, through appropriate procedures, and with the provision of sufficient, appropriate information. ○

Notes and references

- 1 Emergency Act regarding Possession and Ownership of Lands Traditionally Occupied by Indigenous Native Communities of the Country.
- 2 Law on Protection of National Dominion of Property, Possession, or Tenancy of Rural Lands, enacted in the year 2011 (known as the law against the foreign control of land).
- 3 The report of Minister Patricia Bullrich (08/30/2016) was written eight months after the Supreme Court of Justice rejected the federal nature as well as application of the antiterrorist act to the case being prosecuted against Martiniano Jones Huala and other Mapuche representatives. The Court remitted the case to the provincial justice system. The charges were for crimes of encroachment and cattle rustling and is pending being sent out for trial in the provincial courts of the province of Chubut. Another parallel case, where Chile requested the extradition of Mapuche leader Facundo Jones Huala (Martiniano's nephew), was quashed by federal judge Guido Ot-ranto. The appeal is now before the Supreme Court of Justice. The judgment that quashed the extradition highlighted the illegal practices used in making the extradition request (one of the

- witnesses against the Mapuche leader had provided data under torture). Two prosecutors and two provincial commissioners were questioned, one agent of the Federal Intelligence Agency (AFI) is being prosecuted who provided them with intelligence on social mobilizations and marches opposing the installation of a mine. Jones Huala was prosecuted in Chile for the crimes of arson in an inhabited place and the carrying of a homemade firearm in January 2013, but he did not appear on the day of the trial, on account of which his detention was ordered. www.pagina12.com.ar
- 4 The Report also maintains, making reference to the protest actions and claims of the Mapuche people: "These crimes of encroachment, disturbance of possession and extortion adversely affect a strategic service of the resources of the State: 200 wells have been stopped (according to what YPF reports)," <https://www.pagina12.com.ar/diario/elpais/1-314093-2016-11-13.html>
 - 5 <https://www.facebook.com/XAWVNKO/posts/1171285982952144:0>, reproduced by various media and organizations.
 - 6 Because the judge quashed the proceedings against the Lonko Facundo Jones Huala, a Mapuche authority who was facing a request for extradition from the Chilean government.
 - 7 The participation of federal security and intelligence services in acts of espionage against the Mapuche people had already been denounced by the Association of Indigenous Law Attorneys (AADI) in a note addressed in August to President Maurizio Macri and to the governor of Chubut, Mario Das Neves, but it received no reply. The note objected to the criminal actions as a way of dealing with territorial claims of the Mapuche people. The note from the AADI points to the existence of "a common thread between illicit government acts, the State's own failure to recognize of the rights of the indigenous peoples, the penal persecution of its leaders, and the stereotype painted by the communications media, which generates the false idea that the indigenous peoples are a threat, thus exacerbating old conflicts," <https://www.pagina12.com.ar/diario/elpais/1-314093-2016-11-13.html>
 - 8 Charged originally with the crimes of instigation to commit crimes and sedition. The judge finally ordered her release on January 29, but that same afternoon her arrest was ordered for another case brought on January 15 (that is, during the judicial holiday, which was also allowed on an exceptional basis) in which she was accused of fraud to the detriment of the State, extortion, and conspiracy. As such, in an extremely abusive manner, she was released in the morning and a new arrest was ordered in the afternoon, on account of which she did not even get out of prison.
 - 9 IACHR Statement (12/2/2016): <http://www.oas.org/es/cidh/prensa/comunicados/2016/182.asp>
 - 10 http://www.legislaturajujuy.gov.ar/img/sesiones/ftp/s_2634/Ley_5915_33-PE-16.pdf
 - 11 Law on Administrative Power Line Easements and Special Regime Establishing Administrative Easements for the Development of Projects for Electric Power Generation based on Renewable Sources Situated on Communal Property.
 - 12 <http://www.elfederal.com.ar/pueblos-originarios-de-jujuy-se-oponen-a-la-ley-de-servidumbre-electrica/>
 - 13 One written by the non-governmental organization ANDHES in alliance with the Union of Peoples of the Diaguita Nation of Tucumán (UPNDT), the Parliament of Original Nations, the Indigenous Peoples' Human Rights Observatory (ODHPI), the Foundation for Social Accompaniment of the Anglican Church of the Argentine North (ASOCIANA), and another by (in addition to the Parliament of Original Nations, ODHPI, and ASOCIANA): the Chaco Argentina Agroforest Network (REDAF), the Association of Indigenous Law Attorneys (AADI), the Civil Association for the Rights of Indigenous Peoples (ADEPI-Formosa), the Center for Legal and Social Studies (CELS), the United Board of Missions (JUM-Chaco), the Permanent Human Rights Assembly (APDH), the National Aboriginal Pastoral Team (ENDEPA), the Claretian Development Project (OCLADE), the Human Rights Masters' Program of the National University of Salta, and the Commission of Indigenous Jurists

- 14 There are provinces that have yet to commence this survey, others that have started but not concluded it, and others where it has already been concluded, but even so there are no clear intentions for title-granting policies.
- 15 For example, in the province of Salta, on May 12, 2016, there was a violent eviction of members of the Diaguita Calchaquí Cóndor Huasi Community, of Quebrada de San Lucas, Department of San Carlos. It was publicly denounced that a group of police and the Justice of the Peace of the jurisdiction of Cafayate, in execution of a judicial eviction order handed down by Judge María Virginia Toranzos de Lovaglio, went to the homes of Martina Herrera and Santos Arjona, and when those persons were not home, they took out their belongings and destroyed their homes. Representatives of the Union of the Peoples of the Diaguitas Nation of Salta denounced that said judicial order was obtained to satisfy the interests of the San Carlos S.R.L. company, which is seeking the lands comprising the community territory.
- 16 “*Acceso a la justicia y los Pueblos Originarios. Un análisis empírico.*” XVII Congreso Latinoamericano de Sociología Jurídica & VII Latinoamericano de Sociología Jurídica, 2016.
- 17 With “conflict” being understood in a broad sense, that is, as all disputes or controversies that materialize through institutional or *de facto* channels and that violate or have the potential to violate the territorial rights of indigenous peoples. With this criterion a conflict can generate several court cases.
- 18 In the month of November 2013, the Supreme Court of Justice of the Nation (CSJN) ruled, putting a stop to the eviction of the “Las Haytekas” Mapuche community of the province of Río Negro, thus revoking a ruling of the provincial justice system that ordered the community to vacate the land claimed by a private party. In this ruling, for the first time, the high court applied Law 26,160, using the concept of “territory” under Convention 169. The ruling establishes that the territorial survey, already concluded in several provinces of the country, acts as proof to demonstrate traditional indigenous occupation. In the decision, the Court pointed out that Law 26,160 seeks to prevent new situations of dispossession from occurring, in order to respect and guarantee constitutional rights of the indigenous peoples and to comply with international human rights commitments undertaken by the National State. Nonetheless, this court decision was not yet adopted by the provincial courts.
- 19 Understanding the conflict in the broad sense, this means any dispute or controversy that materializes through institutional or factual channels, and that infringes or has the potential to violate the territorial rights of indigenous peoples. Under this criterion a conflict can be translated in several judicial causes.
- 20 Shadow Report submitted to the CERD in 2016, <http://andhes.org.ar/wp-content/uploads/2013/07/Informe-alternativo-CERD-2016.pdf>
- 21 At the public health centers, which serve the majority of indigenous peoples, the presence of translators and/or interpreters is not contemplated or guaranteed. This repeatedly creates difficulties for making a correct diagnosis and, moreover, for determining medical treatment.

*Report prepared by the **ANDHES Foundation** (Attorneys of the Argentine Northwest for Human Rights and Social Studies) based on its studies and research. **Belén Leguizamón, Cyntia Jaquillie Ovejero and Victoria Fernández Almeida**, members of the Indigenous Peoples team of that foundation.*

CHILE

According to official statistics from 2013, the indigenous population in Chile is 1,565,915 persons. With nine indigenous peoples, the Mapuche people represents 84% of the indigenous population, followed by the Aymara, Diaguita, Lickanantay, and Quechua peoples who, together, represent 15%. Out of the total indigenous population, 74% live in urban zones, while the remaining 26% live in rural zones.¹ Statistics from 2015 demonstrate that 30.8% of the indigenous population lives in a situation of multidimensional poverty (income, housing, education, and health), while for the nonindigenous population, that figure is 19.9%. The region of Araucanía, which concentrates the largest indigenous population (Mapuche), accounting for 19.8% of the total population, continues to be the country's poorest region with 29.2% multidimensional poverty and 23.6% poverty by income.²

Chile is the only country in Latin America whose constitution does not recognize the indigenous peoples. Despite that, in the framework of the constitutional drafting process for the development of a new constitution convened by the government in 2016 (as a consequence of a social mobilization) the Ministry of Social Development convened an indigenous constitutional drafting process to gain the perspective of the indigenous peoples on the content of a new constitution. 12,000 indigenous persons participated in this process through 400 gatherings convened by themselves or others.³ Although the conclusions of this process have not yet been systematized, the process has been questioned by indigenous peoples' organizations due to its methodology, which is not in keeping with indigenous tradition and whose timing is late in relation to the constitutional drafting process that the government convened months prior to gather input from the citizenry for a future constitution.⁴

Law N° 19,253 of 1993 on "indigenous promotion, protection, and development" remains in effect, even though it does not meet the international law standard concerning the rights of indigenous peoples to land, territory, natural resources, participation, and political autonomy. One of the fundamental tools of this law,

its Indigenous Lands and Waters Fund, utilized for the market acquisition of lands claimed by indigenous communities and/or persons, was underutilized during 2016. This is evidenced in the use of a mere 29 billion Chilean pesos out of the 83 billion approved in the budget of CONADI (National Indigenous Development Corporation) at the end of the third quarter of the year.⁵ This situation allowed for the acquisition of only 12 properties for indigenous peoples, in contrast with an average of 78 properties in the past four years.⁶ Along the same lines, during the year, the restriction was applied to land purchases for communities that have used non-institutional avenues for land claims,⁷ applying the same restriction for 2017 contemplated in 2016.

As for Law No. 20,249 of 2008 on “coastal marine spaces of native peoples,” its implementation continues to be minimal.⁸ Protection is still lacking against industrial use of those spaces by companies. This is reflected in the case of the Mapuche Williche communities of the Los Lagos (Isla de Chiloé) region, whose traditional coastline was contaminated by the red tide, which environmentalists and the affected communities consider to be a consequence of 4,600 tons of salmon in decomposition dumped into the sea by companies present in those spaces.⁹ Application of ILO Convention 169, ratified in 2008, is still quite insufficient, in particular with respect to indigenous consultation rights when administrative measures on investment projects affect indigenous peoples.

Other noteworthy legislative activity is the executive branch’s introduction of two bills, one for creation of the Ministry of Indigenous Affairs and another for creation of a National Indigenous Council and nine Councils of Indigenous Peoples. The National Indigenous Council might lead to an improved status for indigenous public policy, but does not in-and-of-itself ensure a policy consistent with the rights recognized for these peoples. The Councils of Indigenous Peoples contemplate one Council for each people, with a total of 69 representatives elected by those peoples, which might constitute an avenue for representation of their interests vis-à-vis the State. The bill also considers a National Council of Indigenous Peoples comprised by 15 council members, also elected by the indigenous peoples, for the approval of national indigenous policy.¹⁰ This is a valuable initiative, which in all events must not violate the right of the indigenous peoples to constitute and define their own representative institutions, as per ILO Convention 169.

Finally, another legislative bill that has raised questions on the part of indigenous peoples creates the Biodiversity and Protected Areas Service (SBAP) and



the National Protected Areas System (SNAP).¹¹ That bill fails to recognize the contribution of indigenous peoples to biodiversity; it does not protect indigenous rights against public and private conservation initiatives; neither does it recognize or protect indigenous and community conservation initiatives. As a result of the indigenous criticism of the bill and of its impact, the government decided in early

2016 to promote a consultation process with the indigenous peoples. While said process was still underway, in the month of December 2016, the government submitted its observations on the bill to the Senate Environment Committee, which reopened its discussion and voting. Many of the observations presented by the Ministry of the Environment (MMA) to the Congress involved matters addressed in the consultation with indigenous peoples that could directly affect these peoples. The indigenous organizations have considered the presentation of these observations to be a violation of their right to consultation, and they have objected to the government over the absence of good faith in the consultation process on this legal initiative.¹²

The rights of the Mapuche people

2016 has not seen structural advances in the recognition of the Mapuche people's rights, following a trend in recent years with respect to the lands and territories legally and/or ancestrally belonging to the Mapuche people. In the Region of the Araucanía and Los Ríos, the rights of the Mapuche people have been gravely threatened by the expansion of extractive, production, and infrastructure projects. The great majority of these initiatives belong to private corporations that engage in activities such as the salmon industry with production and ovulation fish farming activities for raising young fish that are later transferred to industrial plants in southern Chile; the forestry industry, in constant expansion with monocrops of exotic species of pine and eucalyptus for producing cellulose; hydroelectric companies, which under the guise of supposedly environmentally friendly "run-of-the-river" projects have proliferated in the foothills and mountainous zones of the Region; or mining prospections and geothermal exploration.

This situation is due to the norms regulating the use, allocation, and granting of rights over natural resources, for example the Waters Code, which has its foundation in the economic theory of free markets and the subsidiary role of the State. The administrative authority's powers for natural resource management and planning is therefore minimized, and the use of natural resources is allocated through the market, not through civil management. In addition, legislation for the various sectors that regulates the use, allocation, and granting of rights over natural resources has not been adapted to ILO Convention 169. Such legislation fails to recognize indigenous peoples' rights over natural resources that ances-

trally belong to them and that are located in their territories. It allows rights to be granted for private parties to utilize those resources without consulting the indigenous peoples over the concession process.

Currently, the legislative bill for reform of the Waters Code¹³ is undergoing its second reading.¹⁴ Certain improvements are being incorporated in relation to recognizing indigenous peoples' rights over water resources. A deficiency in said process has been indigenous participation, which to date has been very marginal, and the incorporation of such participation into the remainder of the process appears to be a great challenge.

An example of the massive investment projects in Mapuche territory is clearly seen in the regions of Araucanía and Los Ríos, where 30 hydroelectric projects have been approved with environmental qualification and 3 with qualification under the Environmental Impact Assessment System (SEIA).¹⁵ These projects are principally located in basin headwaters, that is, where the rivers start in the mountainous zones. The great majority of these projects are located in territories that form a part of the ancestral and current habitat of Mapuche communities. They have multiple impacts, such as: alteration of ecosystems; threats to important sacred sites that have great religious and spiritual meaning for the Mapuche people; severe pollution of waterways and diminished access to waterways; and failure to acknowledge these territories' own production systems and those of their communities. Such projects also violate the Mapuche people's right to define their own development priorities, which is consecrated in Article 7.1 of ILO Convention 169. These projects are thus widely rejected by the communities. From this perspective, the case of the Doña Alicia Hydroelectric Power Plant, located in the commune of Curacautín is emblematic. It was initially rejected by the regional Environmental Assessment bodies but later approved by the Committee of Ministers in Santiago. Then the project was challenged in court before the Third Environmental Court Number of Valdivia, which voided the Decision of the Committee of Ministers. Another emblematic case is that of the Osorno Hydroelectric Power Plant in the Region of Los Ríos. This project threatens to destroy a sacred site of the Mapuche-Huilliche people, which is the *Ngen Mapu Quintuante*. It has environmental approval, but currently the concessionaire's failure to fulfill certain measures agreed to in the decision approving the project is being administratively challenged.

Another phenomenon that has played a major role over the past year consists of investment projects that sidestep the Environmental Impact Assessment Sys-

tem through a procedure named “Environmental Assessment Pertinence Consultation.” Through this procedure, concessionaires of projects whose “impacts” are less than what is defined by quantitative criteria in the environmental regulation¹⁶ consult with the environmental authority (SEA) over whether they need to submit to an environmental assessment. Based on those quantitative criteria—and not on their qualitative impacts—in 90% of the cases the environmental authority finds that the projects need not be environmentally assessed. That rules out the possibility of engaging in a consultation process with the indigenous peoples. Emblematic of this type of project is the Tranguil Hydroelectric Power Plant, whose concessionaire is the Austrian company RP GLOBAL. The project is located in the commune of Panguipulli in the Los Ríos Region, adjacent to legal lands of Mapuche communities. Its electricity lines also cross Mapuche communities. Despite that, since it is an electricity generation project of less than 3 MW, it was not subject to an environmental assessment, and the concessionaire has been able to advance in its implementation without a need for environmental authorizations. This case received extensive public attention, given that one of its strongest detractors, Macarena Valdés, was found dead in her home under strange circumstances. Her death is being investigated by the Prosecutor’s Office with the aim of getting to the truth of the facts.

In addition, criminalization of Mapuche social protest by the State is still constant. Currently, there are a great number of court cases against Mapuche persons, accusing them of participating in criminal acts in connection with claims for their territorial rights. Some of these cases are being prosecuted under the Antiterrorist Act.¹⁷ One of the court cases that has gained major media coverage is that of the fire that took the lives of husband and wife Werner Luchsinger and Vivianne Mackay. Given that it is being prosecuted by the representatives of the Ministry of the Interior under the Antiterrorist Act, and given the charges filed by the Prosecutor’s office, it is being treated as a terrorism case. Ten Mapuche leaders are being charged with participating in the crime, along with the *machi* (traditional spiritual authority of the Mapuche people) Francisca Linconao, who has a long history as a defender of the rights of her people and of her territory. The accusations are based on testimony obtained under torture from a co-defendant. In this case, the situation of Machi Linconao has been very complex. Her defense counsel requested house arrest, and that motion was accepted on four occasions by the Trial Court Judge of Temuco but later revoked by the Temuco Court of Appeals, forcing her to remain incarcerated and, on account of her age, greatly

harming her health. She continued to be held in custody because, according to the antiterrorist act under which she is being prosecuted, a release must be unanimously accepted by the division of that Court. Machi Linconao thus commenced a hunger strike, demanding that the justice system take her circumstances into account and convert the precautionary measure into a house arrest. The change was accepted in December 2016 by the Temuco Court of Appeals, following the filing of a Habeas Corpus Petition.

The context of criminalization has also been used against the criminal defense attorneys who represent the defendants in the case, and they have been harassed, persecuted, and criminalized by the Police and the Prosecutor's Office. Such is the case of attorneys Karina Riquelme and Sebastián Saavedra.¹⁸ Such is also the case of public defense attorney Manuela Royo, who, given her role and close relationship with the defendants, was fired from the Public Defenders' Office. Currently these cases of harassment and persecution of human rights defenders are being heard by the Inter-American Commission of Human Rights (IACHR).

Another constant feature has been police officers' excessive use of violence in the context of Mapuche territorial claims. Worth particular mention are the abusive acts of the police in the operations conducted within the Mapuche communities and on their lands of traditional occupation, without regard for the presence of children, women, and the elderly, whose rights are especially affected. The case of a 17 year old Mapuche child named Brandon Hernández is emblematic of such violence. He was severely wounded in the back by a round from a shotgun, fired by a member of the Special Chilean National Police Force known as "Carabineros" during a police operation a few feet away from his home.

The situation of the rights of the Andean peoples in Chile

In *The Indigenous World 2016* we noted the backlog in the process of demarcation and granting of title for the ancestral territories of the Andean peoples. According to Law No. 19,253 on indigenous protection, promotion and development, the State is obligated to recognize and return indigenous lands. To accomplish that, Law No. 19,253 set a term of three years as of its enactment, which expired 20 years ago. Numerous territories under Chilean State ownership are still being claimed and have yet to be demarcated and formally granted title according to

what was reported by the National Human Rights Institute in the year 2014. This situation has not substantially changed in 2016.

Rather, the Ministry of National Assets, with the acquiescence of the National Indigenous Development Corporation (CONADI), has promoted a policy geared towards reducing indigenous territories in the country's north by applying actual occupation criteria for demarcating and granting title over territorial spaces. This policy fails to recognize customary practices, among them productive occupation for pastoral wild livestock activities; spaces with cultural and spiritual meaning such as the *malkus*, also known as the *cerros tutelares* or mountains housing the spirit of the ancestors; and spaces of environmental importance such as meadows and high altitude wetlands.¹⁹

This policy has impeded advances in the recognition of territorial rights. The most emblematic case in the year 2016 was that of the Aymara Chusmiza-Usmagama Community,²⁰ who have been the victims of a process of confiscation of their ancestrally used waters, because the authority—through a procedure not contemplated in national law—established water rights in favor of a third party without the consent of the community, even though litigation was pending regarding those same waters between the same interested parties. The community has expressed its willingness to the IACHR to reach an Amicable Settlement Agreement with the State of Chile, negotiations for which have been underway for six years. The negotiations have been impeded, however, by the regressive position taken by the Ministry of National Assets, which refuses to recognize the collective rights of the Chusmiza-Usmagama Community over their ancestrally occupied lands as a measure of redress and guarantee of non-repetition.²¹ It is important to note that the Ministry of National Assets, applying Decree with Force of Law 1939/79, has argued that it can only recognize individual property, and in the event that the persons granted title possess other property, free ownership title cannot be granted. Rather, it would be necessary to proceed by way of a purchase, and the indigenous owners would have to pay the sale price set by the government for lands that belong to them on account of their ancestral ownership right. This goes against international norms on the rights of indigenous peoples.

With respect to waters, the Congress is debating a reform to the Waters Code²² that seeks to guarantee water as a human right, protect indigenous rights to water, and safeguard the environmental functions of this life-giving element. Such mechanisms are not contemplated in the statutes on waters currently in effect.²³ The reform proposes to recognize the human right to water and sanita-

tion, which must be guaranteed by the State. In the case of indigenous territories, it would provide that the State shall safeguard the integrity of land and water and shall protect existing waters for the benefit of indigenous communities in keeping with law and international treaties ratified by Chile that are in effect. The law would provide for protection of aquifers and wetlands, as well as environmental flows in degraded zones and water conservation in protected areas and glaciers.

Just as in 2015, during 2016 a sharp reduction was seen in high-impact extractive projects in the territories of the Andean peoples. This resulted from slower activity in the mining sector due to a drop in international market prices for metals, particularly for copper. Nonetheless, at the judicial level, a green light was given to certain projects that were under litigation for failure to consult the indigenous communities. Such is the situation of the Minera Paguanta Prospecting Project, where the right to consultation for communities located downstream from the project site was denied, reversing a judicial ruling that originally recognized this right and demanded an Environmental Impact Study.²⁴ The Second Environmental Court²⁵ and, later, the Supreme Court,²⁶ upheld the decision of the Environmental Assessment Service (SEA) that reduced the consultation to one with the Community of Cultane, which had come out in favor of the project's execution.

Certain mining companies whose projects came to a halt in 2015 have expressed their interest in reactivating the projects. Such is the case of the *El Morro* mining project (for gold and copper), which belongs to Goldcorp Inc., a Canadian company that has partnered with Teck Resources Limited to combine their respective projects, *El Morro* and *Relincho*, into a single initiative, forming the *Nuevo Unión* project. Under this new formulation, the project has not yet come under the Environmental Impact Assessment System.

Barrick Gold, a Canadian company that is the concessionaire of the Pascua Lama project, is in the process of resuming its operations. It should be remembered that this project was challenged by the Diaguita of the Huasco-Altinos (CADHA) Community before the IACHR through a petition lodged in January 2007.²⁷ This petition was admitted by the IACHR in 2009²⁸ and is still awaiting the report on the merits. The processing of the petition has taken 10 years, and 7 years have gone by awaiting the report on the merits.

One case where progress has been seen is that of G.B.B.,²⁹ a woman of Aymara origin who lost her son D.B.B. while she was grazing her flock in the Chilean high plateau. She was sentenced to 12 years in prison for abandonment of a minor that resulted in his death in an unpopulated place. In June 2016 during the

158th Session of the IACHR, held in the city of Santiago of Chile, the Amicable Settlement Agreement (ASA) was signed. That ASA, compliance with which has advanced satisfactorily, has the following content: to grant an honorary life pension and a residence to ensure the subsistence of the victim; to eliminate her criminal history in order to ensure her full reinsertion into society; to add the background information from the proceedings to the adoption file of her minor daughter C.B.B. for purposes of making the complete file of her adoption available to her and favor the re-establishment of the bond with the biological mother; and a guarantee of non-repetition.³⁰

The rights of the Rapa Nui people

The Rapa Nui people of Easter Island maintain their demands for recognition of their territorial and political rights, which are summarized as follows: recognition of their right to self-determination and of their ancestral ownership rights over the territory of the entire island. 71.48% of the island's territory, whose total surface area is 16,600 hectares, is under government ownership, shared between the Vaitea Fund (4,597.24 hectares), and the Rapa Nui National Park (6,913.06 hectares).

With respect to the Rapa Nui National Park (PNRN), on August 18, 2016 a Partnership Agreement was signed between the National Forest Corporation (CONAF) and the *Ma'u Henua* indigenous community for purposes of co-administering the PNRN. This Agreement transfers the public use areas of the PNRN as well as limited powers to the community, such as: public use areas for the management of ecotourism; collection of fees for entry and use of the PNRN; control and regulated management of visitation; strengthening of participatory management of the PNRN; strengthening and creation of administrative jurisdiction of the PNRN in the *Ma'u Henua* Community; development of outreach, educational, and recreational activities. For purposes of carrying out these functions, the CONAF, through Sub-Title 24, Revolving Transfers, will transfer revenues generated by entrance fees and other uses of the PNRN's public use areas to the *Ma'u Henua* indigenous community.

With respect to political rights, in 2016, a migration statute was introduced in the legislature aimed at limiting the demographic burden on the island, with the objective of safeguarding its ecosystem and ensuring the social, cultural, and

economic sustainability of Rapa Nui.³¹ The State, during 2016, also proposed the development of a Special Charter for Easter Island through which a new administrative unit would be created, aimed at de-concentrating political and administrative decisions, under which decisions would be made by a local body with Rapa Nui participation. The Charter does not guarantee self-determination of the Rapa Nui people, since it would set up a model of government called Special Territory Government. The island's residents would participate on an equal footing with public officials, who would represent the interests of the State within that government body. Moreover, the Special Territory Government would be subordinated to an island governor, who would represent the President of the Republic and report directly to the Undersecretary of the Interior. Neither would the charter guarantee the territorial rights of the Rapa Nui people, since it does not contemplate any mechanism for recognition of their ownership of the island's territory, which belongs to them as an ancestral right.

Advances and setbacks in Chilean case law: Environmental Courts³²

The judicial decisions of the Environmental Courts review administrative acts regarding environmental assessments of investment projects in Chile. When analyzing decisions over cases where indigenous peoples have demanded implementation of prior consultation processes, one notes advances and setbacks with respect to indigenous rights, in particular, with respect to free, prior, and informed consultation, depending on whether the cases were decided by the Second or Third Environmental Court.

The Second Environmental Court has completely validated the indigenous consultation model,³³ setting up a formalistic regime with maximum deference to the Environmental Authority. That regime accepts the demand that in an environmental assessment process the indigenous peoples themselves must supplement any missing information submitted by an offeror and must provide background information to demonstrate that they are susceptible to being directly affected. This implies maintaining a standard of proof that makes it difficult to access justice and to exercise the right to consultation for communities marginalized from the environmental assessment procedure. It contradicts the precautionary principle that inspires the Chilean environmental legal system and abdicates the

standard of review and broad control that the law grants to the Environmental Courts.³⁴

The most recent case law from the Third Environmental Court points in the opposite direction. The Third Environmental Court also fails to question the equating of the concept of *susceptibility to being directly affected* with that of *significant impacts*. However, unlike the Second Environmental Court, it has earnestly taken up the broad control and review standard over administrative acts of an environmental nature. Not only does the Third Environmental Court review legal and procedural aspects; it also exercises its powers to verify the facts based on which the administrative-environmental decision is made, and it replaces that decision if warranted. As such, the Third Environmental Court has truly functioned as a specialized judicial body. It has used its technical capacities, evaluating the information offered by the concessionaires during the environmental assessment of their projects, as well as the methodology for collecting and analyzing the data submitted as proof for ruling out the generation of significant impacts on the indigenous peoples and determining whether a consultation process is applicable.

Unlike the Second Environmental Court, the Third Court's decisions have applied the founding principles of the Environmental Impact Assessment System (SEIA), such as the precautionary principle, which obligates the Environmental Authority to technically and impartially analyze the information provided by the concessionaire during a project's evaluation, so that such information will be suitable for ruling out or demonstrating the generation of significant impacts to the environment of the territories of the indigenous peoples, and thus fulfill the Environmental Authority's duty to implement a consultation process.³⁵ This contributes to giving substance to the SEIA, overcoming a procedural, formalist vision, with the understanding that said administrative procedure's purpose is to evaluate and thus anticipate the actual and potential impacts that the projects or activities might have on the environment. Nonetheless, given that to date the appeals have not yet been decided against these decisions of the Third Environmental Court, the Chilean Supreme Court has the last word. ○

Notes and references

- 1 Ministry of Social Development, CASEN 2013 Indigenous Peoples, Summary of Results, March 2015, http://observatorio.ministeriodesarrollosocial.gob.cl/documentos/Casen2013_Pueblos_Indigenas_13mar15_publicacion.pdf

- 2 Ministry of Social Development, CASEN 2015 Situation of Poverty in Chile, 2016, http://observatorio.ministeriodesarrollosocial.gob.cl/casen-multidimensional/casen/docs/CASEN_2015_Situacion_Pobreza.pdf
- 3 <http://www.eldesconcierto.cl/2016/12/15/mas-de-400-encuentros-se-han-realizado-en-el-marco-del-proceso-constituyente-indigena/>
- 4 In this most recent constitutional drafting process 200,000 people participated in the country as a whole, which included the participation of indigenous peoples. In this process the citizenry placed a high priority on recognition of the rights of indigenous peoples, and, in the regions of high indigenous demography, similarly prioritized principles such as multiculturalism and plurinationality, <https://www.unaconstitucionparachile.cl/>
- 5 One US dollar is equivalent to 650 Chilean pesos.
- 6 *CONADI disminuye compras de tierras reclamadas por comunidades indígenas*. El Mercurio, November 16, 2016, at <http://www.economiaynegocios.cl/noticias/noticias.asp?id=309676>.
- 7 http://www.senado.cl/presupuesto-2015-piden-priorizar-restitucion-de-tierras-a-comunidades-que-han-confiado-en-el-camino-institucional/prontus_senado/2014-10-24/161336.html
- 8 As of mid 2016 only 9 requests for the granting of these coastal marine spaces had been approved or were in the process of being approved for indigenous communities or associations. See <http://www.elmostrador.cl/noticias/opinion/2016/05/22/pueblos-originarios-y-espacio-costero/>
- 9 Terram Foundation, Environmental Balance Sheet 2016, <http://www.terram.cl/wp-content/uploads/2016/12/Balance-Ambiental-2016-Fundaci%C3%B3n-Terram.pdf>
- 10 Ministry of Social Development, <http://www.ministeriodesarrollosocial.gob.cl/noticias/2016/01/20/ingreso-a-tramitacion-en-el-congreso-los-proyectos-de-ley-para-la-creacion-del-ministerio-y-los-consejos-de-pueblos>
- 11 Bulletin No. 9404-12
- 12 <https://observatorio.cl/organizaciones-cuestionan-proyecto-de-ley-de-biodiversidad-y-su-avance-sin-haber-concluido-consulta-indigena/>
- 13 Bulletin No. 7543-12
- 14 The bill is currently in the Senate after having passed in the House of Representatives.
- 15 <http://seia.sea.gob.cl/busqueda/buscarProyecto.php>
- 16 An emblematic case exemplifying this situation is that of power plants, which only have to submit to an environmental assessment when they generate more than 3 MW.
- 17 Use of this law to persecute acts of Mapuche social protest was denounced in 2014 by the Inter-American of Human Rights Court (IACHR Court) in its judgment in the case of *Norin Catrیمان et al. v. Chile*. The Court found that the State of Chile, among other rights, had violated legality and the presumption of innocence, judicial guarantees, and personal liberty in the case of eight Mapuches sentenced to prison under this act.
- 18 This case has been publicized by Amnesty International on its Human Rights Defenders Platform: <http://amnistia.cl/nota/karina-riquelme-viveros/>
- 19 In summary, in order to regularize ownership of indigenous property, the general procedures have been applied that regulate the administration and alienation of government property, such as Decree Law 1939 of 1979; a rule of exception applies to private property, that is, Decree with Force of Law 2695, which allows small real properties to be regularized.
- 20 Inter-American Commission of Human Rights. Admissibility Report No. 29/13, dated March 10, 2013. Case 12,904.
- 21 These lands have a total area of 333 km²; their perimeter measures 94 kilometers, amounting to approximately 31,980 hectares, according to the Territorial Delimitation of the Aymara Indige-

- nous Community of Chusmiza Usmagama, conducted by the Department of Historic and Geographic Sciences of the School of Education and Humanities of the University of Tarapacá, at the request of the Chusmiza – Usmagama Indigenous Community, completed in November of this year, 2016.
- 22 Bulletin 7543-12.
 - 23 Waters Code, Decree with Force of Law 1122 de 1981 and its subsequent modifications.
 - 24 Supreme Court, Docket No. 11,040-2011, judgment of March 30, 2012.
 - 25 Environmental Court of Santiago, Docket No. R-54-2014.
 - 26 Supreme Court, Docket No. 817 – 2016, Cassation Appeal.
 - 27 Case 12,741.
 - 28 Inter-American Commission of Human Rights. Admissibility Report No. 1411/09, dated September 30, 2009.
 - 29 Petition 687/2011.
 - 30 Public redress ceremony; reform of adoption law; and training in human rights for operators of the justice system and public officials.
 - 31 Bulletin 10,683-06.
 - 32 Law 20,600.
 - 33 Which had been previously set through Supreme Decree 40 of the Ministry of the Environment and Supreme Decree 66 of the Ministry of Social Development, both of 2013.
 - 34 Second Environmental Court, claim filed by the organization named "Indigenous Peoples United of the Basin of Tarapacá, Quebrada de Aroma, Coscaya, and Miñi Miñi" (PIUCT), which sought to void the decision of the Committee of Ministers that had favorably qualified the "Paguanta Prospection Test Drilling," mining project located at the headwaters of the basin of the Tarapacá stream, which is ancestral territory of Andean communities of the Aymara and Quechua people in the Tarapacá Region. Judgment of December 1, 2015 (Docket No. R-54-2014) and Judgment of May 19, 2016 (Docket No. 817-2016).
 - 35 Third Environmental Court, claims filed by José Cayún against the ruling for enforcement of the Committee of Ministers' decision that had rejected the administrative appeal filed against the favorable environmental qualification of the "Pasada Mediterráneo Power Plant" project. Judgment of November 17, 2016 (Docket No. R-38-2016). Claim filed by the Benancio Huenchupán Indigenous Community against the Committee of Ministers' decision that favorably qualified the "Doña Alicia Hydroelectric Power Plant" project. Judgment of December 28, 2016 (Docket No. R38-2016).

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THE PACIFIC

AUSTRALIA

Indigenous peoples hold a long and complex connection with the Australian landscape, including marine and coastal areas. Recent research indicates that this relationship has endured for at least 50,000 years. Throughout their history, Aboriginal people have lived in all parts of Australia. Today the majority live in regional centres (43%) or cities (32%), although some still live in on traditional lands in remote or very remote areas. At colonisation in 1788, there may have been up to 1.5 million people in Australia. Today the Aboriginal population is estimated at some 745,000 individuals¹ or 3% of Australia's total population of 24,220,200.²

Aboriginal and Torres Strait Islander Australians contribute in every area of public, social and community life, including the arts, media, academia, politics, sport and business. However, the gap in life expectancy, health, education and employment between Aboriginal and Torres Strait Islander and non-indigenous Australians remains unacceptably wide despite the Close the Gap Campaign launched in 2006 by the Aboriginal and Torres Strait Islander leadership and receiving since 2008 bipartisan government support at Commonwealth, state and territory levels.

The status of Aboriginal and Torres Strait Islander peoples as the first peoples of Australia has been recognized in a number of ways: through common law native title and the historic *Mabo* decision, and in legislation such as *The Racial Discrimination Act* (1975), the *Native Title Act* (1993), and the *Aboriginal and Torres Strait Islander Commission Act* (1989 and 2005). Other landmarks event have been the *Australian Declaration Towards Reconciliation* and the *Roadmap for Reconciliation* (2006) and National Apology to the Stolen Generations (2008) At national level there is a ministry of Indigenous Affairs and since 2015 an Assistant Ministry for Care and Indigenous Health and States and Territories have legislation on indigenous rights. Australia has not ratified ILO Convention No. 169 but, although it voted against the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, it went on to endorse it in 2009.



In July 2016, Australia held a “double dissolution” election to elect the 226 members of the 45th Parliament of Australia—150 MPs and 76 senators. With only a one-seat majority, the liberal-national Coalition headed by Prime Minister, Malcolm Turnbull, was able to remain in power.

The two-month long federal election campaign was devoid of any real engagement in Aboriginal and Torres Strait Islander affairs. This sparked a united call for action from a coalition of Aboriginal and Torres Strait Islander peak representative organizations. On 9 June 2016, they signed an election platform declaration, the Redfern Statement, which calls on the 45th Parliament to meaningfully engage with Aboriginal and Torres Strait Islander peoples and commit to a plan of action aimed at addressing issues regarding health, justice, violence prevention, early childhood and disability as a matter of national priority.³

Closing the gap: limited progress

That such a plan of action is needed is corroborated by several reports issued during 2016.⁴ The life expectancy gap is still around ten years⁵ and only two targets – child mortality and year 12 school attainment – are on track to be met by 2020. The rate of employment among indigenous adult and youth is half as high as that of their non-indigenous peers. Racial discrimination is widespread, in particular in the major cities.⁶

The health situation is particularly alarming. The gap in mortality rates remains 1.7 times higher for Aboriginals and Torres Strait Islanders than for non-indigenous people (2009-2013). Mortality among children aged 0–4 years is 1.9 times higher than for non-indigenous children. Aboriginal and Torres Strait Islander Australians also have higher rates of chronic diseases and the mortality rate from diabetes is 12 times higher than the rate for non-indigenous Australians. Other data show that Aboriginal and Torres Strait Islanders adults are overrepresented when talking about severe or profound disability, obesity, increased substance misuse, high levels of psychological distress and hospitalisations for self-harm.⁷

For the past 7 years, there have been demonstrable improvements in access to, and usage of, primary health services and medicine. However, many barriers for further improvements remain and include: lack of services, in particular within mental health; lack of affordable and social/cultural acceptable services; and racism and institutional racism in services.⁸

Concurrently, it has been found that Aboriginal Community Controlled Health Organisations (ACCHOs) are preferred as primary health care providers since they are better positioned to provide a culturally competent service aligned with Aboriginal and Torres Strait Islander peoples' holistic concept of health.⁹

Even if the average health expenditure per indigenous person is 1.47 times that for non-indigenous people, government expenditure continues to not be commensurate with the substantially greater and more complex health needs of Aboriginal and Torres Strait Islander people.

Suicide: a leading cause to gap in life expectancy

Suicide has emerged as a major cause of indigenous premature mortality and it was in 2014 the fifth leading cause of death among indigenous people, primarily

men, although the number of suicides and self-harm among indigenous females is increasing. Indigenous children and young people are particularly vulnerable: indigenous 15–24 year olds are over five times as likely to suicide as their non-indigenous peers and 30% of the nation's youth suicides (to age 17) are Aboriginal. Aboriginal children represent 80% of the nation's suicides of children aged 12 years and less. 'Suicide clusters', or a series of suicide completions and/or self-harming acts that occur within a single community or locale over a period of weeks or months, is also a significant concern, particularly among younger people.

The 2016 report of the Aboriginal and Torres Strait Islander Suicide Prevention Evaluation Project (ATSISPEP) responds to the strong need for further research into indigenous suicide prevention and for service and program evaluation.¹⁰ The report findings are *inter alia* based on round-table consultations in 12 indigenous communities across Australia; as well as key themes and recommendations from the inaugural National Aboriginal and Torres Strait Islander Suicide Prevention Conference held in Alice Springs on 5–6 May 2016. One of the report's many conclusions and recommendations is the importance of strengthening social and emotional wellbeing and providing culturally safe service environment and culturally competent staff. The report also finds that a common success factor in community-based interventions or responses to indigenous suicide is their development and implementation through indigenous leadership and in partnership with indigenous communities based on the principle that indigenous people have the right to be involved in service design and delivery as mental health consumers.

Native lands and Aboriginal youths

More than 20% of Australia is owned by indigenous peoples under native title and statutory land rights schemes.¹¹ Most of this land (98%) is found in very remote areas, and land has primarily great cultural significance but low commercial value. Native title provides Aboriginal and Torres Strait Islander Australians with communal rights and interests, with varying levels of control and management of lands and waters.

Even though the concept of native title has been at the core of indigenous Australians' struggle for their rights, there is today a growing concern that young people feel disengaged with their native title organisations, communities and

land. This concern was at the center of the National Native Title Conference 2016 in Darwin, Northern Territory, 1-3 June 2016.¹² An indigenous youth forum comprised by two talking circles¹³ was therefore held on the first and last day of the conference for conference delegates under the age of 35 years.

The majority of delegates were native title holders, and the remaining delegates were claimants. Despite this, there was a significant lack of engagement with native title processes as well as a lack of involvement in and knowledge of the sector. Delegates found that living away from their native title lands caused significant challenges, including difficulty involving themselves in Prescribed Bodies Corporate (PBC) or communities. They also viewed native title as an 'older person thing'. They felt that their parents' and grandparents' generations were advocating on their behalf and that they did not have the appropriate knowledge (or access to it) to be involved in the decision-making processes. Some also were ashamed of speaking up or having their opinions or ability to contribute devalued by senior group members.

Despite the feelings of disengagement expressed, delegates reinforced the value and importance to them of their country and native title rights and interests. In order to resolve some of the issues identified, they also discussed the possibility of creating a national network of young Indigenous people, aimed at creating a sense of belonging for youth operating in the native title space and to support increased youth participation in the sector.

The Constitutional Recognition process

A further step towards a national referendum about recognising indigenous peoples in the Constitution was taken in May with the decision to launch a thorough and inclusive process for consulting all Australians, including Aboriginal and Torres Strait Islander peoples. The process will be led by the Referendum Council appointed in December 2015¹⁴ by the Prime Minister, the Hon Malcolm Turnbull MP, and the Leader of the Opposition, the Hon Bill Shorten MP.

The consultation process started in June with a series of meetings with Aboriginal and Torres Strait Islander leaders, including traditional owners and representatives of peak bodies. During the second half of 2016, a concurrent series of indigenous consultations, community-wide and digital consultations took place.

The key proposals for reform include i) drafting a statement acknowledging Aboriginal and Torres Strait Islander peoples as the First Australians, ii) amending

or deleting the ‘race power’, section 51 (xxvi); iii) inserting a constitutional prohibition against racial discrimination into the Constitution; iv) providing for an Indigenous voice to be heard by Parliament, and the right to be consulted on legislation and policy that affect Aboriginal and Torres Strait Islander people; v) deleting section 25, which contemplates the possibility of a State government excluding some Australians from voting in State elections on the basis of their race.¹⁵

Further consultations are planned for early 2017. Following their conclusion, the Council will deliver its Final Report. The date for the introduction into parliament of a bill to amend the Constitution will be determined by the government.¹⁶

Indigenous leaders have already made it clear that a ‘minimalist’ approach—one that provides symbolic recognition in a constitutional preamble, removes section 25 and moderates the race power (section 51 (xxvi))—would not be acceptable to Aboriginal and Torres Strait Islander peoples. Many of them are also more in favor of treaties modeled on those other Commonwealth countries have with their indigenous peoples, as they see treaties as being less “symbolic” and having more substance than a constitutional recognition. Several states have begun working on such treaties with their indigenous communities.¹⁷

Political participation

Indigenous people have long advocated for better political representation and fairer consultation. Aboriginal and Torres Strait Islander peoples are the First Peoples, but they are less than 3% of the Australian population. In Australia’s representative democracy, which works by majority vote at the ballot box and in Parliament, it is difficult for their voice to be heard and for them to influence laws that are made about them. The newly elected Parliament includes five indigenous parliamentarians—three senators (Patrick (Pat) Dodson, Jacqui Lambie and Marilarri McCarthy) and two members of the House of Representatives—Ken Wyatt and Linda Burney. Ken Wyatt became the first elected Indigenous MP in 2010¹⁸ and has since 2015 been the Coalition’s Assistant Minister for Age Care and Indigenous Health. Linda Burney is the first indigenous woman to hold a seat in the federal House of Representatives and is the Australian Labour Party’s Shadow Minister for Human Services. At the state level, there are presently 11 indigenous state parliamentarians (7 men and 4 women).¹⁹

Free, prior and informed consent and genetic research

Over the past years there have been an increasing number of research projects dedicated to unravel the genetic ancestry of the indigenous peoples of Australia. In 2011, the first Aboriginal Australian genomic sequence obtained from a 100-year-old lock of hair donated by an Aboriginal man from southern Western Australia in the early 20th century was published.²⁰ It has been followed in 2016, by “A genomic history of Aboriginal Australia”²¹ published in the scientific journal *Nature*.

This article shows that because the continent has been inhabited for such a long time there exists an incredible genetic difference among Aboriginal Australians: groups from southwest Australia are genetically more different from groups in the northwestern part of Australia than for instance American Indians and Siberian peoples. This genetic differentiation started as early as 31,000 years ago. The study also explains why almost 90% of the contemporary Aboriginal Australian languages belong to the Pama-Nyungan language family which is only some 4,000 years old. This huge age difference with the genetic results seems to be the result of a migration wave from the northwest of the continent some 4,000 years ago, which brought with it massive linguistic and cultural changes but had very limited genetic impact.

Aboriginal and Torres Strait islander peoples—as many other indigenous peoples—have traditionally been very reticent about allowing tests of their blood, saliva, etc., to be taken and used for scientific purposes. The international team behind the article on the first aboriginal genome had therefore, prior to its publication in 2011, arranged for a series of discussions with Wongatha, Ngadju and other Aboriginal Australian peoples in Western Australia in order to get their formal consent. Subsequently, both researchers and the Aboriginal groups involved in that project expressed interest in additional research. Hence, collaborations were expanded to include Aboriginal Australians from numerous language groups across Australia who were approached to participate in the research project.²² This collaboration was based on a set of ethical rules. In the case of the team from the University of Copenhagen, for instance, project ethics were elaborated on the basis of the research guidelines set by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and the Free, Prior and Informed Consent (FPIC) protocols for working with indigenous peoples set by the United Nations Declaration on the Rights of Indigenous Peoples 2007. Following Danish

law, the project proposal was also submitted to the National Committee on Health Research Ethics, Denmark. Initial meetings were held with key individuals of Aboriginal communities, and whenever possible, a senior person from the group was engaged as a consultant and culturally appropriate liaison. The ideas and suggestions put forward by these representatives were incorporated into the planning stages of this research. Discussions with potential participants included a background to the genetic research. Participants were made aware that while the results would be published, their identities would remain anonymous. Participants were advised that if they wished to withdraw from the study at any time they may do so by contacting the elder from their group or the locally-based researcher without having to offer any explanation for their decision. Plain English consent forms were provided too and signed by each participant who were also filmed giving their consent. To protect anonymity, the filmed consents are held securely and are not directly accessible to anyone outside the immediate research team. If there was a challenge to the process of obtaining consent, an arrangement will be made for a mutually acceptable third party to view the footage and confirm that consent was freely given.²³ ○

Notes and reference

- 1 The actual numbers are highly disputed because of the difficulty in estimating a population so very much changed by colonization.
- 2 The results of the 2016 census on population and housing are not yet available. See ABS *Estimates and Projections, Aboriginal and Torres Strait Islander Australians, 2001 to 2026*, Cat. no. 3238.0.(2014)
- 3 Redfern Statement, at <http://nationalcongress.com.au/about-us/redfern-statement/>
- 4 See, e.g., Australian Government, *Closing the gap: Prime Minister's report 2016*, at <https://www.dpnc.gov.au/resource-centre>; The Close the Gap Campaign Steering Committee, February 2016: *Closing the gap - progress and priorities*, at www.humanrights.gov.au/social_justice/health/index.html; SCRGP (Steering Committee for the Review of Government Service Provision) 2016, *Overcoming Indigenous Disadvantage: Key Indicators 2016*, Productivity Commission, Canberra; Human Rights Commission, *Social Justice and Native Title Report 2016* at <http://www.humanrights.gov.au://www.humanrights.gov.au/publication>.
- 5 Life expectancy for Aboriginal Australian men and women is 69 and 73 years respectively compared with that of non-indigenous Australian 79 and 83 respectively.
- 6 In 2014-15, more than one in three Aboriginal and Torres Strait Islander Australians aged 15 years and over reported they felt treated unfairly due to their indigenous status—in particular through hearing racial comments/jokes
- 7 See *Closing the gap - progress and priorities*.

- 8 The recent case of Geoffrey Gurrumul Yunupingu a multi-award winning and internationally known singer who was allegedly denied adequate treatment for hours has been seen as illustrative of the systemic issues of racial bias in the medical care of indigenous people. For the whole story, see <https://www.theguardian.com/music/2016/apr/14/race-row-rages-on-over-gurrumul-hospital-ordeal>
- 9 See Closing the gap – progress and priorities.
- 10 The ATSISEEP report “Solutions that work: what the evidence and our people tell us” is available at www.atsissep.sis.uwa.edu.au
- 11 Dr Leon Terrill, “Indigenous Land Reform Project”, Indigenous Law Centre, Faculty of Law, UNSW, at <http://www.ilc.unsw.edu.au/node/1424>
- 12 The conference was co-convened by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and the Northern Land Council, and hosted by the Larrakia people. See Report on the Indigenous Youth Talking Circles at <http://www5.austlii.edu.au/au/journals/Native-TitleNlr/2016/12.pdf>
- 13 For indigenous Australians, talking circles symbolize completeness and equality and are used as a cultural sensitivity approach.
- 14 The Council comprises sixteen Indigenous and non-Indigenous members. It is Co-Chaired by Ms Pat Anderson and Mr Mark Leibler AC <https://www.referendumcouncil.org.au>
- 15 See <https://www.referendumcouncil.org.au>
- 16 See <https://www.referendumcouncil.org.au/get-the-facts>
- 17 See, e.g., “What will Indigenous treaties mean?” Updated 14 Dec 2016, at <http://www.abc.net.au/news/2016-12-14/creation-of-indigenous-treaties-being-led-by-states/8119488>
- 18 Senator Neville Bonner was the first Indigenous Member of Parliament in 1971.
- 19 The first indigenous state parliamentarian was elected in 1974 to the Northern Territory state parliament.
- 20 Rasmussen et al., “An Aboriginal Australian Genome Reveals Separate Human Dispersals into Asia”, *Science*. Oct 7, 2011;334(6052):94-8. This article shows that Aboriginal Australians are descendants of an early human dispersal from Africa into eastern Asia, possibly 62,000 to 75,000 years ago. It also supports the hypothesis that present-day Aboriginal Australians descend from the earliest humans to occupy Australia, likely representing one of the oldest continuous populations outside Africa. At <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3991479>
- 21 Anna-Sapfo Malaspinas et al. “A genomic history of Aboriginal Australia”, *Nature* 538, 13 October 2016, pp.207–214. Can be downloaded at: https://www.researchgate.net/publication/30839120-8_A_genomic_history_of_Aboriginal_Australia
- 22 The international research team included geneticists from Griffith University (Australia) and from the University of Copenhagen.
- 23 See S01 Ethical approvals in relation to sampling in Australia at <http://www.nature.com/nature/journal/v538/n7624/extref/nature18299-s1.pdf>

*This article has been compiled by **Diana Vinding** on the basis of documents and reports from various sources.*

AOTEAROA (NEW ZEALAND)

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

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

New Zealand endorsed the UN Declaration on the Rights of Indigenous Peoples in 2010. New Zealand has not ratified ILO Convention N° 169.

Māori advocate for constitutional transformation

In January 2016, Matike Mai Aotearoa, an independent iwi-led working group on constitutional transformation, released its report on an inclusive constitution for Aotearoa: *He Whakaaro Here Whakaumu Mō Aotearoa*.² The iwi-led effort paralleled a limited government-led conversation on the constitution that ended in 2013 (see *The Indigenous World 2013*). The working group's report is based upon hundreds of *hui* (meetings), submissions and discussions with Māori. It includes consideration of possible foundational values for a new constitution, such as community, belonging and conciliation. It also discusses six indicative constitutional models that emerged from the working group's consultations. Several of these models feature three spheres of influence: the *rangatiratanga* sphere

“where Māori make decisions for Māori”, the *ka*° *wanatanga* sphere “where the Crown will make decisions for its people” and the relational sphere where Māori and the Crown “will work together as equals” in joint decision-making.³ The working group identifies 2040 as an aspirational goal for some form of constitutional transformation for Aotearoa. Its recommendations include the need for discussions on constitutional transformation to continue, as well as formal dialogue between Māori, the Crown and local authorities; establishment of a further working group; and that, in 2021, dialogue be initiated with the Crown to organise a Treaty convention on constitutional transformation. The government has not commented on the report.

Waitangi Tribunal reports on TPPA

The Waitangi Tribunal held an urgent hearing in March into claims that the Trans-Pacific Partnership Agreement (TPPA) breached Māori Treaty rights (see *The Indigenous World 2016* and *2013*). While the Tribunal’s *Report on the Trans-Pacific Partnership Agreement* did not find that the TPPA’s text breached the Treaty of Waitangi, the Tribunal did identify concerns regarding the ability of foreign investors to bring claims against the New Zealand government. In particular, it noted:

*We are not in a position to reach firm conclusions on the extent to which ISDS [investor-state dispute settlement] under the TPPA may prejudice Māori Treaty rights and interests, but we do consider it a serious question worthy of further scrutiny and debate and dialogue between the Treaty partners. We do not accept the Crown’s argument that claimant fears in this regard are overstated.*⁴

Despite these concerns, legislation to align New Zealand’s domestic law with its obligations under the TPPA and enable ratification of the TPPA received royal assent in November.⁵ With Donald Trump’s assumption of the United States Presidency, however, the TPPA now looks set to collapse. If the TPPA does proceed and there are allegations of a Treaty breach, the Waitangi Tribunal has noted that Māori could return to the Tribunal: “if prejudice is alleged in future because of some Crown action or omission (short of introduction of a Bill) or inaction, then it remains open for Māori to submit a claim alleging a breach of the principles of the Treaty of Waitangi.”⁶



In its report, the Tribunal also commented on the government's engagement with Māori regarding international treaty negotiations. The Tribunal reiterated its findings in the Wai 262 claim (see *The Indigenous World 2012*), stating that "Māori interests are entitled to a reasonable degree of protection when those interests are affected by international instruments entered into by the New Zealand Government".⁷

Māori land reform progresses

Progress on major reforms to the governance and administration of Mā Māori land continued in 2016 (see *The Indigenous World 2016* and 2014). The Waitangi Tribunal released a pre-publication report on the reforms in March: *He Kura Whenua ka Rokohanga: Report on Claims about the Reform of Te Ture Whenua Māori Act 1993*. The Tribunal considered whether both the Crown's consultation process on the exposure draft of the Bill and the content of the draft Bill breached the Treaty. It found flaws in the 2013 and 2015 consultation processes and stated "that the Crown will be in breach of Treaty principles if it does not ensure that there is properly informed, broad-based support for Te Ture Whenua Māori Bill to proceed."⁸ The Tribunal also identified concerns with the content of the draft Bill,

primarily for failing to protect the retention of Māori land and the effective authority of its owners. These concerns included the flawed wording of the Māori-language version of the Bill, which the Tribunal stated “cannot be adopted in its present form”; the ability of minorities of owners to hold second-chance meetings regarding Māori land with no quorum required; and, the fact that thresholds of owner agreement will only be required of governance bodies in select cases.⁹ It also found that insufficient information had been provided regarding the Māori Land Service established under the Bill.¹⁰ The Tribunal’s recommendations included further consultations with Māori on the draft Bill, the development of decision-making on the operation of the Māori Land Service collaboratively with Māori landowners; and the avoidance of “legislative solutions which enable, in legal or practical terms, small groups of participating Māori landowners to effectively alienate the interests of other Māori landowners”.¹¹ Despite the Tribunal’s recommendations, Te Ture Whenua Māori Bill was introduced into the House of Representatives the following month and passed its second reading in December.

New Māori language Act

New legislation aimed at revitalising the Māori language (see *The Indigenous World 2016*) was enacted early in 2016: Te Ture mō Te Reo Māori / Māori Language Act 2016.¹² The Act repeals the earlier Māori Language Act 1987 and part of the Broadcasting Act 1989. It establishes an independent entity, Te Mātāwai, to lead community efforts at revitalisation while the Crown retains responsibility for leadership at the national level. In a first for Aotearoa, the Act is enacted in both the Māori language and English, with the Māori text prevailing in case of inconsistency.

International attention on Māori rights

The United Nations (UN) Human Rights Committee and the UN Committee on the Rights of the Child (CRC) both commented on the human rights situation of Māori during 2016. The UN Human Rights Committee’s concluding observations on the sixth periodic report of New Zealand under the International Covenant on Civil and Political Rights included recommendations that New Zealand “revise the Ma-

rine and Coastal Area (Takutai Moana) Act 2011 with a view to ensuring respect of the customary rights of Māori on their land and resources, and their cultural development”;¹³ “[s]trengthen the role of the Treaty of Waitangi in the existing constitutional arrangements”;¹⁴ “[g]uarantee the informed participation of indigenous communities in all relevant national and international consultation processes”;¹⁵ “[i]mplement technical capacity programmes for indigenous communities aiming at their effective participation in all relevant consultation and decision-making processes”;¹⁶ “take all appropriate measures to enhance Māori and Pasifika representation in government positions at all levels, in particular at the local council level, including through the establishment of special electoral arrangements”;¹⁷ and, evaluate the impact of law enforcement operational policies on indigenous peoples and provide training to law enforcement officials to protect against racial profiling.¹⁸

The UN Committee on the Rights of the Child’s concluding observations on the fifth periodic report of New Zealand under the Convention on the Rights of the Child included a recommendation that New Zealand makes further efforts to preserve Māori identity, including intensifying “efforts to promote and foster Māori language, culture and history in education and increase enrolment in Māori language classes”;¹⁹ take “urgent measures to address disparities in access to education, health services and a minimum standard of living by Māori and Pasifika children and their families”;²⁰ “address the root causes of youth suicide, with special attention to Māori children”;²¹ “introduce a systemic approach to addressing child poverty, in particular [regarding] Māori and Pasifika children”;²² and, “strengthen its efforts to address the overrepresentation of Māori and Pasifika children and young people in the juvenile justice system”.²³ The New Zealand government made no statement on the reports in the national media.

No Treaty breach regarding dolphins

In May, the Waitangi Tribunal issued a priority report concerning threats to the Māui’s dolphin as part of its Te Rohe Pōtae (Wai 898) district inquiry: *The Priority Report concerning Maui’s Dolphin*. The Tribunal found that Māui’s dolphin is a *taonga* (treasure) to the claimant groups (Ngāti Te Wehi and Ngāti Tāhinga) and, accordingly, that their *kaitiaki* (guardianship interests) were deserving of active

protection under the Treaty. However, it concluded that the Crown had not breached its duties under the Treaty in the process of finalising its Threat Management Plan for the Māui's dolphin nor did the plan itself breach the Treaty. It noted that the Crown was required to balance Treaty interests in Māui's dolphin with customary fishing interests in the dolphin's habitat.²⁴

Treaty settlements continue

Progress continued throughout 2016 in the settlement of Māori claims for historical Treaty breaches.²⁵ One group had their mandate recognised,²⁶ three signed terms of negotiation with the Crown,²⁷ one signed an agreement in principle,²⁸ three agreed that their deeds of settlement were ready for presentation to their members for ratification,²⁹ two signed deeds of settlement with the Crown,³⁰ five had legislation giving effect to their settlements introduced,³¹ and one had the legislation giving effect to their settlement enacted.³²

One notable development was the introduction of legislation giving effect to the Whanganui River Deed of Settlement (Ruruku Whakatupua) in May. This settles the historical claims of Whanganui Iwi concerning the Whanganui River, through the establishment of Te Pā Auroa nā Te Awa Tupua as a legal framework for the river, and creates legal personality for the Whanganui River known as Te Awa Tupua.³³ ○

Notes and references

- 1 Statistics New Zealand, <http://www.stats.govt.nz>
- 2 Matike Mai Aotearoa *He Whakaaro Here Whakaamu Mō Aotearoa: The Report of Matike Mai Aotearoa - The Independent Working Group on Constitutional Transformation* (January 2016).
- 3 *Ibid* at 9.
- 4 Waitangi Tribunal *Report on the Trans-Pacific Partnership Agreement* (2016) at 50.
- 5 The Trans-Pacific Partnership Agreement Amendment Act 2016.
- 6 Waitangi Tribunal, above n 4, at 52.
- 7 Waitangi Tribunal, above n 4, at 7; Carwyn Jones *Waitangi Tribunal Report on the TPPA* (5 May 2016) <https://ahikaroa.wordpress.com>
- 8 Waitangi Tribunal *He Kura Whenua ka Rokohanga: Report on Claims about the Reform of Te Ture Whenua Māori Act 1993* (2016) at 355.
- 9 *Ibid* at 356-357.
- 10 *Ibid* at 359.

- 11 Ibid at 359-361.
- 12 Available at <http://www.legislation.govt.nz/act/public/2016/0017/29.0/DLM6174509.html>
- 13 United Nations (UN) Human Rights Committee *Concluding observations on the sixth periodic report of New Zealand* 28 April 2016 UN Doc CCPR/C/NZL/CO/6 at [44].
- 14 Ibid at [46(a)].
- 15 Ibid at [46(b)].
- 16 Ibid at [46(c)].
- 17 Ibid at [48]. The term *Pasifika* is used to describe people living in New Zealand who have migrated from the Pacific Islands or who identify with the Pacific Islands because of ancestry or heritage.
- 18 Ibid at [24].
- 19 UN Committee on the Rights of the Child *Concluding observations on the fifth periodic report of New Zealand* 21 October 2016 UN Doc CRC/C/NZL/CO/5 at [19(a)].
- 20 Ibid [15(a)].
- 21 Ibid [17].
- 22 Ibid [36(a)].
- 23 Ibid [45(e)].
- 24 Waitangi Tribunal *The Priority Report concerning Maui's Dolphin* (2016).
- 25 For further information see Office of Treaty Settlements <https://www.govt.nz/organisations/office-of-treaty-settlements/>
- 26 Te Korowai o Wainuiārua.
- 27 Maniapoto; Moriori; and Ngāti Maru (Taranaki).
- 28 Ngāti Kahungunu ki Wairarapa.
- 29 Ngāti Tūwharetoa; Ngāti Tamaoho; and Te Tira Whakaemi o Te Wairoa.
- 30 Ahuriri Hapū; Rangitāne o Wairarapa Tāmaki Nui-a-Rua.
- 31 Ngāti Pūkenga; Ngatikahu ki Whangaroa; Ngāi Te Rangi; Whanganui River Legislation; and Rangitāne o Wairarapa Tāmaki Nui-a-Rua.
- 32 Ngāti Hineuru.
- 33 Te Awa Tupua (Whanganui River Claims Settlement) Bill 2016.

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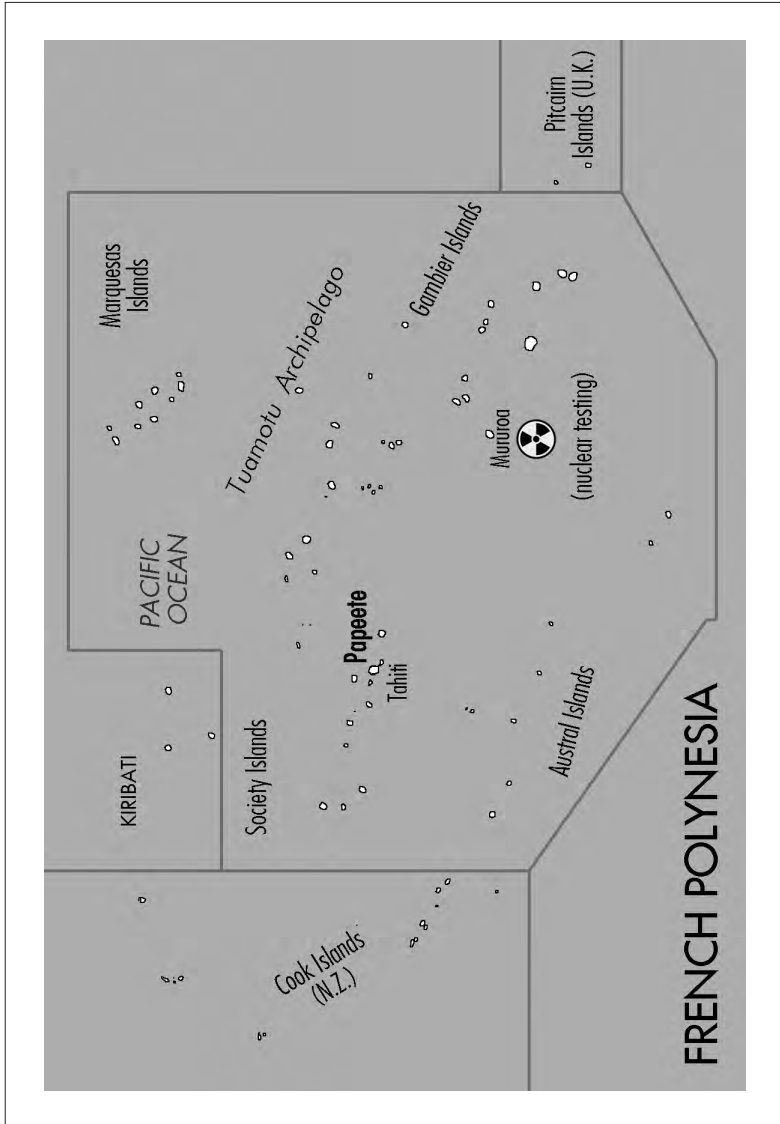
FRENCH POLYNESIA

A former French colony, French Polynesia has since 2004 been an Overseas Collectivity (*Collectivité d'Outre-mer*) of 270,000 inhabitants (around 80 % of whom are Polynesian).¹⁰ As a collectivity, it has relative political autonomy within the French Republic through its own local institutions: the Government and Assembly of French Polynesia. Social inequalities have been severely exacerbated by the economic crisis that French Polynesia has been suffering since the turn of the millennium. As of 2009, one in every five households was living below the poverty line.²

Up until 2004, political life in French Polynesia was divided into a dichotomy between those in favour of autonomy, represented by Gaston Flosse's *Tahoeraa Huiraatira* political party (and advocating French Polynesia's continued existence within the French Republic) and those in favour of independence, represented by Oscar Temaru's *Tavini Huiraatira* party. Since then, French Polynesia has suffered a period of serious political instability along with the creation, in February 2016, of a third large political party, *Tapura Huiraatira*, complicating local political life yet more. This autonomist party was created by Edouard Fritch, President of French Polynesia since September 2014 when he replaced Gaston Flosse who had become ineligible. With a war of succession being waged within the autonomist family, creating this party enabled Edouard Fritch to establish a new majority in the Assembly and hold onto his presidential title.

The UN and the right to self-determination

French Polynesia has been placed back on the UN's list of non-self-governing territories since May 2013. While opponents of its re-inscription see this as an implicit demand for independence, its proponents note that this should result in a referendum on self-determination that offers a choice between becoming a French department, an associated state, or gaining full independence. The requests made to the UN Committee on Decolonisation in 2016 included recogni-



tion of the Polynesian languages as official languages alongside French and France's ratification of the European Charter for Regional or Minority Languages. The French state considers that "the French Polynesia issue" is a matter for the domestic policy sphere and has thus far not cooperated with the UN General Assembly's Fourth Committee, which is responsible for decolonisation issues.³ 2016, however, marked a turnaround in this "empty chair policy", which appeared to be counterproductive given that the committee was only ever hearing from the pro-independence side. An autonomist, Edouard Fritch, spoke for the first time on 4 October 2016 to present another vision of Polynesian demands – people who, he stressed, continued to vote largely for the autonomist parties – and also to share a number of areas of progress, including French Polynesia's incorporation, in September 2016, into the Pacific Islands Forum, composed thus far only of independent countries. Two other important points were also raised by the President in response to the demands of the independentists and the voluntary movements for protection of the environment and Mā'ohi culture: the impact of nuclear testing, which has been "recognised by the French state since 2010" through the passage of the Morin Law, and the management of natural resources: "the French state is not confiscating Polynesia's natural resources for its own benefit".⁴

The nuclear impact 20 years on

With 20 years passed since the end of nuclear testing (1966-1996), the Polynesian associations and churches continue to raise major concerns with regard to recognition of the social and health consequences, both moral and material, of those tests, as well as how the ensuing nuclear waste is managed. The Mā'ohi Protestant Church denounced the nuclear tests in 1982 and supported the call for French Polynesia's re-inscription in August 2012. This church – which has been involved since the 1990s in defending the Mā'ohi land (*te fenua*), language (*reo māōhi*) and people – stated during its August 2016 synod that it envisaged taking the French state to court for "crimes against humanity [...] given the attitude of the French state, which pays no attention to the misfortunes of the people". The difficulty the victims of nuclear tests have had in obtaining compensation, even though this was laid down in the Morin Law of January 2010, is perceived as an example of such disinterest on the part of the French state. By stating that, under certain circumstances, "the risk attributable to the nuclear tests can be considered

negligible”, the Morin Law only rarely enables victims to obtain compensation (7 Polynesian victims have been compensated, in contrast to the 1,043 cases submitted as of the end of 2016). During his only visit to French Polynesia on 23 February 2016, the President of the French Republic, François Hollande, stated that he wanted to amend the implementing regulations of the Morin Law to ensure better consideration of the victims without, however, removing the term “negligible risk”, which forms the stumbling block of the mechanism. The Catholic Church, thus far not particularly involved in the matter, has now authorised (or is tolerating) the work of one of its clerics on gaining recognition and reparation for the consequences of nuclear testing. Since January 2016, the “193 association” – referring to the number of nuclear tests conducted in French Polynesia – chaired by Father Auguste Uebe Carlson, has launched a petition that has garnered more than 50,000 signatures, or between a fifth and a quarter of the entire adult population. This petition is calling for a local referendum on the nuclear issue. Two questions would be asked: “Do you think that the 193 nuclear tests conducted at Fantataufa and Moruroa were a good thing?” and “Do you think that the French state should therefore provide compensation for this?”

The right to natural resources

The second subject of concern is related to natural resource exploitation and particularly that of subaquatic mineral resources – commonly known as “rare earth metals” – which could, over time, constitute a major area of economic wealth given the extent of French Polynesia’s exclusive economic zone (EEZ). In November 2015, the Overseas Minister, George Pau-Langevin, recalled that mineral resource exploitation was the responsibility of the collectivity and not the French state, by virtue of an organic act of 2004. Nevertheless, fears that such responsibilities could be redefined to the benefit of the French state have arisen based on the fact that current French legislation stipulates that the state exercises its responsibility over “strategic raw materials” (minerals useful in atomic energy, liquid and gas hydrocarbons) and that the French state could redefine the list of materials considered “strategic” at any time.

Hotel projects and environmental protection

Finally, several plans to create or extend large hotel facilities have elicited a strong reaction from local environmental and cultural protection organisations.

The hotel project in Papeno'o valley (Tahiti), comprising the construction of a road through the Maroto valley, a luxury hotel, a golf course and a cultural tourist centre has drawn the attention of the Mā'ohi Protestant Church and associations such as Haururu who, given the pressure from investors, are concerned about the ecological impact of this project. Such projects, including for example, the plan to revive phosphate mining in Makatea, promise to create several hundred jobs and French Polynesia has been severely affected by unemployment (21.8% in 2012, according to the ISPF). Haururu is therefore aware of the importance of economic development issues and has thus submitted an alternative project that would enable economic development to go hand in hand with land conservation and respect for their culture. ○

Notes and references

- 1 The last census that mentioned "ethnic" categories was in 1988: "Polynesians and similar" accounted for 80.58%, "Europeans and similar" 13.28% and "Asiatics and similar" 5.42%.
- 2 Institute of Statistics (ISPF), Survey into household living conditions in French Polynesia. 2009.
- 3 Le Monde, "Polynésie: la France dénonce une "ingérence flagrante" de l'ONU" ("French Polynesia: France denounces UN's "flagrant interference"), *Le Monde*, 17 May 2013.
- 4 La Dépêche de Tahiti, "La Polynésie prend la parole ce matin à New York" ("Polynesia to speak in New York this morning"), *La Dépêche de Tahiti*, 4 October 2016.

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KANAKY – NEW CALEDONIA

New Caledonia is an archipelago of 18,575 km² in the South Pacific. The main island, Grande Terre is 400 km long and 50 km wide.¹ Apart from Grande Terre, it comprises the Belep Islands to the north, the Loyalty islands (Ouvéa, Lifou, Tiga, Maré or *Iaai*, *Drehu*, *Tokanod* and *Nengone* in the respective indigenous languages) to the east, the Île des Pins (*Kunié ou Kwényii* in indigenous language) to the southeast and the uninhabited islands of Chesterfield, Huon and Surprise, as well as the Bellone reefs, Walpole Island, the islands of Astrolabe, Matthew and Fearn or the Hunter Islands.² Grande Terre is very rugged, with a central mountain range that has peaks reaching well over 1,600 m. New Caledonia also comprises an economic exclusive zone (EEZ) of 1,740,000 km², or three times the area of France. New Caledonia is 18,000 km from France.

According to the 2014 census, New Caledonia's population totals 268,767 inhabitants, broken down into 39% Kanak, 27% Europeans (mainly French), 8% Wallisians and Futunians, and almost 15% residents of other origins (Tahiti, Indonesia, Vanuatu, Vietnam, other Asiatic origin). 32% of the population is under 20 years of age.³

Since its takeover in 1853, New Caledonia has been under French rule but has been in a decolonisation process since the signing of the Matignon-Oudinot Accords in 1988, reaffirmed by the signing of the Nouméa Accord in 1998.⁴ These agreements provide for a referendum to be organised between 2014 and 2018 which will define the institutional future of the country and the transfer, by the French State, of some of its sovereign powers (yet to be defined) to New Caledonia.⁵ This decolonisation process is the fruit of a Kanak nationalist struggle for independence that started in the 1970s. This struggle was based on the Kanak people's right to self-determination and independence and its will to free itself from the colonial system imposed by France since 1853. The Matignon-Oudinot Accords divided the country into three provinces (North, South and Islands), created an agency in charge of rural and land development (ADRAF), an agency that would develop the Kanak culture (ADCK), and new institutions based on "*la coutume*" (custom) such as the Customary

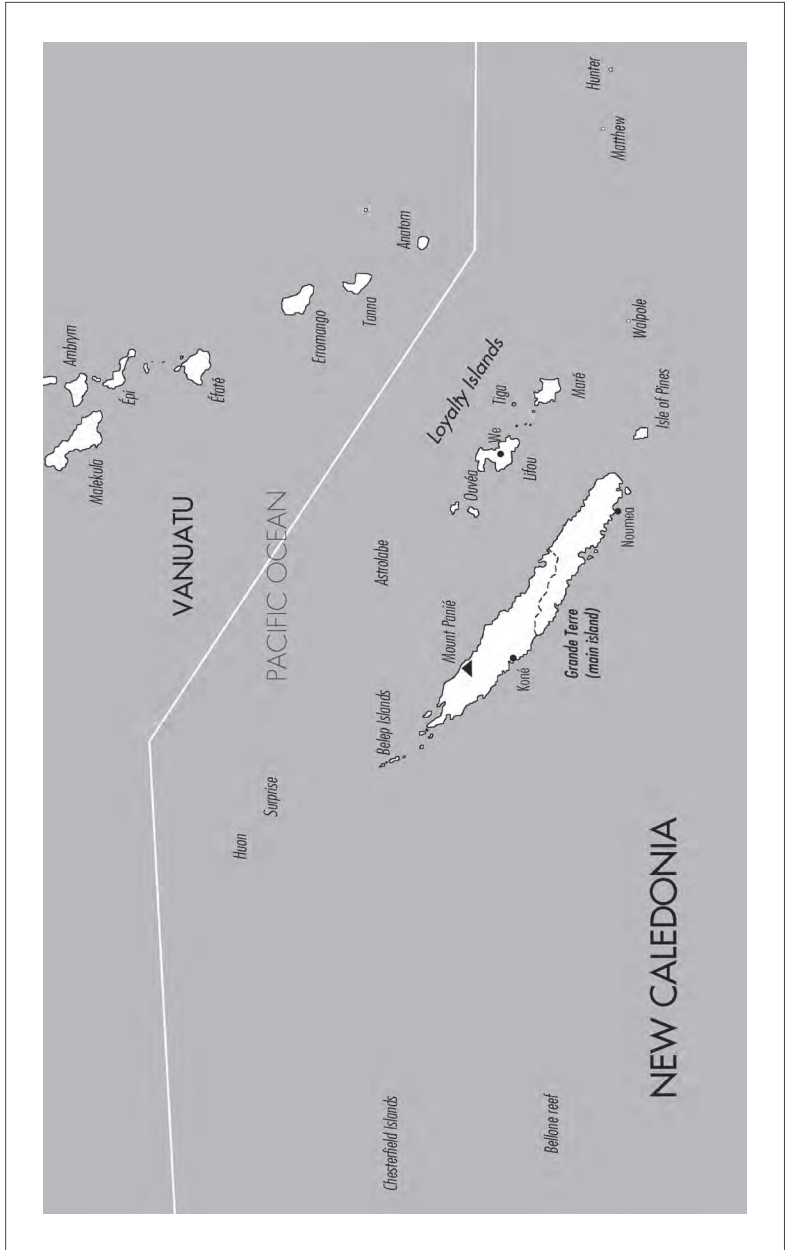
Council, later to become the Customary Senate (1998), the customary areas⁶ and their respective councils. These were reaffirmed by the Nouméa Accord, the preamble to which furthermore recognises the anteriority of the Kanak people in New Caledonia in these terms: “It is now necessary to create the basis for a Caledonian citizenship that allows the First People and men and women living in New Caledonia to become one single human community embracing a common destiny”. This, unfortunately, may well prove difficult to achieve due to the deeply-rooted cultural and socioeconomic differences existing between the various communities living in Kanaky/New Caledonia.

Colonised by France since its takeover in 1853, New Caledonia is in a process of decolonisation. It is now on the path to fulfilling the Nouméa Accord (1998), which anticipated three consultations on the country’s accession to full sovereignty. The first consultation is planned for 2018.

Right to vote, self-determination and indigeneity

The events of 2016, and indeed those of 2013 to 2015, have been marked by fierce controversy around the issue of the right to vote.⁷ And when this is a matter of self-determination, through a referendum, this issue becomes “the mother of all battles”, particularly for the indigenous and colonised people of New Caledonia, the Kanak people. They have been demanding their right to independence and self-determination since 1975.⁸ Today, the pro-independence (largely Kanak) and anti-independence political parties are in disagreement over the formation of the electoral bodies for the future elections to determine the destiny of New Caledonia. The last census, in 2014,⁹ confirmed that the Kanak people had become a minority in their own country. Non-indigenous individuals now make up 61% of the population with the remaining 39% being indigenous. In addition, there are three electoral lists in New Caledonia:

- the “general” electoral roll for French national (presidential and legislative), European and municipal elections;¹⁰



- the “provincial” electoral roll to elect the members of provincial assemblies and members of the New Caledonian Congress;
- the “referendum” electoral roll for the consultation on the country’s accession to full sovereignty.

These two latter rolls are “restricted”, and originate in the Matignon and Nouméa accords.

The “provincial” electoral roll comprises people on the special provincial electoral list. This list is a way of identifying those people who are citizens of New Caledonia. This electoral roll is defined by Article 188 of the Organic Law of 1999 on New Caledonia and contains three criteria.¹¹ However, the special administrative committees responsible for drawing up electoral rolls placed around 2,000 Kanaks who are on the general electoral list in an annexed table of people not permitted to vote in provincial elections.¹² These Kanaks are therefore not considered citizens of their own country. This situation has been denounced by the pro-independence political groups for years.

The “referendum” electoral roll comprises people on the special electoral list for the consultation on the country’s accession to full sovereignty. This electoral roll is defined by Article 218 of the Organic Law of 1999 on New Caledonia. It comprises eight criteria.¹³ In 2016, however, pro-independence political parties denounced the fact that 25,000 Kanaks were not registered on this special list.¹⁴ Despite being indigenous to the country, these Kanaks will therefore not be able to exercise their right to self-determination and independence.

The pro-independence political parties have been denouncing fraud in relation to these special electoral lists since 2013, particularly within the special administrative committees responsible for drawing up and revising these lists, which meet each year in the town halls from March onwards.

UN Mission to New Caledonia

In response to the lobbying of the United Nations and also of regional institutions such as the Melanesian Spearhead Group (MSG) done by pro-independence Kanaks, a number of missions have been conducted to New Caledonia with regard to this issue of the right to vote.

In 2013, during the MSG Summit in New Caledonia, the MSG Member States reaffirmed their support for the Kanak people through the Nouméa Declaration. This states: “We the Leaders of the Melanesian Spearhead Group (MSG) [...] now declare to renew our commitment on the following : (i) pursue and protect the right to self-determination of the indigenous Kanak people of New Caledonia in accordance with the United Nations (UN) Charter and the International Covenant on Economic, Social and Cultural Rights [...]”¹⁵

In 2014, the Committee on Decolonisation conducted a mission and the ensuing report contained the following points and recommendations:¹⁶ “The mission shares the views of all those who consider the current situation in New Caledonia to be extremely fragile and stresses the importance of a constructive dialogue among all actors to find common ground, preserve peace and promote a ‘common destiny’. [...] The mission also stresses the importance for all concerned to guarantee the full implementation of the Nouméa Accord by urgently undertaking genuine efforts to address current shortcomings in its implementation, particularly concerning the restricted electorate provisions. [...] The mission is of the view that the modus operandi of the special administrative commissions should be reviewed because of the problems raised by many interlocutors, including the magistrates themselves.”

Similarly, since 2014, UN resolutions concerning New Caledonia¹⁷ have read as follows: “Notes the concerns expressed regarding the challenges encountered in the provincial elections process with respect to the persistent varying interpretations of the restricted electorate provisions and the voter registration appeal process, and encourages the administering Power and the people of New Caledonia to address in an amicable and peaceful manner the concerns of all stakeholders under the existing relevant laws in the Territory and in France, while also respecting and upholding the spirit and letter of the Nouméa Accord; [...] Expresses the view that adequate measures for conducting the upcoming consultations on access to full sovereignty, including a just, fair, credible and transparent electoral roll, as provided in the Nouméa Accord, are essential for the conduct of a free, fair and genuine act of self-determination consistent with the Charter of the United Nations and United Nations principles and practices”.

From March to July 2016, experts mandated by the UN Electoral Assistance Division were deployed to observe the operations of the special administrative committees responsible for drawing up and revising the electoral lists. This mission will be repeated in 2017. ○

Notes and references

- 1 https://www.croixdusud.info/geo/nc_dim.php
- 2 The Matthew and Fearn or Hunter islands are at the heart of a dispute between Vanuatu and France. In 2009, the Kanak and Socialist National Liberation Front (FLNKS) officially recognised that Matthew and Hunter were a part of Vanuatu, http://www.tahiti-infos.com/Les-iles-Matthew-et-Hunter-n-en-finissent-pas-d-empoisonner-les-relations-franco-vanuatuanes_a13518.html
- 3 Insee Census 2014, <http://www.isee.nc/population/recensement>
- 4 These accords were signed by the French State, the FLNKS (which is the Kanak National Liberation Movement), and the RPCR (which is a political anti-independence party).
- 5 These sovereign powers include: justice, defence, external relations, public order, currency and credit.
- 6 The Nouméa Accord divided New Caledonia into eight customary areas: *Hoot Ma Whaap, Paici-Cèmuhi, Ajië Aro, Xârâcùù, Drubea-Kapumë, Nengone, Drehu, Iaai*.
- 7 <http://juspoliticum.com/article/La-fraude-a-la-sincerite-du-corps-electoral-en-Nouvelle-Caledonie-964.html>;
<http://la1ere.francetvinfo.fr/nouvellecaledonie/300-400-personnes-menacees-de-radiation-de-la-liste-electorale-des-provinciales-341155.html>
- 8 LEBLIC Isabelle, 1993. *Les Kanak face au développement. La voie étroite*, Grenoble, Presses universitaires de Grenoble, page 61.
- 9 <http://www.isee.nc/population/recensement/communautes>
- 10 The “general” electoral roll comprises individuals appearing on the “general” electoral list. These include anyone aged 18 and over and resident in New Caledonia for six months. These people can be registered on the general electoral list in their commune of residence.
- 11 Article 188: I. – Congress and the provincial assemblies are elected by an electoral roll of electors meeting one of the following conditions: a) Meeting the conditions for being registered on the electoral lists of New Caledonia drawn up with a view to the consultation on 8 November 1998; b) Being registered in the annexed table and living in New Caledonia for 10 years on the date of the elections to Congress or the provincial assemblies; c) Having reached the age of majority after 31 October 1998 and justifying 10 years of residence in New Caledonia in 1998, either having one of their parents meeting the conditions for being an elector in the election of 8 November 1998 or having one of their parents listed in the annexed table and justifying 10 years of residence in New Caledonia on the date of the elections; d) Time spent outside of New Caledonia in national service, studying or training or for family, professional or medical reasons is not, for people who were previously resident there, considered as interrupting the period considered when assessing residency status.
- 12 The reasons why the special administrative committees placed these Kanak individuals on the annexed table are different and varied. Nonetheless, it is generally a problem of evidence. For example, Kanaks are often required to justify 10 years of continued residence in New Caledonia between 1998 and 2008. If evidence is not provided for any period within the 10 years, the special administrative committees place them in the annexed table. Another problem often reported is that the applicant must provide proof of address to be able to register. And yet many Kanak families live in squats around Nouméa or Grand Nouméa and cannot provide proof of address. The requirements of the law are inappropriate to the Kanak way of life and thus discriminatory against them.

- 13 Article 218: The following are permitted to participate in the consultation: electors registered on the electoral list on that date and who meet one of the following conditions: a) Having been admitted to participate in the consultation on 8 November 1998; b) Not being registered on the electoral list of the consultation of 8 November 1998, but nonetheless meeting the required condition of residence to be an elector at this consultation; c) Not having been able to be registered on the electoral list for the consultation of 8 November 1998 due to not meeting the residency conditions but justifying their absence due to family, professional or medical reasons; d) Having had the status of customary civilian or born in New Caledonia and having the focus of their material and moral interests there; e) Having one of their parents born in New Caledonia and having the focus of their material and moral interests there; f) Being able to justify 20 years of continuous residence in New Caledonia on the date of the consultation and no later than 31 December 2014; g) Being born before 1 January 1989 and having their residence in New Caledonia from 1988 to 1998; h) Being born after 1 January 1989 on and having reached the age of majority on the date of the consultation and having had one of their parents meet the conditions to participate in the consultation on 8 November 1998. Time spent outside of New Caledonia in national service, studying or training or for family, professional or medical reasons is not, for people who were previously resident there, considered as interrupting the period considered when assessing residency status.
- 14 <http://la1ere.francetvinfo.fr/nouvellecaledonie/corps-electoral-un-quart-des-citoyens-de-droit-coutumier-en-dehors-des-listes-354018.html>; <http://ustke.org/actualites/actualite-politique/Droit-a-lautodetermination-pour-tous-les-kanak-l-at767.html> To appear on the special list for the consultation, you must first be registered on the general electoral list. Registration on the general list is either a voluntary process or an automatic registration on reaching the age of majority. This automatic registration is undertaken by the special administrative committees using a database provided by the town halls and the New Caledonia Institute for Statistics and Economic Studies. However, it has been noted, particularly by UN experts, that many young Kanaks are being refused automatic registration for lack of some particular evidence in their files. Another reason is that many Kanaks do not feel concerned by French national elections and do not therefore register voluntarily on this general list.
- 15 Melanesian Spearhead Group (MSG) Nouméa Declaration on the Kanak and Socialist National Liberation Front (FLNKS) of New Caledonia, approved and signed on 21 June 2013, in Nouméa, New Caledonia.
- 16 United Nations, 2014, *Report of the United Nations mission to New Caledonia, 2014*, A/AC.109/2014/20.
- 17 United Nations, 2014. *Resolution adopted by the General Assembly on 5 December 2014, Question of New Caledonia*, A/RES/69/102 & United Nations, 2015. *Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. Report of the Special Political and Decolonization Committee (Fourth Committee)*, A/70/505, pp. 10-14 & United Nations, 2016. *Papua New Guinea: draft resolution, Question of New Caledonia*, A/AC.109/2016/L.23.

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EAST AND
SOUTH EAST ASIA

JAPAN

The two indigenous peoples of Japan, the Ainu and the Okinawans, live on the northernmost and southernmost islands of the country's archipelago. The Ainu territory stretches from Sakhalin and the Kurile Islands (now both Russian territories) to the northern part of present-day Japan, including the entire island of Hokkaido. Hokkaido was unilaterally incorporated into the Japanese state in 1869. Although most Ainu still live in Hokkaido, over the second half of the 20th century, tens of thousands migrated to Japan's urban centers for work and to escape the more prevalent discrimination on Hokkaido. Since June 2008, the Ainu have been officially recognized as an indigenous people of Japan. Most recent government surveys put the Ainu population in Hokkaido at 16,786 (2013) and in the rest of Japan at 210 (2011).¹

Okinawans, or Ryūkyūans, live in the Ryūkyū Islands, which make up Japan's present-day Okinawa prefecture. They comprise several indigenous language groups with distinct cultural traits. Although there has been some migration of ethnic Japanese to the islands, the population is largely indigenous Ryūkyūans. Japan colonized the Ryūkyūs in 1879 but later relinquished the islands to the US in exchange for its own independence after World War Two. In 1972, the islands were reincorporated into the Japanese state and Okinawans became Japanese citizens although the US military base remained. Today, 50,000 US military personnel, their dependents and civilian contractors occupy 34 military installations on Okinawa Island. The island is home to 1.1 million of the 1.4 million Okinawans living throughout the Ryūkyūs. The Japanese government does not recognize Okinawans as indigenous people.

The Japanese government has adopted the UNDRIP (although it does not recognize the unconditional right to self-determination). It has not ratified ILO Convention 169.



The Ainu and Japan's hate speech problem

After long-standing calls for government action to curb hate speech, the Japanese Diet passed the nation's first anti-hate speech law in May 2016. During deliberation of the bill, Ainu activists raised concerns that the law failed to cover

indigenous people, given that it defined hate speech as that against “foreign” residents and their descendants. In response, lawmakers passed a supplementary resolution that clarified that the condemnation against discriminatory language was not limited to that specifically defined under the law, and that “appropriate action would be taken in accordance with the spirit of international conventions”.

While the law condemns hate speech and calls on local governments to provide support for victims and public education, some critics point out that the law fails to impose any legal prohibition or penalties. Many Ainu activists, however, heralded the law as an important first step in combating the growing problem of hate speech.

Addressing persistent discrimination

The Japanese government also announced in May 2016 that it had decided to begin consideration of a new law to support the livelihoods and education of the Ainu people. The Ainu Association of Hokkaido had long called for such a law, finding current levels of support (scholarships for secondary/tertiary education, employment consultations) insufficient to address continuing disparities. The Ainu Association seeks a more comprehensive approach, spanning from early childhood education through to social security for the elderly. The 2009 report by the government’s “expert panel” had similarly called for a new law to take a more comprehensive approach to supporting Ainu livelihoods. It remains to be seen whether the government will consider restoration and protection of indigenous rights for inclusion in the new law.

Public awareness of the situation of the Ainu also remains a challenge. According to the results of a survey released by the Japanese government in February 2016, 72.1% of Ainu agreed with the statement that “discrimination against the Ainu people exists”. Among the general public, however, only 17.9% agreed with the statement, with 50.7% saying that “discrimination doesn’t exist”. Such a gap in public awareness may prove a challenge to any efforts made under a new law to address the effects of discrimination.

Return of ancestral remains

In March 2016, Hokkaido University agreed, under a court-mediated settlement, to return to the Ainu of Urakawa, Hokkaido, the remains of 16 Ainu people that it had excavated 85 years ago for “research purposes”. A group of five Ainu had initiated court proceedings against the university for the return of the remains and, under the settlement, agreed to drop demands for monetary compensation in exchange for the release of the remains. Twelve of the bodies were given a ceremonial burial upon their return to the community in July. Meanwhile, the university refused to provide an apology, stating that it was “not part of the settlement”. Despite the university’s position, at least one professor from the Hokkaido University Center for Ainu and Indigenous Studies made a personal apology to members of the Ainu community regarding the university’s actions.

A similar court-mediated settlement was reached in November 2016 between Hokkaido University and Ainu in Monbetsu, Hokkaido for the release of the remains of four Ainu people. Proceedings against the university are also ongoing for the release of the remains of a further 64 people by another group from Urahoro, Hokkaido, and the two preceding settlements have provided hope that a settlement can be reached in this case as well.

The momentum created by these settlements has also pushed the issue of Ainu remains to a global scale. In August 2016, the Ainu Association of Hokkaido announced it had confirmed that the remains of 17 Ainu people were being held in Germany, and stated that it would work with the Japanese government to request their return. Thus far, the German side has indicated that it would require evidence of “improper acquisition”, which may prove a challenge to any return.

A new step in language revitalization

2016 also saw an important step forward in the revitalization of what remains a critically endangered language. One elementary school in Nibutani, Hokkaido announced in January 2016 that it would begin teaching Ainu language classes regularly throughout the school year. While teaching Ainu language in public schools is not previously unheard of, this effort is the first time that it will be taught on a sustained basis rather than as one-off classes.

The Okinawans

The struggle over Okinawa's long-term future continues as the US and Japanese governments make long-promised base closures and the return of existing military-occupied lands conditional upon Okinawans' acceptance of new military facilities. A number of incidents this year, including violent crime, aircraft crashes and contamination, highlight what is at stake for Okinawans. As they engage in civil disobedience, sit-ins and other forms of protest to prevent new construction, court battles in 2016 revealed the extent to which the Japanese government defers to its military arrangements with the United States in the Okinawan context. Citing increasing threats from China, moreover, the Japanese government is increasing its own Self-Defense Forces on the outer islands of Okinawa prefecture, sparking new protests.

Still dominating Okinawan society is the two-decade old struggle to close the US military's Futenma Air Station, which the two governments tied to the construction of a new US military complex at Okinawa's rural Cape Henoko (for more background see *The Indigenous World 2011-2014*). Ongoing legal wrangling effectively suspended construction at Henoko from March to December 2016. The year began with the Japanese government filing a lawsuit aimed at shifting local authority over Okinawa's coastal waters to the central government. This was in response to the Okinawa Governor's 2015 cancellation of his predecessor's approval of the extensive land reclamation required for the Henoko project. Ignoring a court-mediated settlement, Tokyo ordered the Governor to reinstate the approval, which set in motion months of lawsuits, counter-suits and appeals. In December, Japan's Supreme Court ruled against the Okinawa government's right to revoke its approval, paving the way for construction. As a first ruling regarding the Henoko project, its effective nullification of local control over coastal waters sets a broader legal precedent of usurping the already limited Okinawan autonomy afforded through existing national institutions.

By making Futenma's closure conditional on the completion of the new base, the US and Japanese governments reveal their willingness to put residents at risk. The December crash of an MV22 Osprey aircraft from Futenma base into a beach in Nago City highlights the danger posed to those living on current and future flight paths. A November court ruling found that the harm caused by aircraft noise at Futenma exceeded tolerable levels. Studies show psychological effects,

low birth weight, as well as increased risk of dying from heart attacks and strokes resulting from persistent aircraft noise at the base. More than a third of schools near Futenma and Kadena air base reported that aircraft noise regularly disrupted classes.

Given these impacts, the December 2016 return of a 4,000-hectare area of Yanbaru forest, occupied for 65 years by US forces for jungle warfare training, was bittersweet for most Okinawans. The US and Japanese governments tied the return to the construction of six new oversized helipads in the Takae region of the Yanbaru forest, for flight training of the Marine Corps' new and crash-prone MV22 Osprey aircraft. Two helipads are complete and operational. The Japanese government designated 17,000 hectares of Yanbaru as a national park in November and is campaigning for UNESCO World Natural Heritage status because of Yanbaru's biodiversity and indigenous flora and fauna. No environmental impact assessment has been conducted with regard to the Osprey deployment, however, which will bring noise and insecurity, and inevitably contamination. In November, a district court denied the Takae residents' lawsuit to halt the helipad construction on the basis of damaging noise levels.

Two cases of rape (March and December) and murder of women by US contractors sparked massive protests and a demand by the Okinawa Prefectural Assembly to remove all US Marines from Okinawa. Other problems this year help explain Okinawans' sustained efforts to demilitarize their land. Perfluorooctanesulfonic acid, which is illegal in Japan, was discovered flowing from Kadena Air Base into two rivers which, together, supply water to eight municipalities. A Marine Corps AV-8 Harrier jet from Kadena crashed off the coast of Okinawa Island. Wildfires were caused by live-fire training.

The Japanese government's increasing use of violent force and detention to repress popular opposition drew the attention of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. In April, David Kaye expressed his concern to the government and said he would monitor the situation in Okinawa. Riot police have become the government's main tool for clearing non-violent sit-ins, causing injuries to protesters a number of times this year. In August, several reporters were also prevented from covering the protests. At the year's end, Amnesty International joined the call for the release of the jailed chairman of the Okinawa Peace Movement Center, who was arrested for his involvement in the opposition at Henoko and Takae. ○

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CHINA

Officially, China proclaims itself to be a unified country with a diverse ethnic make-up, and all ethnic groups are considered equal in the Constitution. Besides the Han Chinese majority, the government recognizes 55 ethnic minority peoples within its borders. According to the latest government data (report published in 2012) compiled from the 2010 national census, the ethnic minority population stands at 111,964,901 persons, or 8.4 % of the country's total population. There are still "unrecognized ethnic groups" in China, numbering a total of 640,101 persons.

The Law of the People's Republic of China on Regional National Autonomy is an important basis for the governance of ethnic minority peoples. It includes establishing ethnic autonomous regions, setting up their own local administrative governance and the right to practise their own language and culture. "Ethnic autonomous regions" make up approximately 60% of China's total land area.

The Chinese government does not recognize the term "indigenous peoples", and they rarely participate in international meetings related to indigenous peoples' issues. The Chinese government voted in favour of the UNDRIP but, from its attitude towards ethnic minorities, the UNDRIP does not - in its opinion - apply to China.

National policy plan on ethnic minorities

The main economic and social policies for ethnic minority peoples in China are covered by the national Five-Year Plan (2016-2020), which was announced by the Chinese Communist Party and the State Council in October 2016. The plan contains the core concepts of innovation, openness, coordination, green environment, and sharing of prosperity, which were the five guiding principles championed by Chinese President Xi Jinping.¹ The government's policy planning for ethnic minority peoples in the coming years will follow these five core concepts as outlined in the national plan, along with the economic development targets to eradicate poverty.

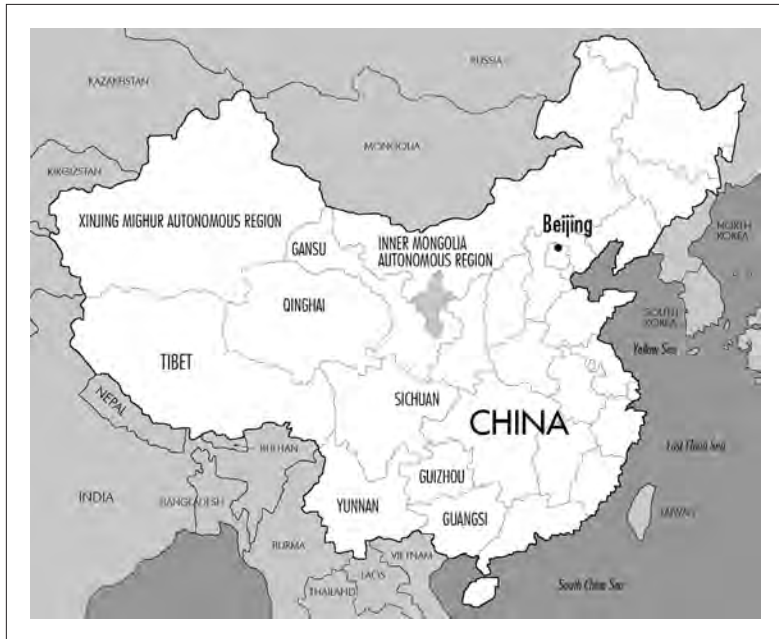
Looking back at the period of the last Five-Year Plan, the Chinese government has applied the same “economic development” model to deal with the many complicated issues and different ethno-cultures of minority peoples in China. Top political leaders believe the highest priority for improving the lives of ethnic minorities is to reduce poverty. It is true that, in some ethnic minority regions, the peoples’ livelihood has improved through the government’s economic stimulus programs. These successful cases have become the government’s showcase to present the outside world with the economic progress being made for ethnic minority peoples.

However, political unrest and cultural conflicts continued to take place in Uyghur Xinjiang, Tibet, and Inner Mongolia ethnic autonomous regions. Although supposedly under the benevolent protection of the Chinese motherland, these ethnic minority peoples still see themselves as living under oppression and discriminatory policies. There is a saying that goes: the Chinese government’s approach is to offer money with one hand while holding a gun in the other. Beijing will provide economic assistance for ethnic minority peoples who are willing to obey its rules but applies harsh military crackdowns against those who choose to defy the government.

Religion and human rights situation in Uyghur Xinjiang Region

One of the most protracted and difficult problems for the Chinese authorities to deal with is that of the Muslim Uyghur people of Xinjiang (also known as East Turkestan). All upheavals and violent incidents in the area have been attributed to extremist elements of the Muslim Uyghurs. The Chinese government continues to implement strict controls over the Uyghurs in order to keep them from practising their religious and cultural traditions although, in 2016, there were fewer reports of the deployment of military forces to keep the situation under control.

Brutal, military crackdowns have, however, been replaced by government policies which prescribe discrimination and unfair treatment, especially infringements upon the human rights and religious practices of the Uyghurs. The most controversial example was the attempt to prevent the Uyghurs from fasting or performing other religious rituals during Ramadan. Aiming to counter Muslim religious practice, the Chinese government initiated programs to promote eating and drinking during Ramadan throughout cities and towns across Xinjiang.² The Uy-



ghur population was encouraged to attend afternoon teas, social functions, banquets and community group events where eating and drinking took place. In Aksu and other cities of Xinjiang, the local education bureau prohibited school students from fasting during Ramadan. Officials said parents would also be punished if the ban was violated. According to news reports from the Voice of America, the Chinese authorities in Xinjiang published regulations which explicitly “forbid Communist Party members, civil servants, and school students from fasting, attending prayer and other religious events held in a mosque, and other Islamic religious practices.”³ Uyghur rights activists said enforcement of these impositions during Ramadan was a “systematic suppression and hostile provocation” of the Uyghur people and would only lead to more political dissent and social strife.

Furthermore, a “Mosque Rectification” campaign was launched in 2016. It was supervised by the Chinese Central Ethnic-Religious Affairs Department, with the support of local Xinjiang authorities and police units. Within three months of the campaign, 5,000 mosques had been demolished in cities, towns and villages around the region.⁴ Officials said the demolition works were carried out on “old,

dilapidated buildings” that posed a danger to the public, and that the efforts were to ensure stability and safety for worshippers. However, local residents said the campaign was another attempt to subjugate the Uyghur population and to suppress the Muslim religious faith. By destroying mosques, the Chinese government hoped to stamp out what they perceived as “religious extremism” and “Uyghur separatism”.

International award for Uyghur scholar Ilham Tohti

China’s repression of rights in the region was highlighted by the international media in October when prominent Uyghur scholar, Ilham Tohti, won the 2016 Martin Ennals Award. This award honours worthy individuals who “defend human rights with courage in the face of personal risk”.⁵ Tohti is a professor who used to teach at the Central University for Nationalities in Beijing. He was sentenced to life imprisonment by a Chinese court on charges of promoting “separatism” in 2014. Since then, he has been incarcerated in a state prison in Urumqi City, capital of Xinjiang. The awards body, composed of leading international human rights organizations, said Tohti “has rejected separatism and violence, and sought reconciliation based on respect for Uyghur culture, which has been subject to religious, cultural and political repression in Xinjiang.”

After the award announcement, the European Parliament urged China to grant Tohti his freedom. In a statement, they condemned the Chinese government for not following the due process of the law, given that Tohti did not benefit from the right to a proper defence, and called for the immediate and unconditional release of both Ilham Tohti and his supporters detained in relation to his case. Geng Shuang, a Chinese foreign ministry spokesperson, told reporters that Tohti’s case had nothing to do with human rights, while accusing the scholar of promoting and taking part in separatist activities.

New restrictions on movement

The Xinjiang regional government announced the abolition of the “personal identification program” in May 2016, which had only been enacted in Xinjiang province. It was a program whereby all persons were issued with an ID card contain-

ing all basic information, including age, ethnicity, schooling, occupation, place of residence, original home town, family members, etc. It was enacted in Xinjiang in May 2014. Residents of Xinjiang had to carry it wherever they went, including when migrating to towns or cities, going to school, or entering/exiting Xinjiang. Police would inspect it at road travel check points, and it was required for applying or registering for any local government services, schools, medical treatment, jobs, etc. The Chinese government claimed that it enabled them to provide a better service for residents, and to keep track of economic, business and agricultural activities. Local people, however, said it was a strict mechanism of population control aimed at monitoring and keeping track of people's residence and movement, and of restricting Uyghurs from travelling out of the province, and discouraging them from migrating to cities. The abolition of the program therefore initially seemed to allow greater freedom to Uyghurs and other ethnic minorities of Xinjiang to travel throughout the region.⁶

One month later, however, officials announced a new decree requiring Xinjiang residents to turn in their passports to the public security authorities for "annual review" and to be retained for "safekeeping" after the review. In addition, people applying for a travel permit or a new passport are now required to provide DNA samples, fingerprints, voice recording and a three-dimensional image for registration in a government database.⁷ Human Rights Watch states that the new policy is a violation of people's basic human rights, by arbitrarily restricting their freedom of movement, and that it will only lead to further social instability and resentment towards the government's rigid control.

Protest over land grabbing in Inner Mongolia

For Inner Mongolia Autonomous Region, conflict over the expropriation of land and forcible relocation of inhabitants continued to cause clashes at several locations over the past year. Local Mongolian residents held several protests: the community of Bayan Nur City protested four times after finding out that almost 30,000 acres of their pastureland in the Urat Middle Banner region had been rented out to mining companies and property developers.⁸ A number of protesters were arrested and detained in custody before release. The residents, mostly livestock herders, pointed out that transfer of ownership and renting of land were il-

legal, while the mining activities had resulted in pollution and degradation of the environment.

In another land-grabbing case, over 100 residents held a large protest on 20 June at their grazing pastureland in Bayan Tal District of Baarin Right Banner, under the jurisdiction of the Inner Mongolia city of Ulanhad. The local population said the land had been rented out, without their consent, to a company owned and operated by Han Chinese for an agricultural production business. When the business lease expired in April, the residents wanted their community land back for livestock grazing but the company had refused and had continued to plant crops for the new season. The area residents therefore organized a resistance campaign to block the company's crop planting but the authorities mobilized over 80 police officers during the dispute, during which 20 protesters were arrested.⁹

On 17 August, some 200 herders and farmers at Xilin Gol League, headed to the seat of the local government located in Xilinhot City to call for paid subsidies for their loss of grasslands. The herdsman said the government had not paid them any subsidy for the state's use of their community grazing land. Secondly, they demanded higher prices for the state corporation's purchase of their sheep, cattle, and other livestock animals. Scuffles broke out during the incident, and the local police arrested four people who practise a traditional pastoral and herding lifestyle. A leader of the protesting residents said they were impoverished by a prolonged drought, resulting in a poor harvest of corn and other staple crops, combined with drastically falling prices for the state corporation's procurement of lamb and other livestock meat. According to news reports, the government-set procurement prices for lamb and meat were previously much higher, at two to three times the price.¹⁰

There were numerous other protests and clashes with the authorities over illegal expropriations of land, resulting in incarceration and jail terms for some Mongolian herders. More of these violent protests have been reported in recent years in Inner Mongolia, and elsewhere in China. Most are cases of illegal transfer deals where government officials have received bribes and other benefits when granting concessions to mining companies and other businesses through forgery of documents and other illegal means, while the local communities suffer the consequences, as many people are forcibly removed from their traditional community land.¹¹ Historically, the conflict over land and natural resources between Mongolians and Han Chinese has been ongoing for many hundreds of years. Now the Mongolians are protesting more, and using modern technology to

present their case to the outside world. These more vigorous and well-organized actions are turning into civil resistance and a direct challenge to Beijing's rule.

Ethnic language policy in national plan

The language and education policy outlined in the government's Five-Year Plan focused on raising the Putonghua (standard Chinese) literacy rate in rural communities, as well as in the ethnic minority regions. A group of Mongolian parents in Ulanhad protested to the city government in December after a Han Chinese director at a local kindergarten refused to allow a Mongolian teacher to teach in the Mongolian language. The parents said other Mongolian teachers in schools were also suffering from such restrictions, and they demanded the implementation of the policy for teaching one's mother-tongue language to children.¹²

In another case, the government education bureau in Tibet suggested using only Chinese language textbooks for teaching mathematics in grade schools. According to the bureau's statement in June, the move will boost learning for students, while printing the textbooks in Tibetan "will only complicate the education process". Tibetan activists fear such misguided education policy is only the beginning, and will eventually lead to the extermination of the Tibetan language.¹³

Most teaching of mother-tongue languages in ethnic minority regions has been marginalized, due to the primacy of Chinese language education. The education policies in the national plan for the next five years will only exacerbate the situation, pushing ethnic minority languages in China on the road towards extinction.

New ethnic registration measures go into effect

A series of legal measures came into effect on 1 January 2016 which had major consequences for ethnic minority peoples. These are known as "Measures for the Administration of the Ethnic Composition Registration of Chinese Citizens", issued under the authority of the State Ethnic Affairs Commission and Ministry of Public Security.¹⁴ The new measures make it more difficult for individuals to change their ethnic group identification, which can be registered as following either that of their father or mother. Children of divorced parents can apply to change their ethnic affiliation only once, and can only do so up until the age of 20.

Children under the age of 18 can only apply to change ethnic group identification once in their lifetime. This set of measures also contained other new restrictions and management regulations that will affect the national household registry system, eligibility for election as ethnic group representatives to the National People's Congress, the implementation of policies for ethnic minority autonomous regions, and government programs for citizens belonging to ethnic minority groups.

Beijing hosts ethnic arts festival

China held its Fifth National Ethnic Arts Festival in Beijing from 16 August to 14 September 2016. The Chinese government regularly organizes similar events to showcase ethnic group talents, under the concept of promoting growth and prosperity for music, the performing arts, and other creative cultural industries of ethnic minority regions. These programs also have the dual purpose of propagating government and Communist Party policies for ethnic peoples, through cultural and arts media. For these state-sponsored festivals, the performing troupes present the glory of the “Chinese Dream” on stage, whereby all ethnic minority peoples live in harmony and happiness in the Chinese motherland. Uyghurs, Mongolians and other ethnic minority groups have, however, increasingly taken to protesting and voicing their grievances over the past year, as they have suffered the injustice and oppression of the Chinese authorities and their law enforcement agencies.

Human rights defenders speaking for their cause said there is still much discrimination and marginalization in Chinese society, leading to rising tension and widening cracks in the relationship between the Han Chinese majority and the ethnic minority peoples. ○

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TAIWAN

The officially-recognized indigenous population of Taiwan numbers 534,561 people (2013), or 2.28% of the total population. Fourteen indigenous peoples are officially recognized. In addition, there are at least nine Ping Pu (“plains or lowland”) indigenous peoples who are denied official recognition. Most of Taiwan’s indigenous peoples originally lived in the central mountains, on the east coast and in the south. However, nearly half of the indigenous population has migrated to live in urban areas.

The main challenges facing indigenous peoples in Taiwan continue to be rapidly disappearing cultures and languages, low social status and very little political or economic influence. The Council of Indigenous Peoples (CIP) is the state agency responsible for indigenous peoples. A number of national laws protect their rights, including the Constitutional Amendments (2000) on indigenous representation in the Legislative Assembly, protection of language and culture and political participation; the Indigenous Peoples’ Basic Act (2005), the Education Act for Indigenous Peoples (2004), the Status Act for Indigenous Peoples (2001), the Regulations regarding Recognition of Indigenous Peoples (2002) and the Name Act (2003), which allows indigenous peoples to register their original names in Chinese characters and to annotate them in Romanized script. Unfortunately, serious discrepancies and contradictions in the legislation, coupled with only partial implementation of laws guaranteeing the rights of indigenous peoples, have stymied progress towards self-governance.

Since Taiwan is not a member of the United Nations it has not been able to vote on the UN Declaration on the Rights of Indigenous Peoples, nor to consider ratifying ILO Convention 169.

Formal apology issued by Taiwan president

The most significant development for indigenous peoples in 2016 was when President Tsai Ing-wen issued a formal apology on behalf of the government



to all Taiwan indigenous groups on 1 August for the discrimination and mistreatment they had suffered for the past four centuries. The ceremony took place at the Presidential Office Building, as Tsai also formally apologized to the Pingpu plains aborigine groups and promised to help them gain official recognition.¹

Tsai outlined her Democratic Progressive Party (DPP) government's plan to implement improved policies and programs to help protect indigenous peoples' rights, and to promote their education, culture, social welfare and economic development. Elected as Taiwan's first female president in 2016, Tsai also made history for being the first leader in Asia to issue a public apology to indigenous

peoples, and the date was chosen since 1 August has been designated as Indigenous Peoples' Day in Taiwan.²

To back up her words, Tsai also announced that she was setting up an "Indigenous Historical Justice and Transitional Justice Commission" under the Presidential Office, and other working committees headed by indigenous representatives, to pursue justice and rectify past government violations, and that regular meetings would be held to review national policies which impact on their lives.

In her statement, Tsai pointed to when Chinese and Western foreign powers first came to Taiwan in the 17th century, which marked the start of indigenous peoples suffering from colonial exploitation and subjugation, turning them into "displaced, foreign, non-mainstream, and marginalized." She also said, "Indigenous peoples had their own languages. However, with Japanese rule aiming to assimilate and turn all into imperial subjects, and with the KMT government banning tribal languages after 1945, indigenous peoples' languages suffered great losses. Most Pingpu languages have disappeared. Successive governments have been negligent in the protection of indigenous cultures."³

Regarding the Pingpu people issue, she promised her ruling DPP government would recognize the Pingpu groups as indigenous people under the principle of respecting the Pingpu ethnic group's self-identity, recognizing their identity, and setting a deadline for the government agency, the Council of Indigenous Peoples (CIP), to do this, "so that Pingpu ethnic group identity will receive the rights and status they deserve."

Reactions from society and protests by indigenous peoples

Tsai's presidential apology on behalf of the government was hailed as a positive development in the advancement of indigenous peoples' rights in Taiwan. Pundits and most politicians endorsed the official apology. Some activists, however, said it did not go far enough, and that they wanted to see real changes and effective policy implementation rather than mere promises and political statements. Several groups held protests in the plaza outside the Presidential Office to publicize their demands for the return of ancestral lands, implementation of indigenous self-government policies, a halt to land grabbing and tourism development, and a relaxation of restrictions on permit hunting of wildlife.⁴

Indigenous youth had earlier initiated a “Walking for Historic Justice” march, starting on 2 July from the southern tip of Taiwan and walking all the way to Taipei City, arriving on 31 July. They included activists from Amis, Bunun, Atayal, Paimwan, Sediq and other groups and were joined by Pingpu’s Makatao, Papora and Ketagalan youth representatives.⁵

Pingpu people demand indigenous status

Despite President Tsai’s formal apology and promise to grant them recognition, Pingpu people suffered a series of setbacks and denial of their rights in 2016. The Taiwan High Court issued a ruling in May that sided with past government policies to act against the Pingpu Siraya people of southern Taiwan. Siraya activists had filed an administrative lawsuit in previous years, and appealed to the High Court after losing the previous court battles. However, the judges once again ruled against them in May, and indigenous activists said it could be seen as the judicial system’s denial of Siraya people’s rights, denying them recognition as indigenous peoples. They vowed to further appeal to the Council of Grand Justices for a constitutional interpretation.⁶

Before President Tsai’s planned formal apology on 1 August, Pingpu leaders and organizations convened several regional meetings. These culminated in a national conference in July to consolidate their recommendations and reach a consensus on their demands to the government. The Pingpu Indigenous Rights Council, with support from Ketagalan groups and the Central Taiwan Pingpu Indigenous Youth Alliance, organized a rally at the legislature in July to press their demand for inclusion and end the systematic denial of their indigenous culture and history.⁷ Legislators Kawlo Iyun Pacidal of New Power Party and Chung Chia-pin of DPP attended the rally to lend their support. Taokas youth activist Kaisanan Ahuan said at the rally, “The government should squarely face the fact of our existence and it has a duty to ensure that our culture can continue to pass on to the next generation.”

Pingpu people recognition in October

Following the mandate from President Tsai, CIP was pressured to announce, on 7 October, the “recognition” of Pingpu aborigine groups, which it did so by creat-

ing a third category known as “Pingpu Indigenous People”, separate from and without the same indigenous rights as the two main CIP categories of “Lowland Indigenous People” and “Mountain Indigenous People”. CIP officials said the creation of “Pingpu Indigenous People” would be passed by an amendment to the nation’s Status Act for Indigenous Peoples but that granting of indigenous rights and government support programs would be worked out gradually.⁸

Some Pingpu leaders and politicians welcomed the news as an “historic decision”, saying that it heralded a new era for their people, who would be able to go on to achieve historic justice and equality, and obtain full indigenous status in the future.

Other activists, however, believed it was justice yet again denied, and that the CIP was using a “delaying tactic” to deceive the public and international communities, by stating that they want to give recognition while actively working to oppose the granting of indigenous rights and to Pingpu groups. “The proposal to create another category of “Pingpu Indigenous People” was not what we fought for. It only gives us a superficial title and we fear that the CIP will work hard to stall on granting any indigenous rights. In the end, we could be denied our rights and excluded from the system again,” said Pingpu Papora activist Aidu Mali from central Taiwan’s Puli Township.⁹

Government and business tourism development

Indigenous peoples joined efforts to fight against tourist resort projects with demonstrations and public petition campaigns last year. Two prominent cases receiving attention were the questionable land expropriation of “Peacock Garden” to build a luxury hotel on the shores of central Taiwan’s Sun Moon Lake in Nantou County, and the continuing controversy over the Shanyuan Palm Beach Resort on the coast of Taitung County. Thao people of Sun Moon Lake battled the local government throughout 2016, as they had approved a developer to build a luxury hotel via BOT (build-operate-transfer) with a 50-year lease on the existing tourist attraction of “Peacock Garden”, an avian park occupying two hectares and which once housed over 300 peacocks, along with other native and exotic fowl species.

The protest was led by Thao elder Banu Kapamumu because the area was built on the Thao community’s traditional territory. The Nantou government, under the KMT party administration, rammed the project through without consulting

them, however. The Thao people organized several protests in November, and presented a petition calling for the government to investigate the case. Banu Kapamumu said, "The hotel BOT project was made in the dark, under very questionable means, resulting in a very profitable deal for the developer company. The entire process was illegal, because there was no public hearing and no proper environmental impact assessment, and the hotel will generate wastewater and trash to pollute the Sun Moon Lake."¹⁰

The Shanyuan Palm Beach Resort project covers 26 hectares of land which the local Amis people say belonged to their traditional fishing ground. Despite opposition from local residents and concerns of environmental damage, the project received provisional approval in June. Residents from the affected Amis communities of Kararuan, Edoulan, and Fulafulangan of Taitung County organized demonstrations in July to fight against the project, and their efforts received the support of environmental groups.¹¹

Leaders of Amis communities said the development would expropriate their traditional territory for business use, cause erosion of the coastal land, generate pollution that would destroy the marine ecology, and ruin the livelihoods of the local fishermen.¹²

Impact of natural disasters

Taiwan was struck by five tropical storms in 2016, three of which caused major damage - Typhoon Nepartak on 8 July, Super Typhoon Meranti on 14 September, and Typhoon Megi on 28 September. These three storms swept through Taiwan's southern and eastern regions, leading to flooding, landslides, collapsed roadways and bridges, severe erosion, and property damage. Super Typhoon Meranti was the most powerful storm of the Western Pacific region in 2016.¹³ It brought heavy precipitation and record-breaking winds, and several indigenous areas in the mountains suffered devastation, particularly Tjikuvulj community of the Paiwan people, and Dahdah community of the Bunun people, both in Taitung County.¹⁴

These two communities were stranded without access roads and without water or electricity for several days, having to rely on outside deliveries of food and daily provisions. Overall, Super Typhoon Meranti caused NT\$ 2.198 billion (US\$70.59 million) in damages to the agriculture, fisheries, livestock farming and forestry sectors. A total of 10,950 hectares of farmland were affected, with the

production of banana, guava, jujube and jambu fruit the worst hit, which included both indigenous and non-indigenous farmers in southern Taiwan.¹⁵ ○

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PHILIPPINES

The latest census conducted in the Philippines in 2010 included an ethnicity variable for the first time but no official figure for the indigenous peoples has yet come out. The country's indigenous population thus continues to be estimated at between 10% and 20% of the national population, which has been projected to currently lie at 102.9 million. The indigenous groups in the northern mountains of Luzon (Cordillera) are collectively known as *Igorot* while the groups on the southern island of Mindanao are collectively called *Lumad*. There are smaller groups collectively known as *Mangyan* in the central islands as well as even smaller, more scattered groups in the central islands and Luzon, including several groups of hunter-gatherers in transition.

Indigenous peoples in the Philippines have retained much of their traditional, pre-colonial culture, social institutions and livelihood practices. They generally live in geographically isolated areas with a lack of access to basic social services and few opportunities for mainstream economic activities, education or political participation. In contrast, commercially valuable natural resources such as minerals, forests and rivers can be found mainly in their areas, making them continuously vulnerable to development aggression and land grabbing.

The Republic Act 8371, known as the Indigenous Peoples' Rights Act (IPRA), was promulgated in 1997. The law has been lauded for its support for indigenous peoples' cultural integrity, right to their lands and right to self-directed development of these lands. More substantial implementation of the law is still being sought, however, apart from there being fundamental criticism of the law itself. The Philippines voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples (UN-DRIP) but the government has not yet ratified ILO Convention 169.

National elections

The May 2016 national elections marked a major shift in political leadership in the Philippines. Opposition candidate Rodrigo Duterte was elected President with an overwhelming total of 16,601,997 votes, 6.6 million votes more than his closest rival, administration candidate Mar Roxas.¹ During the campaign, Duterte gained popularity with his hardline anti-crime, anti-drugs and anti-corruption platform, winning the hearts of the Filipino masses with his promise of “genuine change”.

Indigenous peoples (IPs) engaged in the electoral process by fielding their own political party “Sulong Katribu” to represent their interests in the elections. This attempt by indigenous peoples to gain seats in Congress via the party list system failed, however, not because of insufficient votes but because the Commission on Elections and the Supreme Court refused to accredit Sulong Katribu to participate in the 2016 national elections. The disqualification of the party’s list was condemned by many indigenous peoples, including Katribu Kalipunan ng Katutubong Mamamayan ng Pilipinas (KATRIBU), a national alliance of IPs in the Philippines, the Cordillera Peoples’ Alliance (CPA) and KALUMARAN of Mindanao. They filed appeals asserting that all the requirements for party list accreditation had been complied with and that the disqualification of Sulong Katribu was a move to further marginalize and discriminate against indigenous peoples. However, these appeals were likewise denied.

Indigenous peoples’ agenda 2016

On 29 June 2016, a National Peoples’ Summit was held with over 1,000 leaders from various peoples’ organizations, including indigenous peoples, aimed at crafting a comprehensive peoples’ agenda for the first 100 days of the Duterte presidency. This was followed by a dialogue with President Duterte on 30 June, the day he was inaugurated as the new Philippine President.² IP leaders joined the dialogue with the president, the first time they had ever been invited to enter Malacañang presidential palace.

On 8 August 2016, in commemoration of International Day of the World’s Indigenous Peoples, IPs from different regions of the country, led by KATRIBU, held



a rally and submitted a six-point IP Agenda to the President containing their long-standing demands for justice, peace and respect for indigenous peoples' rights.³ They demanded that the new administration resume peace negotiations and release political prisoners; promote the right to ancestral lands and self-determination; stop the plunder of natural resources in indigenous territories; provide free and sufficient social services, livelihood and support to victims of natural calamities.

ties; respect and promote human rights; and hold former President Benigno Aquino III accountable for the violation of indigenous peoples' rights.⁴ A media forum and photo exhibition on the theme of IPs' right to education was also held.

Another gathering of 75 indigenous men and women from 29 indigenous peoples' groups met in Quezon City from 9-11 August 2016 with the theme of "Ensuring Fulfilment of IP Rights in the Implementation of the Sustainable Development Goals". The gathering formulated a statement on the state of IPs in the Philippines, which they presented to the government and United Nations (UN) agencies, including the UN Special Rapporteur on the rights of indigenous peoples. Among the salient demands raised were full and effective participation of IPs in the peace negotiation between the Philippine government and revolutionary groups; recognition of collective ownership of ancestral domains; ensuring education of IP children in their mother tongue; strengthening of traditional occupations and innovations; a halt to mining operations which have adverse social and environmental impacts; support for indigenous peoples' climate change adaptation and mitigation actions; ensuring representation of indigenous women in local decision-making bodies; and revamping the National Commission on Indigenous Peoples (NCIP). The group also called on the government to invite the UN Special Rapporteur on the rights of indigenous peoples on an official mission to the Philippines in 2017.⁵ The government response to these various IP agendas is yet to be seen.

The changes under the new administration since July 2016 have gained both praise and criticism from various parties. Indigenous peoples' organizations were among those who expressed support for some of the populist pronouncements of the President. During his inaugural address, the president specifically mentioned the need for indigenous peoples' concerns to be tackled during the peace negotiations between the government and revolutionary groups. Likewise, in his State of the Nation Address in July he said, "We will vigorously address the grievances that have been time and again expressed not only by the Bangsamoro, indigenous peoples and other groups for security, development, fair access to decision-making and acceptance of identities".⁶

In a dialogue with Lumad evacuees in July, the President guaranteed the safe return of Lumad evacuees who had fled their village after three civilians were killed by paramilitary forces in their militarized communities. In October 2016, after more than a year of staying in evacuation centres, some 4,700 Lumad evacuees thus returned home to Lianga, Surigao del Sur, where they found their homes and farms in derelict conditions, requiring months of hard work to be able to return

to their normal lives, with no support or compensation offered by the government.⁷ Meanwhile, indigenous organizations have remained critical, particularly of the continued militarization under the *Oplan Bayanihan* counter-insurgency operations and the rise in the number of extrajudicial killings.

Resumption of peace talks

One major development during the last six months of 2016 was the resumption in peace negotiations between the Government of the Philippines (GPH) and the Communist Party of the Philippines, New Peoples' Army and National Democratic Front of the Philippines (CPP-NPA-NDFP), which have been waging an armed revolution since 1968. The resumption in peace talks (which were suspended in 2011) came with the release of 21 political prisoners, affirmation of the Comprehensive Agreement on Human Rights and the Respect for International Humanitarian Law signed in 1998, acceleration of discussions on the substantive agenda and unprecedented indefinite unilateral ceasefires by both sides of the armed conflict.⁸

IP groups expressed support for the peace talks, especially since many IP areas are where the armed struggle is taking place. The military claims that "90% of guerrilla bases and NPA camps are inside ancestral domain areas and 3 out of 4 NPAs in Eastern Mindanao are indigenous."⁹ In light of the ongoing peace talks, IPs are pushing for the inclusion of IP rights and concerns over ancestral lands in the draft Comprehensive Agreement on Socio-Economic Reforms (CASER).

Regarding the Bangsamoro struggle for self-determination in Mindanao, the proposed draft Bangsamoro Basic Law failed to make it through the previous Congress and was shelved. The new administration has now reconstituted the Bangsamoro Transition Committee and has initiated dialogue with both the Moro Islamic Liberation Front (MILF) and the Moro National Liberation Front (MNLF) aimed at arriving at a new draft Bangsamoro law under a proposed federal system of government.¹⁰

Militarization and human rights violations

President Duterte has gained notoriety all over the world for his "war on drugs", known as *Oplan Tokhang*, which has resulted in a rising death toll and worsening

climate of impunity in the country. As of 2 January 2017, Rappler had documented 6,218 people killed in the war on drugs since 1 July 2016. Of this number, 2,169 killings were of suspected drug personalities while 4,049 were victims of extrajudicial killings.¹¹ Various civil society organizations and institutions in the country have strongly criticized the violation of due process and the rule of law brought about by the war on drugs.

Political extrajudicial killings of IPs and other human rights violations have also continued as a result of the militarization of indigenous communities despite the unilateral ceasefires declared by both the government and the NDFP. On 13 October 2016, a 28-year-old member of Panalipdan Youth in Compostela Valley was shot dead by gunmen believed to be elements of the Philippine Army's 46th Infantry Battalion while on his way home.¹² In the province of Ifugao, the continued use of *barangay* or community halls as military camps by the 54th Infantry Battalion of the Philippine Army has instilled fear in the residents and is endangering their lives. On 18 November 2016, a civilian worker had an argument with a soldier of the 54th Infantry Battalion who then shot him stating that it was in self-defence.¹³

Suspension of mining operations

Gina Lopez, a well-known environmental advocate, was appointed the new Secretary of the Department of Environment and Natural Resources. Lopez embarked on an environmental audit of 41 mining companies operating in various parts of the country, including IP territories. Prior to the audit, Lopez had already suspended the operations of 10 mines for violating environmental laws. The audit resulted in a list of 20 more mines recommended for suspension.¹⁴ IPs are currently pushing for the issuance and implementation of the suspension orders.

Expansion of monocrop plantations

Indigenous peoples have expressed alarm over government plans to boost foreign corporate oil palm investments and expand monoculture plantations in the Philippines. In Mindanao, several hundred thousand hectares have already been converted into oil palm plantations.¹⁵ The government has pronounced 5.67 mil-

lion hectares or 18% of the country's total land area for land-use conversion through joint corporate agribusiness venture agreements and direct foreign investments. This includes expansion of oil palm areas to a million hectares, largely in Mindanao, and up to 15,469 hectares in eight municipalities of South Palawan,¹⁶ affecting indigenous communities. The aggressive expansion of plantations in recent years has led to many cases of human rights violations against farmers, plantation workers and indigenous peoples. Community members from the municipalities of Bataraza and Española in Palawan reported how their rights had been violated by several companies that continue to expand their palm oil plantations on community lands without their Free, Prior and Informed Consent (FPIC). The Palawan NGO Coalition Against Land Grabbing (CALG) and the Commission on Human Rights in the Philippines (CHRP) conducted a fact-finding investigation that revealed a pattern of land grabs and forest destruction by palm oil companies and indicated the complicity of government officials in defrauding indigenous peoples of their lands.¹⁷

Lakbayan 2016 (Journey 2016)

From 13-21 October 2016, around 3,000 IPs and Moro from different regions of the country converged on Metro Manila for the *Lakbayan* (Journey) of National Minorities for Self-Determination and Just Peace.¹⁸ The *Lakbayan* aimed to promote the rights and struggles of national minorities through a series of protests, seminars, fora, dialogues and meetings with Congressmen and government agencies, as well as cultural and solidarity events calling for a halt to development aggression, militarization, human rights violations and government neglect of social services. On 19 October 2016, IPs and Moro people protesting in front of the US Embassy were violently and repeatedly rammed by a police car and dispersed with water cannon, truncheons and tear gas, leaving at least 50 people wounded and 29 under arrest.¹⁹ Among those injured was Piya Malayao, Secretary General of Katribu, who condemned the police brutality in dispersing the protesters. The *Lakbayan* was nevertheless successful in raising broader public awareness of the plight of IPs in the country and in forwarding their demands to concerned government officials and agencies.

Formation of SANDUGO

On 14 and 15 October 2016, around 600 delegates held a two-day assembly to launch the SANDUGO Movement of Moro and Indigenous Peoples for Self-Determination, marking the first time that IPs and the Bangsamoro people have come together for collective actions in their common struggle for self-determination. At least 51 convenors from various tribes, ethnolinguistic groups and advocates made up the founding National Convenors of SANDUGO. Aside from launching the movement, the assembly came up with a resolution which they submitted to both GPH and CPP-NPA-NDFP peace panels, calling for a separate section on IP rights and Moro concerns in the CASER in order to address the distinct problem of national oppression in the country.²⁰

UN submissions on Philippine IPs

Throughout 2016, several Philippine IP organizations were involved in preparing shadow reports, making interventions and/or submitting complaints to various UN mechanisms, including the UNPFII, CESCR, CEDAW, UPR and Business and Human Rights, in order to present the situation of Philippine indigenous peoples. ○

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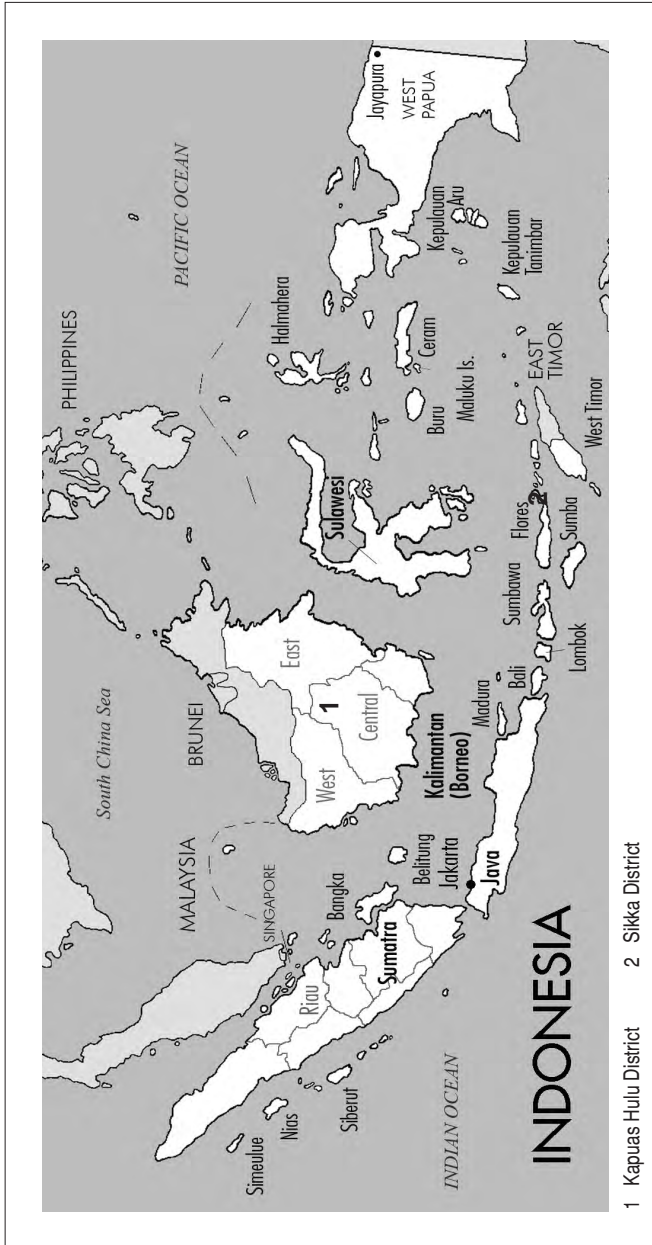
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INDONESIA

Indonesia has a population of approximately 250 million. The government recognizes 1,128 ethnic groups. The Ministry of Social Affairs identifies some indigenous communities as *komunitas adat terpencil* (geographically-isolated indigenous communities). However, many more peoples self-identify or are considered by others as indigenous. Recent government Acts and Decrees use the term *masyarakat adat* to refer to indigenous peoples. The national indigenous peoples' organization, Aliansi Masyarakat Adat Nusantara (AMAN), estimates that the number of indigenous peoples in Indonesia lies between 50 and 70 million people.

The third amendment to the Indonesian Constitution recognizes indigenous peoples' rights in Article 18b-2. In more recent legislation, there is implicit recognition of some rights of peoples referred to as *masyarakat adat* or *masyarakat hukum adat*, including Act N° 5/1960 on Basic Agrarian Regulation, Act N° 39/1999 on Human Rights, and MPR Decree N° X/2001 on Agrarian Reform. Act N° 27/2007 on Management of Coastal and Small Islands and Act N° 32/2010 on Environment clearly use the term *Masyarakat Adat* and use the working definition of AMAN. The Constitutional Court affirmed the Constitutional Rights of Indigenous Peoples to their land and territories in May 2013, including their collective rights over customary forest.

While Indonesia is a signatory to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), government officials argue that the concept of indigenous peoples is not applicable as almost all Indonesians (with the exception of the ethnic Chinese) because they are indigenous and thus entitled to the same rights. Consequently, the government has rejected calls for specific needs from groups identifying themselves as indigenous. On 10 August 2015, the Ministry of Environment and Forestry agreed to be the trustee of 6.8 million hectares of indigenous maps, for inclusion in the One Map Initiative.



1 Kapuas Hulu District 2 Sikka District

Policy developments

Some changes occurred in 2016 at the policy level. One of these was Regulation of the Minister of Agrarian and Spatial Planning/National Land Agency (ATR/BPN) No. 10 of 2016 on the Procedure for Enacting Communal Rights. Although, substantively, no major changes were made to this regulation, it is more detailed than Ministerial Regulation N° 9 of 2015 on Communal Rights. Despite the changes, it has to be admitted that implementation has been very slow, and on a small scale.

At the local level, despite early signs of implementation of the Village Law (which recognizes indigenous governance systems) in some districts, such as Pelalawan District, Riau Province, or ongoing implementation in Jayapura with the “indigenous village” initiative, this could not cover up the fact that the legislative processes for the bill on recognition and protection of the rights of indigenous peoples, the legality of customary forests and the legality of indigenous territories were not as busy as in previous years. There was very little meaningful progress at all in 2016.

Violence and criminalisation of indigenous peoples continue. Almost no meaningful efforts have been made to systematically stop the acts of violence against indigenous peoples. Moreover, the handling of cases of violence and criminalisation of indigenous peoples became more complicated in 2016, especially with the emergence of new types of conflict related to infrastructure and dams, and the more obvious military intervention in such violence and criminalisation.

Spaces for conflict resolution scarcely improved the situation of indigenous peoples. Various complaints to state agencies failed to get a due response. Even the courts could do little to bring hope to indigenous peoples. One or two cases won by indigenous peoples at the first level court were overturned following appeal, as happened to a group of indigenous peoples from Muara Teweh, Central Kalimantan (see below).

New spirit amidst the fading hope for legal reform at both national and local level

Finally, after two years of waiting since the 2014 National Legislation Program, the National Parliament re-included the Indigenous Peoples Bill into the 2017 List of Priority Bills on 9 December 2016.¹ Forty-nine bills are currently listed in the

2017 National Legislation Program, one of which is the Indigenous Peoples Bill. However, it is worth noting that it is only a list, since the National Parliament will simply adopt this list at a plenary session on a date not yet decided. Indigenous peoples have to make sure that the Indigenous Peoples Bill is not removed from this list.

Of the political processes occurring during the preparations for this National Legislation Program, special appreciation should be given to some Members of Parliament who are constantly, tirelessly, fighting for the creation of national legal frameworks for indigenous peoples. In addition to the Indigenous Peoples Bill, several bills relating to indigenous peoples are also on the 2017 list of legislation, including the Land Bill, Palm Oil Bill and Conservation Bill. Discussion of these bills must be done openly and they must be examined closely. Contradictions are likely to occur between one bill and another. Moreover, special attention should be given to the Palm Oil Bill because the urgency of this bill is now being questioned. Instead of discussing this bill, the government should prioritise the Forestry Law, which still retains Law N° 41 of 1999. The amendments that have repeatedly been reviewed by the Constitutional Court deserve priority at this time.

And what about the Indigenous Peoples Task Force? Three years have passed since 2 January 2014 when AMAN proposed the draft Presidential Regulation on the Indigenous Peoples Task Force through the Secretary of Cabinet. To date, however, a Presidential Regulation on the Indigenous Peoples Task Force has yet to be enacted.

One Map Policy going nowhere

Inaction and obscurity are the order of the day in the One Map Policy Program.² Data and information on the existence of indigenous peoples and customary territories has continuously been transmitted to the government since 2012. As of the end of November 2016, the Indigenous Territory Registration Body (BRWA) had registered as many as 703 maps of indigenous territories covering a total area of 8.3 million hectares.

Despite many discussions, however, there has been no significant policy response from the ministries and agencies receiving the maps of indigenous territories. The Geospatial Information Agency (BIG), meanwhile, will produce the indigenous territories map as one of their thematic maps, as a component in

support of Joko Widodo and Jusuf Kalla's government agenda of achieving the One Map Policy pursuant to Presidential Decree N° 9 of 2015.

Threat to indigenous peoples' traditional farming and food self-sufficiency

The President issued Presidential Instruction N° 11 of 2015 on Improved Forest and Land Fire Control on 24 October 2015. Through its implementation, this Presidential Instruction has caused fear among indigenous communities³ as police and armed forces have reportedly been intimidating indigenous peoples. This Presidential Instruction indicates that indigenous peoples' dry farming tradition, using a burning technique, is the cause of forest fires.

Some incidents have been reported to the police, one of which was in Pelalawan District, Riau Province where 92 community members were detained on charges of alleged land burning, while only 15 companies were examined on similar allegations. Twenty-five of the 92 community members are now awaiting trial. Only one company has been taken to court, however, while investigations into another three have been discontinued.

In West Kalimantan, the members of the Dayak Bahau, Dayak Kayan and Dayak Kenyah indigenous peoples in Mahakam Ulu were reportedly being put under pressure by the police. Seven Dayak Iban villages in Jalai Lintang indigenous territory, Kapuas Hulu District were also pressured in similar ways. In fact, 12 residents had been sanctioned compulsory reporting on their whereabouts. Similar cases have also occurred in Central Kalimantan and South Kalimantan.

It is evident that the policy does not understand the provisions set out in the legislation, particularly related to making exceptions for the local wisdom-based forest burning technique. Local wisdom dictates the burning of a maximum of two hectares of land per household in order to plant local varieties of plant, all surrounded by firebreaks to prevent the fire from spreading, as outlined in Law N° 32 of 2009 on Environmental Protection and Management, particularly *Article 69 paragraph (1) and (2) juncto Explanation of Article 69 paragraph (2)*.

The struggle to take back indigenous territories through judicial channels

On 6 December 2016, after struggling for nearly a year through the courts, the lawsuit filed by the Talonang indigenous peoples against PT. Sumbawa Island Agro was dismissed by the judges of Sumbawa District Court as it was deemed obscure and lacking a party. PT. Sumbawa Agro is a company engaged in the development of sisal (*agave sisalana perrine*), which is a natural fibre crop used as a raw material. With this ruling, the Talonang indigenous peoples were unable to take back their indigenous territory, which was being controlled by the company. The Semunying Jaya indigenous peoples were likewise handed down a similar ruling in a case against PT. Ledo Lestari in West Kalimantan. After a one-year trial, the judges ruled that the lawsuit filed by the Semunying Jaya indigenous peoples was obscure and lacking a party. Decisions such as these are not prohibited but they are rather arbitrary because the simple logic that a case is “obscure and lacking a party” should be decided at the time of the interlocutory judgment, thus spending less money and energy on the ensuing legal proceedings.

New stage of violence and criminalisation of indigenous peoples

In previous years, cases of violence and criminalisation of indigenous peoples took place predominantly in the plantation sector, forest-related industry and mining but, in 2016, the cases were more varied. Some were related to dam construction, as was the case a few decades ago. 2016 was also marked by a return of “military force”, which became more active in safeguarding the smooth running of investments in indigenous territories. Some of the cases described below show that, in addition to the police, the military are frequently involved in conflicts, in a position that is at odds with indigenous peoples.

In August 2016, the Head of Sikka District issued Instruction No. Pem. 305/115/2016 ordering Soge and Goban indigenous peoples to vacate their ancestral territories immediately. The grounds for this instruction were that the Sikka District Government had allocated the territories of these two indigenous communities to PT. Krisrama, despite their lack of a concession license. The instruction proved the lack of impartiality of the Sikka District Head, who clearly favours

investment over the survival of the Soge and Goban indigenous peoples. It also reflected the Sikka District Government's inability to solve a problem that had been ongoing for a long time, ever since these indigenous territories were controlled by PT. Diosis Agung, a company involved in coconut plantations.

In October 2016,⁴ 11 members of the Seko indigenous peoples were arrested by North Luwu Police on charges of destroying equipment and expelling employees of PT. Prima Power Seko. The company is going to build a hydropower plant with a 380 megawatt capacity, far exceeding the needs of North Luwu District. These eleven people are still being detained at Luwu Utara police station, under investigation. Prior to this detention, hundreds of Seko indigenous peoples had rallied to protest at the presence of PT. Seko Prima Power, a hydropower company taking over Seko indigenous territories. This case arose several years ago. It forms a real threat to the Seko indigenous peoples as some villages will be submerged when the dam is built for the hydropower plant's reservoir. In addition to this there is the social damage, which first began when PT. Seko Prima Power arrived in the area and will escalate if this company continues to operate in the region. This is not to mention the potential damage to the Seko's culture, including their ancestral sites. Furthermore, the dignity of the Seko is also being violated as the company has pursued a most uncivilised path, without any open consultation. The strong political and economic factors underlying the entry of this company only exacerbate the situation. This hydropower development is allegedly intended to facilitate two mining companies, namely PT. Citra Palu Minerals and PT Kalla Arebamma, which have been planned by the government since 2011.

On 17 November 2016, at around 19:20 East Indonesia Time, an investigator from the Ngada Police committed an act of violence against a 20-year-old member of the Lambo indigenous community in Nagekeo District, East Nusa Tenggara Province. This member was hit twice on the chest, and twice in the abdomen with a book. He was forced to tell the perpetrator who had burned the drilling equipment used for dam construction. This violent act was committed after an incident on 8 November 2016 when drilling equipment at Lambo Dam construction site was found burning while under escort from the police and civil service police unit (*Satpol PP*). Although the cause of the fire remains unknown, the police have accused the Lambo indigenous peoples of being the perpetrators.

The Lambo dam construction plan, which is a continuation of the Mbay dam construction in 1999, has long been rejected by the people due to the encroachment onto their territories, the lack of information about the dam construction

plan, the intimidation and criminalisation of indigenous peoples, the absence of an Environmental Impact Assessment, and the fact that the dam construction on the Lambo indigenous territories is not in accordance with the spatial planning of Nagekeo District. Having been at a halt for years, Nagekeo District Government finally went ahead with the dam construction in 2016. Since 6 June 2016, the Nagekeo District Government, along with the Survey Team and escorted by the civil service police unit, Nagekeo District police, and fully-armed military personnel, has been forcibly entering the construction site to conduct a survey. Butowe Rendu Village Head sent a letter rejecting the Lambo dam construction plans to Nagekeo Government. The letter was accompanied by official minutes of rejection signed by the tribe's elders. The Nagekeo District government has ignored the protests of the indigenous peoples, however.

The 25 and 26 November 2016 marked a culmination in the fear being experienced by the Alut and Tuyan indigenous peoples in Tana Bumbu, South Kalimantan Province. Escorted by 300 state officials, namely police, Mobile Brigade Corps and military personnel, PT. Jhonlin Agro Mandiri displaced the Alut and Tuyan indigenous peoples from their farmlands with the use of heavy equipment. Rubber, rice, bananas, jering bean (dogfruit) and other plants were destroyed. Agricultural tools such as sickles were seized. Three members of the public were also attacked with weapons by the Mobile Brigade Corps. Such threats and violence committed by the state against indigenous peoples proves the state's failure to protect indigenous peoples. In the eyes of the indigenous peoples, the state is now heavily slanted in favour of investment even though this often destroys the livelihoods of indigenous peoples and the environment. ○

Notes and references

- 1 List of Priorities 2017, see <http://www.dpr.go.id/uu/prolegnas>
- 2 Oxford Business Group, *Indonesia introduces one map policy as a solution to overlapping land claims*, see <http://goo.gl/VxZjNn>
- 3 Jakarta Globe, *Plan to Ban Land Burning Sparks Concern About Indigenous People*, see <http://goo.gl/RD9wAM>
- 4 Mongabay Indonesia, *Kala Protes PLTA, Belasan Warga Seko Ditangkap*, 29 October 2016, <https://goo.gl/AJBIEB>

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MALAYSIA

As of 2015, the indigenous peoples of Malaysia were estimated to account for around 13.8% of the 31,660,700 million national population.¹ They are collectively known as *Orang Asal*. The *Orang Asli* are the indigenous peoples of Peninsular Malaysia. The 18 *Orang Asli* subgroups within the Negrito (Semang), Senoi and Aboriginal-Malay groups account for about 210,000 or 0.7% of the population of Peninsular Malaysia (31,005,066). In Sarawak, the indigenous peoples are collectively known as natives (*Dayak and/or Orang Ulu*). They include the Iban, Bidayuh, Kenyah, Kayan, Kedayan, Lunbawang, Punan, Bisayah, Kelabit, Berawan, Kejaman, Ukit, Sekapan, Melanau and Penan. They constitute around 1,932,600 or 70.5% of Sarawak's population of 2,707,600 people. In Sabah, the 39 different indigenous ethnic groups are known as natives or *Anak Negeri* and make up about 2,233,100 or 58.6% of Sabah's population of 3,813,200. The main groups are the Dusun, Murut, Paitan and Bajau groups. While the Malays are also indigenous to Malaysia, they are not categorised as indigenous peoples because they constitute the majority and are politically, economically and socially dominant.

In Sarawak and Sabah, laws introduced by the British during their colonial rule recognising the customary land rights and customary law of the indigenous peoples are still in place. However, they are not properly implemented, and are even outright ignored by the government, which gives priority to large-scale resource extraction and the plantations of private companies and state agencies over the rights and interests of the indigenous communities. In Peninsular Malaysia, while there is a clear lack of reference to *Orang Asli* customary land rights in the National Land Code, *Orang Asli* customary tenure is recognised under common law. The principal Act that governs *Orang Asli* administration, including occupation of the land, is the Aboriginal Peoples Act 1954.

Malaysia has adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and endorsed the Outcome Document of the World Conference on Indigenous Peoples but has not ratified ILO Convention 169.

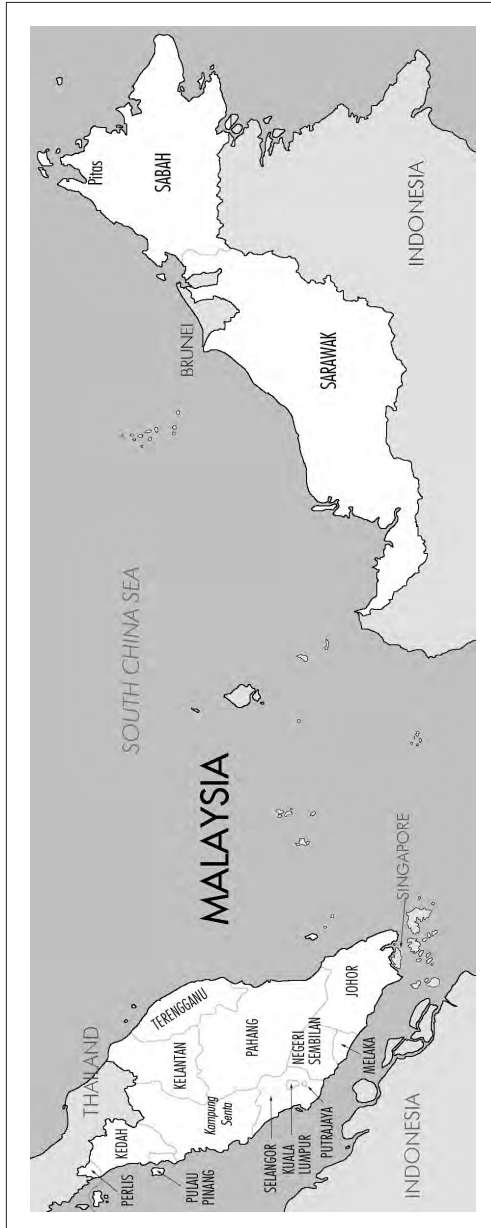
Follow-up to the National Inquiry into the Land Rights of Indigenous Peoples

In August 2016, the Jaringan Orang Asal SeMalaysia (or Indigenous Peoples' Network of Malaysia / JOAS) submitted a memorandum to a Federal Minister under the Prime Minister's Department calling for greater transparency in providing information on the progress and timely implementation of the recommendations to resolve issues related to the land rights of indigenous peoples. In 2013, the Human Rights Commission of Malaysia (SUHAKAM) published the findings of its National Inquiry into the Land Rights of Indigenous Peoples. A Task Force was appointed by the government to assess the findings and recommend steps for their implementation (see *The Indigenous World 2012, 2013, 2014, 2015, 2016*). In June 2015, the Federal Cabinet accepted all of the Task Force's 50 recommendations (categorised into short-, medium- and long-term plans) but rejected the call for a National Commission on Indigenous Peoples to be established, stating that the function of a commission would be served by a Cabinet Committee for the Land Rights of Indigenous Peoples.

Indigenous peoples are concerned that the Cabinet Committee has not communicated with indigenous communities or organisations since its establishment but has tasked the Governance and Integrity Bureau (BITU) to be its secretariat. In conjunction with the International Day of the World's Indigenous Peoples celebrations in August 2016, representatives held a dialogue with the Director of BITU to call for better and more timely communications, to ensure transparency in its process and to involve the Orang Asal. To date, however, the BITU has not contacted indigenous organisations nor replied formally to the memorandum submitted to the Minister through BITU.

Challenging encroachment onto indigenous lands and territories

At the start of 2016, the Chief Judge of Sabah and Sarawak reiterated the need to establish a land tribunal to look into cases of Native Customary Rights (NCR) over lands and territories in order to hasten the settlement of such cases. It was suggested that proposed members of the tribunal could include those knowledgeable in native land claims and legal issues with a cultural and traditional dimen-



sion. The proposed land tribunal was recommended by the SUHAKAM National Inquiry into the Land Rights of the Orang Asal and adopted by the Cabinet Committee but has yet to be implemented.

Realising the need to strengthen its advocacy on lands and territories, many indigenous peoples' organisations scaled up their community mapping efforts in Sabah, Sarawak and Peninsular Malaysia in 2016 and invested in drone technology. They also linked their advocacy efforts with the international *Land Rights Now!* campaign. More than 10 new traditional territories were mapped and many more on-the-ground situations were captured using the drone. For example, the drone was able to capture the encroachment of agribusiness onto indigenous territories through aerial photographs which, in the past, could not be taken due to the companies refusing access. Among the local land conflicts that

need highlighting is the dismantling of several blockades set up by the Orang Asli of Gua Musang to stop logging. In November, more than 50 Orang Asli were arrested and detained but later released on bail. This did not break their spirit, however, and they set up more blockades despite further threats from the authorities. It was important to note the heightened interest from the media, NGOs and the public in this regard.

More communities filed cases in court during 2016 and a number of victories were gained. However, the majority decision of the Federal Court on 20 December regarding the Sarawak government's appeal in the case brought by TR Sandah (see *The Indigenous World 2016*) was extremely disappointing to Orang Asli. It was ruled that the customary practice of indigenous peoples did not have the force of law because – even if shown to exist – it did not fall within the definition of customary laws under the Sarawak Land Ordinance. The Federal Court's decision will have major legal implications for large tracts of customary lands and forests currently occupied, used and enjoyed by the indigenous peoples of Malaysia. It is also a serious setback in the decades of struggle by indigenous peoples in Malaysia to exercise their customary rights to their territorial domains and to maintain their traditional system of land and resource use, which has contributed to the sustainable use and conservation of the rainforests in Borneo and Peninsular Malaysia.

In Peninsular Malaysia, the Orang Asli made some gains in the courts. In the case of *Kong Chee Wai*, the Court of Appeal upheld the decision of the High Court and asserted that the Semai of Kampung Senta had native title right to their customary lands (estimated at 2,000 hectares) despite a large part of it having been alienated to a private company. However, it is still not conclusive as to whether the Orang Asli enjoy blanket rights to their customary lands. Several other court cases are at various stages of hearing or appeal, and these may alter the landscape of the recognition of Orang Asli land rights.

Anti-dam campaign

In Sabah, protests at the proposed construction of the Kaiduan dam in the upper Papar River continued throughout 2016, and particularly in October when the director and deputy director of the Sabah Water Department were allegedly involved in the siphoning off of RM3.3 billion in federal funds for water development in Sabah. The Water Department has been the key department pushing for the Kaiduan dam. Thus

far, however, only three people have been taken to court, one of them being the former Sabah Water Department director who was charged with 12 counts of money laundering involving a total of RM 56.9 million (S\$18.4 million) at the Sessions Court.

Despite calls from many quarters to review the decision to build the dam in view of this scandal, the department instead went on the offensive against the affected communities. The government is adamant that the dam is the best option to prepare for a purported water shortage, and has shot down every recommendation made to adopt alternative water supply measures and step up efforts to reduce pipe leakages, reported to stand at more than 30% of water lost.

In Sarawak, the persistent and intensive campaign by indigenous peoples in Baram and throughout Sarawak as well as the support of various groups, CSOs and individuals at the local, national and international level also attracted the attention of the then Chief Minister of Sarawak, Tan Sri Adenan Satem and the Sarawak government. Adenan humbly acknowledged the strong opposition to the proposed mega Baram HEP Dam which, if implemented, would have submerged 30 villages and around 420 km² (42,000 hectares of forested lands and gardens of the affected villages). It would also have forcibly displaced and dispossessed more than 20,000 indigenous people from their traditional homelands. He ordered the project to be stopped and revoked the government gazette to extinguish the NCR of the indigenous communities in the target reservoir area of the proposed HEP Dam, just a few months prior to the Sarawak State Elections in May 2016. Meanwhile, the people of Baram are still cautious and are continuing to monitor activities related to the proposed mega dam.

Economic and political insecurity

Malaysia continued to face serious economic and political insecurities throughout 2016, which have also affected service delivery and commitments to indigenous peoples. The National Coalition, dominated by the United Malay National Organisation (UMNO), has held power for six decades and has devised many ways to protect itself and its top leaders, and to purge critics. The 1MBD scandal linking the Prime Minister to the siphoning of funds earmarked for development raged on for the third year. Even though related legal actions and investigations have been initiated in several countries such as the USA, Switzerland and Singapore, there have been no further developments in the parliamentary investigation in Malaysia,

and no one in Malaysia has been charged with the 1MDB's missing money. A court has, however, handed down a prison sentence to an opposition politician who managed to expose the 1MDB scandal, and an editor and publisher of one of Malaysia's independent news organisations are facing jail under a rule which forbids certain content from being published with the "intent to annoy". A news portal was also closed down in March after the authorities ordered its website blocked.

The ringgit has depreciated faster than other emerging-market currencies, and the authorities asked foreign banks to stop some ringgit trading abroad, raising fears of harsher controls. The introduction of the Goods & Services Tax and the removal of subsidies on fuel and essential goods has further burdened the communities, and particularly angered rural indigenous communities because service delivery and poor infrastructure have not improved.

Indigenous peoples have been among the most affected economically. They participated in peaceful assemblies and sent several memoranda to the government. One such peaceful assembly was BERSIH 5, organised by the Movement for Clean & Fair Elections, BERSIH (see *The Indigenous World 2016*) in October 2016 in several cities in Malaysia and elsewhere around the world. In connection with BERSIH 5, on 19 November 2016 Maria Chin Abdullah was detained for 10 days under the Prevention of Terrorism Act, which the government had promised would never be used against political opponents and critics. Many believe that the motivation behind the detention was to stifle outrage over 1MDB, a state-owned investment firm from which billions have gone missing.²

Meanwhile, on 20 December 2016, Jannie Lasimbang was acquitted of the charges brought against her by the government under the Peaceful Assembly Act 2012 (PAA) for her role in organising BERSIH 4 in Sabah (see *The Indigenous World 2016*). The magistrate also opined that a notice to the police to hold peaceful assemblies was not necessary as long as the government has not complied with a requirement in the PAA to gazette public places for assemblies.

National and international advocacy

In November 2015, the Sabah government mandated a transition to 100% Certified Sustainable Palm Oil (CSPO) by 2025 and appointed a Jurisdictional Certification Steering Committee (JCSC) to oversee the process. The JCSC comprises government, industry and civil society representatives and is convened by the

Sabah Forest Department, with Forever Sabah and RSPO as technical advisors. The JCSC established four working groups on High Conservation Value Forests; Compensation; Smallholders; and Free, Prior and Informed Consent (FPIC) for this purpose. The working group on FPIC has produced a draft Guide and Operationalisation mechanism based on several workshops with communities, government and the private sector, to ensure FPIC application across the state that could help resolve numerous complex issues in the oil palm sector.

In November, JOAS advocated for the implementation of FPIC in Malaysia at the Forum on Business and Human Rights in Geneva, and also hosted an international Conference on Human Rights & Agribusiness. Two local cases were also highlighted, namely the shrimp farms in Pitas and the oil palm joint-venture development in Bigor, a small village in the region of Nabawan in Sabah (approx. 250 km southwest of Kota Kinabalu), where their customary lands have been taken under the pretext of granting communal titles to the community.

At the roundtable discussions on the mid-term follow-up to the Universal Periodic Review (UPR) held by SUHAKAM in January 2016, indigenous peoples' representatives also urged SUHAKAM to follow-up on the Land Inquiry report and to re-visit recommendations made during the 2013 UPR on Malaysia. ○

Notes and references

- 1 Malaysia Statistics Department, 2015. Click "Current population estimates" for Sabah and Sarawak ethnic groups. For Sabah and Sarawak, the figure used is under "bumiputera" which includes the Malays i.e. the "Brunei Malays" (Sabah) and "Malays" (Sarawak). The actual number of natives should therefore be lower than this estimate. There is no breakdown by ethnic group. There is no current population data available for the Orang Asli but this is sourced from the estimate of the Department for Orang Asli Development (JAKOA), <http://pqi.stats.gov.my/searchBl.php>
- 2 <http://www.economist.com/news/leaders/21710820-opposition-has-do-more-win-over-rural-malays-malaysians-underestimate-damage?zid=306&ah=1b164dbd43b0cb27ba0d4c3b12a5e227>

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THAILAND

The indigenous peoples of Thailand live mainly in three geographical regions of the country: indigenous fisher communities (the Chao Ley) and small populations of hunter-gatherers in the south (Mani people); small groups on the Korat plateau of the north-east and east; and the many different highland peoples in the north and north-west of the country (the Chao-Khao). Nine so-called “hill tribes” are officially recognised: the Hmong, Karen, Lisu, Mien, Akha, Lahu, Lua, Thin and Khamu.¹ According to the Department of Welfare & Social Development, there are 3,429 “hill tribe” villages with a total population of 923,257 people.² The indigenous peoples of the south and north-east are not included.

A widespread misconception of indigenous peoples being drug producers and posing a threat to national security and the environment has historically shaped government policies towards indigenous peoples in the northern highlands. Despite positive developments in recent years, it continues to underlie the attitudes and actions of government officials.

Thailand has ratified or is a signatory to the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (UNFCCC), the Convention on the Rights of the Child (CRC), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Universal Declaration of Human Rights. It voted in support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) but does not officially recognise the existence of indigenous peoples in the country.

Although there have been some positive developments in Thailand's political environment, such as the adoption of a draft constitution and a long-term national strategic plan (20 years), the indigenous peoples' situation remains the same. Some issues have even become worse.



1 Rawai 2 Kaeng Krachan National Park

Land grabbing at Rawai

Rawai, located in the province of Phuket, is a popular tourist spot in the south of Thailand. It is home to the Chao Ley (people of the sea), a collective term for three indigenous groups: the Mogan, Moglen and Urak Lawoi. Their population is roughly 13,000 living in the five provinces of Phang Nga, Phuket, Krabi, Satun and Ranong along the Andaman coastal area and sea.

Rawai is one of the largest Chao Ley villages in the south. These villagers were in an uncertain standoff with the Baron World Trade Co. Ltd throughout 2016. The company claims ownership of over 33-rai (5 hectares) of land (public beachfront at Rawai sub-district in Muang Phuket district). This overlaps with the ancestral lands of the Chao Ley, who have used them to hold sacred ceremonies for generations.

The situation degenerated into violence on 27 January 2016 when the company hired a group of young men using a backhoe and trucks to unload rocks onto the road and try and block it to prevent villagers from entering the area. These young men destroyed the huts and fishing equipment of the Chao Ley. Around 30 Chao Ley were injured in the violent encounter, with 10 seriously hurt.³

The company claimed that it had legally obtained title to the land in order to develop a luxury villa project on Rawai Beach but that construction work had been obstructed by the Chao Ley, who refused to leave the disputed land.⁴ In the letter, the company also requested that the authorities deploy troops to protect company workers as they started to construct the villas on the disputed land, which the authorities had reportedly agreed to.

The public beachfront is where the Chao Ley moor their boats, unload fish, and keep their fishing equipment. The beach also includes their ritual sites and spirit house (Balai), where they perform sacred ceremonies and where the spirits of their ancestors reside. According to an investigation by the National Human Rights Commission of Thailand (NHRCT), the cultural and religious practices of the Chao Ley prove that they have used these lands for hundreds of years. The road block has affected some 252 households living there, and a total of 2,063 people.⁵ This was confirmed by police Lieutenant Col. Prawut Wongsinil of the Department of Special Investigation (DSI) under the Ministry of Justice. Various forensic, historical and cultural evidence, such as aerial photographs, ancestral

Chao Ley graveyards, testimonials of witnesses, school registrations etc., show that the Chao Ley have resided in the area for hundreds of years.⁶

When the government issued the first deeds to their land in 1965 (2508 BE), there was no information provided to, nor consultation undertaken with, the Chao Ley living in the area, let alone obtaining of their free, prior and informed consent (FPIC). This is still the case today.⁷ In November 2014, the Justice Ministry asked the Department of Lands to revoke the title deeds held by several businessmen claiming ownership of 11-rai (1.7 acres) of coastal lands in Phuket where the Chao Ley community live.⁸ Despite several efforts, however, there has been no progress in this matter. These efforts have included:

- Establishing a committee to solve the land disputes of the Chao Ley in five provinces,⁹ under the chairmanship of General Surin Pikulthong.
- On 2 February 2016, the Phuket provincial governor called for a meeting between representatives of the company and the Chao Ley to settle the dispute. No agreement was reached.¹⁰
- On 2 February 2016, the NHRCT also launched an inquiry into the case, including site visits and meetings.¹¹ The report produced by the NHRCT restated the legitimacy of the existence of the Chao Ley in Rawai with various evidence similar to the DSI findings, while calling for an investigation into the legality claimed by those with land title deeds.
- A group of 30 Chao Ley submitted a written petition to the Deputy Prime Minister Gen. Prawit Wongsuwan on 9 February 2016, seeking help to resolve the land dispute. They called on the Land Department to revoke the land deeds issued to the company which, they claimed, overlapped with 19-rai (3.20 acres) of their ancestral lands. They also called for a committee tasked with solving land conflicts to investigate whether the land deeds were issued to the company legally or not.
- On 11 February 2016, the Chao Ley representatives filed a complaint with the Justice Ministry asking their cases to be handed over to the DSI to ensure impartiality and efficiency. They also called for compensation for 34 members of the community who were injured in the violent encounter in January 2016.¹²
- On 4 March 2016, in a Facebook video, Thai PBS reported a resumption of construction work on the disputed land, with an excavator levelling the ground to build a fence at the entrance. The Chao Ley could only watch

while the excavator went to work. There were around 20 military and police officers deployed in the area.¹³ The Chao Ley peoples have struggled with this issue for years. They have sought in vain for the Thai authorities to protect them from eviction. Successive governments have promised to review the land ownership issue but there has been no progress to date.¹⁴

This case was also submitted to the Special Rapporteur, Ms Victoria Tauli Corpuz, as a matter of urgency.¹⁵

Court case on burning Karen properties in Kaeng Krachan National Park

In 2014, the Karen filed a case against the Government of Thailand for the destruction of their property and forceful eviction.¹⁶

On 7 September 2016, the Central Administrative Court ruled that the park authorities did not break the law by burning Karen people's properties in order to forcefully evict them from Kaeng Krachan National Park in 2011. The court dismissed all the demands of the Karen apart from compensation for the loss of their properties. The court ordered the Department of National Parks to pay compensation of 10,000 THB (approx. 287 USD) to each of the six Karen plaintiffs, in contrast with their initial demands of 100,000 THB each. The Department has refused to pay even this meagre compensation and has pledged to appeal against it.

In its verdict, the court stated that because the Karen had "encroached" upon forestland to expand their community and farms, the Department's decision to burn down their homes was permissible under the National Park Act 1961. The court also barred the community from returning to the land, which the Karen claim belonged to their ancestors. It is undisputed that the plaintiffs, including a 105-year old Karen spiritual leader, had lived on the lands all their lives until the evictions began, generations before the National Park was established in 1981.

"The ruling that the Karen had 'encroached' forestland only affirms the general lack of understanding on our histories and sustainable traditional practices and livelihoods," said Wut Boonlert of the Karen Network for Culture and Environment. "Our rights to stay in our ancestral land and continue our traditional farm rotation system are protected in the existing laws, including categorically under the 2010 Cabinet Resolution. However, the court concluded that the resolution

does not give rights inside National Parks. So, that means our rights are only on paper.”

Villagers are concerned that this will set a precedent for other authorities to do the same in other forest areas. The affected villagers have now lodged an appeal to the Central Administrative Court. The case is underway.

Referral once more of the inscription of Kaeng Krachan Forest Complex (KKFC) as a Natural World Heritage site

Last year, the Thai government (Department of National Parks) undertook a series of consultations and workshops with Karen villagers living in or near the Kaeng Krachan Forest Complex (KKFC) in response to the World Heritage Committee's decision at its 39th session held in Bonn in 2015 (39 COM 8B.5). The committee felt that Kaeng Krachan Forest Complex (KKFC) in Thailand had strong potential to meet criterion (x) for inscription as a World Natural Heritage site but requested, among other things, that the State Party address the concerns regarding the rights of the local Karen community living in the area.

The additional report submitted by the Thai government stated that they had made various efforts to deal with this issue,¹⁷ i.e. a public hearing of all stakeholders, integrated collaboration of all relevant sectors around conflict resolution, and the fostering of inclusive participation in management. The report further states, among other things, that public hearings with all stakeholders, including representatives of Karen communities, had been arranged in each national park and wildlife sanctuary and, finally, for the entire forest complex. The outcome of the process shows that all stakeholders have been informed and acknowledged the nomination of KKFC for the World Natural Heritage List. For conflict resolution and improvement of quality of life, a number of mechanisms and measures have been implemented to show Thailand's readiness to look after the Karen communities. In terms of participation in management, representatives of different Karen communities are included in the composition of the Protected Area Committee (PAC) of each national park and wildlife sanctuary of KKFC.

At the 40th session held in Istanbul and Paris, the World Heritage Committee again decided to refer the nomination of the Kaeng Krachan Forest Complex (decision 40 COM 8B.11) in order for the Government of Thailand to better address the concerns raised by the Office of the UN High Commissioner for Human

Rights concerning the Karen communities, including the implementation of a participatory process to resolve rights and livelihood concerns and to achieve a consensus of support around the nomination.

Such a referral will allow the Thai government another three years to initiate further steps in which to address the outstanding problems and concerns of the Karen people and local communities living there.

Continued efforts to get indigenous peoples' rights into the draft constitution of Thailand

The draft 2016 constitution was finally approved in a national referendum on 8 August 2016. This draft adopted the term “Thai Ethnic Groups” rather than “Indigenous Peoples” as initially written in the first draft. It was stated in Chapter VI: Policies of the state section that:

“The State shall promote and protect the rights of Thai people of different ethnic groups to live voluntarily and peacefully without disturbances in the society according to their culture, custom and traditional ways of life, in so far as such livelihood is not contrary to public order or good morals of people, or does not harm the security of the State or health”.

In the section, the state apparently makes a commitment to promote and protect “Thai people of different ethnic groups”. It does not, however, define any of the groups. Furthermore, there is no definition of precisely how ethnic people may offend the “public order” or the “good morals of people”, or “harm the security of the State or health”. This issue is subject to further interpretation and deliberation. ○

Notes and references

- 1 Ten groups are sometimes mentioned, i.e. the Palaung are also included in some official documents. The directory of ethnic communities of 20 northern and western provinces of the Department of Social Development and Welfare of 2002 also includes the Mlabri and Padong.
- 2 The figure given is sometimes 1,203,149 people, which includes immigrant Chinese in the north.
- 3 Documentation submitted to AIPP from local community representative. Also see Supra note 2 and *Threatened seafarer tribes demand rights over their home*, Prachatai, 11 February 2016, <http://www.prachatai.com/english/node/5845>

- 4 Green News TV (in Thai) <http://www.greennewstv.com/%E0%B8%81%E0%B8%A5%E0%B8%B8%E0%B9%88%E0%B8%A1%E0%B8%97%E0%B8%B8%E0%B8%99%E0%B8%8B%E0%B8%B1%E0%B8%94-%E0%B8%8A%E0%B8%B2%E0%B8%A7%E0%B9%80%E0%B8%A5-%E0%B8%82%E0%B8%A7%E0%B8%B2%E0%B8%87/> as reported in HRW, Supra note 2
- 5 Ibid.
- 6 Thai PBS News (in Thai) <http://news.thaipbs.or.th/content/7641> as reported in HRW Supra note 2
- 7 Interview on TV 11 channel as per documentation submitted to AIPP from local community representative.
- 8 *Panel upholds sea gypsy claim*, Bangkok Post, 5 November 2014, <http://www.bangkokpost.com/archive/panel-upholds-sea-gypsy-claim/441449>
- 9 This was formed on 22 July 2014, as per Order 116/2014 of the Prime Minister's Office and the Cabinet Resolution on restoration of the traditional livelihoods of the Chao Ley (dated 2 June 2010)
- 10 Ibid.
- 11 Bangkok Post, Supra note 16
- 12 Prachatai, Supra note 7
- 13 Prachatai, Supra note 8
- 14 HRW, Supra note 2
- 15 A report jointly prepared and submitted by Asia Indigenous Peoples' Pact (AIPP) and Network of Indigenous Peoples in Thailand (NIPT) in April 2016.
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VIETNAM

As a multi-ethnic country, Vietnam has 54 recognized ethnic groups, 53 of which are ethnic minority groups, comprising an estimated 12.3 million people or around 14.27% of the country's total population of some 91 million. Each ethnic minority group has its own distinct culture and traditions. The Vietnamese government does not use the term "indigenous peoples" for any groups but it is generally the ethnic minorities living in the mountainous areas that are referred to as Vietnam's indigenous peoples. The term "ethnic minorities" is thus often used interchangeably with "indigenous peoples" in Vietnam. Poverty is still high among the ethnic minorities. While the national poverty rate is 9.79%, it is still around 43- 48% in many ethnic minority areas. The process of poverty reduction is unstable and there is a high poverty relapse rate.

All ethnic minorities have Vietnamese citizenship, and Vietnam's constitution recognizes that all people have equal rights. There is no specific law on ethnic minorities but a ministry-level agency, the Committee on Ethnic Minority Affairs, is in charge of ethnic minority affairs. The Government of Vietnam has ratified CERD, CEDAW and CRC but not ILO Convention 169 and although Vietnam voted in favour of the UNDRIP it does not recognize ethnic minorities as indigenous peoples. The draft law on association and the proposal to develop a specific national law on ethnic minorities were not adopted by the National Assembly in 2016.

New legislation relevant to ethnic minorities

Of specific interest to ethnic minorities are the Law on Referendum No. 96/2015/QH13, which took effect on 7 January 2016, and the Law on Religion and Belief, which has been approved and will take effect on 1 January 2018. Most of the new laws have no separate articles targeting ethnic minorities (EM). The draft proposal on the development of the Law on Ethnic Minorities was not approved by the National Assembly. This legislative proposal was once more rejected, more than 20 years after the first concept note on the development of the Law on EM was initiated.



Vietnamese indigenous peoples' involvement in REDD

UN-REDD is the first programme ever in Vietnam to promote EM participation at all levels. It has been conducted in Vietnam with the technical support of UNEP, FAO and UNDP since 2009. An EM Network was established in six UN-REDD pilot provinces in 2015. The members of the EM Network, with the support of the Centre for Sustainable Development in Mountainous Areas - CSDM, have been organized and strengthened to participate in developing, implementing and monitoring the REDD+ processes in these six pilot provinces.

One of the important elements of the REDD-related activities was the piloting of FPIC in the six UN-REDD provinces. The consultation process with local communities was limited, however, as the REDD+ programme was not providing information to all local people and thus did not obtain the consent of all. At the same time, UN-REDD is speeding up the process of finalizing the safeguard information system with the aim of ensuring the right to participate and gain benefits from forests and share such benefits with EM.

The draft Prime Minister's decision on a National REDD+ Action Plan (NRAP) for the period 2016-2020 and Vision 2030 included the phrase "ensuring the full and effective participation of stakeholders, including ethnic minorities and women from local communities" under the first part "Points of View". The recognition and participation of ethnic minorities, and specifically CSDM, has been included in the Report on Self-Participatory Assessment of the REDD+ Readiness Package in Vietnam, submitted to the Forest Carbon Partnership Facility of the World Bank. UN-REDD phase II is coordinating with CSDM to conduct a survey of and select ethnic minorities in the pilot provinces; to elect the representatives of EM people to participate on the REDD+ Programme Executive Board; and to deploy the plan to connect with the EM networks in the pilot provinces. It has developed a set of criteria for selecting the EM representatives, identifying the specific tasks of these representatives, and identifying the needs and interests of EM in relation to forest protection and their participation in the REDD+ programme. UN bodies and the Norwegian government have encouraged the Government of Vietnam to effectively engage civil society and EM in formulating and implementing the NRAP investment plan.

Land tenure and forest land allocation

Policies, laws and regulations related to land tenure and forests are not consistent across the country in Vietnam and vary considerably from province to province. Furthermore, the process of Forest Allocation and Forest Land Allocation (FA/FLA) has not been applied consistently. Forest cover and land management contexts differ significantly between provinces as well. The study in six provinces found that the area of forestland that had been allocated to households and communities was considerably smaller than that allocated to State entities. The assessment also revealed the impacts of FA/FLA on forest conditions, on the livelihoods of forest-dependent communities, the types and severity of conflicts, and other risks and challenges associated with the FA/FLA process. The summary of key findings is divided into those related to the legal and policy framework, to FA/FLA processes, and to FA/FLA practices.¹

Ethnic minority policies

Between 2011 and 2015, the EM-related legislative system, with a total of 180 legal documents, was institutionalized through Government Decrees and Prime Minister's Decisions. However, this system still has the following shortcomings:

- The existing legislative system has overlapping content, target groups and valid terms.
- Resources for policy enforcement are insufficient. Implementation also lacks coordination, leading to low effectiveness and very limited impacts.
- The inconsistency in coordination is mainly found in the implementation of policies on emigration, production development support and/or policies which require a series of solutions, large-scale application or are of relevance to many sectors.
- The lack of systematic implementation of policies is also reflected at provincial level, where quite a few provinces have not followed the guidelines of the central organs.

- The legislative system is still focused on supporting well-being, infrastructure and production development but not on social investment, technology transfer or environmental protection.
- The existing legislative system is not yet suitable for the specific features/condition of EM and their living areas.
- Fairness and equality are not assured for all target groups in the same area. Policy implementation is thus heavily subsidized, failing to promote the driving forces and self-reliance of EM.
- The feasibility and efficiency of land policies targeted at EM households with limited land availability and resettlement, as well as land and forest allocation policies targeted at EM households, individuals and communities, remains low.

Sustainable Development Goals

Vietnam has promoted the SDG implementation as committed. Aiming to achieve Goal 5, Target 5A and Target 5B “universal access to reproductive health in EM areas”, Vietnam has developed the proposal “Minimizing child marriage and consanguineous marriage in EM areas for the period 2015 – 2025” approved by the government. The programme aims to raise awareness, and change attitudes and behaviour towards marriage among ethnic minorities. The project goal is to decrease child marriages by 2-3% per year in EM areas, with a 3-5% decrease in consanguineous marriages per year. Since 2015, and as of July 2016, however, Son La province has witnessed nearly 500 child marriages and two consanguineous marriages. Child marriage is actually showing a tendency to increase.²

Indigenous women and youth

Although remarkable progress has been made in Vietnam to close the gender gap in past years, important gender differences still remain. These differences are reflected in women’s and men’s contributions to productive and reproductive work, formal and informal employment opportunities, different salary levels, poverty levels, literacy rates, their access to and control over natural resources.

Although representation of women in the National Assembly is high by regional standards and there are two female members of the Politburo, there are still signs that women do not have an equal voice in public affairs. In fact, there are some indications that women's political representation has worsened slightly in some areas. For example, women's representation in the National Assembly decreased from 27.3% in 2002-2007 to 24.4% for the 2011-2016 session.

Many of the barriers that women face in the political sphere are also encountered at grassroots level. Women tend not to be involved in decision-making. Attending village or commune meetings is commonly considered a man's task. Women's participation in local People's Committee Councils is significant but still limited: 23.8% at provincial, 23.2% at district and 20% at commune level.

Access to land: there is a new policy to include both husband's and wife's names on the land-use certificate but the results are still minimal. According to the 2008 Vietnam Rural Economic Study in 12 provinces, the number of land-use rights certificates registered in the names of both wife and husband (2006-2008) is 32% in Lai Chau, 27% in Lao Cai and 17% in Dak Lak. For agricultural land registered to both wife and husband, this figure is 21% for EM. However, some reports note that even when their name is on the land-use certificate, many EM women still do not take decisions on the use of the land due to their dependence on men and their lack of confidence. Having less land rights limits women's access to credit with which to diversify income sources and recover from loss. The proportion of residential land-use right certificate without both names on them among EM is 77%.

EM women play an important role in forest protection; they are the ones who keep the cultural traits of the community alive and transfer indigenous knowledge and values about the forest to the next generation. They protect biodiversity and genetic resources in the forest and rivers and share new knowledge and experiences of protecting and improving the forest. They expand the area of forest area utilized for sustainable livelihoods and plant new seedlings. They are family medical doctors who take care of the health of their family and community using herbal medicines from the forest. And yet the women's role in managing and protecting the forest is becoming less important because of a lack of recognition of indigenous knowledge and the fading away of indigenous knowledge, which is kept and transmitted by EM women. ○

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LAOS

With a population of six and half million, Laos is the most ethnically diverse country in mainland Southeast Asia. The ethnic Lao, comprising around half of the population, dominate the country economically and culturally. There are, however, pockets where the number of ethnic groups exceeds that of the Lao and where their culture is prominent. There are 4 ethnolinguistic families in Laos; Lao-Tai language-speaking groups represent two-third of the population. The other third have first languages belonging to the Mon-Khmer, Sino-Tibetan and Hmong-Ew-Hmien families and are considered to be the indigenous peoples of Laos. Officially all ethnic groups have equal status in Laos, and the concept of indigenous peoples is not recognised by the government, despite the fact that Laos voted in favour of adopting the UN Declaration on the Rights of Indigenous Peoples.

The Lao government currently recognises 160 ethnic sub-groups within 49 ethnic groups. Indigenous peoples, especially of the third group, are unequivocally the most vulnerable groups in Laos, representing 93% of the country's poor. They face territorial, economic, cultural and political pressures and are experiencing various threats to their livelihoods. Their land and resources are increasingly under pressure from pro-investment government development policies and commercial natural resource exploitation.

Laos has ratified ICERD (1974) and ICCPR (2009). The Lao government, however, severely restricts fundamental rights, including freedom of speech (media), association, assembly and religion, and civil society is closely controlled. Organisations openly focused on indigenous peoples or using related terms in the Lao language are not allowed and open discussions about indigenous peoples with the government can be sensitive, especially as the issue is seen as pertaining to special (human) rights. In 2014, the Universal Periodic Review of the Lao People's Democratic Republic (Lao PDR or Laos) made no direct reference to indigenous peoples.

Indigenous people in the latest 2015 national population census

The 4th Population and Housing Census (PHC) 2015 was conducted from March 1-7, 2015 according to Prime Ministerial Decree N° 89/PM, dated September 11, 2013. The PHC has been conducted in the country every 10 years since 1985. The 2015 PHC collected data on important demographic and social characteristics such as age, sex, marital status, religion, citizenship and ethnicity. Out of the total population, the ethnic Lao accounted slightly over half of the nation's population (53%). Khmu and Hmong are the second and third largest groups, respectively. Each of these two groups comprises more than half a million individuals.¹

High ranking officials from central level are advocating for the recognition of the Brou indigenous people as official ethnic group; Brou is comprised of Tri, Makong and Katang indigenous people (all of whom consider themselves as Brou). If the central government agrees on the demand, Brou – that is geographically distributed over three provinces: Khammouane, Savannakhet and Saravane province – would become the 4th most populous group of the country with 345,000 people.

Regulatory framework and political representation

2016 witnessed three main events of political significance. Among the most important were the 10th Party Congress of the Lao People's Revolutionary Party in January, the election of National Assembly and Provincial People's Council members in March, and the ASEAN Summits in September. Laos became first country to serve as ASEAN Chair for the new ASEAN Economic Community. This is a big responsibility for the Government of Laos (GoL) that brought considerable international attention and provided Laos with an opportunity to demonstrate a strengthened commitment to principles of culturally sensitive sustainable development.²

Three indigenous people were re-elected out of 69 members during the 10th Party Central Committee members' election in early 2016 including Mr. Bounhang Vorachit (Katang), Ms. Pany Yathotou (Hmong) and Major General Somkeo Silavong (Khmu). Mr. Laopaxong Navongxay (Hmong) was also elected as alternative Party Central Committee members.³ Mr. Vorachit and, Ms. Pany Ya-



thotou were also elected as member of the Politburo and Mr. Vorachit was nominated as Secretary General of the Party Central Committee.

The Decree 84 on Compensation and Resettlement Management in Development Projects (05/04/2016) replaced the decree No. 192/PM dated 7 July, 2005 concerning compensation and relocation-allocation of people affected by development projects. The new decree provides principles, regulations and standards on the management, monitoring of compensation of losses and the management of resettlement activities and directly advocates for the respect of local cultures, religions, beliefs and traditions of affected people based on their customary practices.⁴

Prime Minister to stop export logging

The new Lao government has issued a moratorium on the export of logs and timber in a bid to reduce rampant and widespread illegal wood shipments outside the small Southeast Asian nation's borders. Prime Minister Thongloun Sisoulith issued the Prime Minister order 15 on May 13. The moratorium requires all ministries, provincial governors and mayors to implement strict measures to control and inspect the felling of trees, log transportation, and logging businesses. The moratorium contains 17 points, including one that forbids the export of logs, timber, processed wood, roots, branches, and trees from natural forests as well as logs the previous government had recently approved for export.⁵ Following this, Lao Prime Minister Thongloun Sisoulith instructed that all types of forest be closed to logging by June 1, with all parties prohibited from collecting or removing logs from forest fields and this will allow the government to review the implementation of the logging quota. Both regulations contribute to preserve forested spaces often located on indigenous lands.⁶

Ban of banana plantation concessions

Following Bokeo Province Governor Khamphanh Pheuyavong who had imposed a ban on expansion of banana farms back in April 2016,⁷ the Lao government has prohibited the establishment of more large scale banana plantations in a move to address environmental impacts after learning of severe environmental impacts caused by the use of hazardous chemicals on some farms, which is causing suffering among communities in the Northern provinces of Bokeo, Luang Namtha, Phongsaly, and Sayaboury.⁸ Marginalized Indigenous people who previously relied on subsistence farming form the majority of workers on banana concession. They get low wages and are not paid if they are sick and are forced to work in unsanitary conditions around dangerous chemicals. *"We all have headaches, although we're wearing masks when we spray pesticides on the trees,"* says Sith, an ethnic Khmu from the mountains of neighboring Xayaburi province. *"My son doesn't eat any more. He always feels like vomiting,"* he adds, pointing out a teenager with patches of depigmented skin.⁹ They typically earn between \$120 and \$150 a month in a country where the national income per capita is estimated

at \$137 a month by the World Bank. Armed Chinese guards were forcing Lao workers in the country's northern Oudomxay province to labor in banana plantations: "*The plantation owner uses the weapons because he is scared that Lao workers will resist his orders, but he does not have permission to have firearms,*" said a village chief in Houn district in Oudomxay province.¹⁰

Decree on pesticide

The Lao government has issued a mandate stating that the current Ministerial Regulation on pesticides must be uplifted to Prime Minister Decree in order for providing more powers and measures to assigned authorities in control of the synthetic chemical pesticides while promoting the biological agents that ASEAN Member States have already harmonizing its regulatory framework through the ASEAN Guidelines on the Regulation, Use, and Trade of Biological Control Agents. Further, the Pesticides Decree under revision provides coordination mechanism for relevant government sectors to involve and participate in controlling not only the use of the pesticides but other related activities in relation to pesticides as production, sale, transportation, importation and disposal.¹¹

Economic development impact indigenous people land

The economy grew at a rate of only 6.9 percent, which fell short of the government's target of 7.5 percent but still high compared to other countries in the region. In terms of private investments, 1,222 investment projects were approved for domestic and foreign businesses over the past nine months, with registered capital of over 25.5 trillion kip (US\$ 3.13 billion). Of the total, nine projects were approved in the form of concessions, worth US\$ 447 million. Approval was given to another 33 projects for operation in special and specific economic zones, with a total value of US\$ 443.9 million.¹²

Investments in indigenous land are proliferating but many schemes – including mining, plantations and processing units – not utilizing environmentally friendly practices adversely affect local communities and fail to comply with government regulations. 400 Lahu and Akha families in Phonesamphan and Taohom villages

in Long district of northern Laos' Luang Namtha province are being increasingly affected by a cassava-processing plant operated by Jupaoyan Cassava Processing Co., Ltd. a Lao-Chinese company that releases pollutants into a nearby stream on which they depend for water.¹³ This includes chemical running off leaching into the river and livestock poisoning occur all too frequently, informal labor depriving the workers of the rights afforded to formally employed, etc.¹⁴ This resulted in Prime Minister maintenance on the ban on mining concessions.¹⁵ Hydropower development also heavily impact indigenous people livelihood as in the case of the Namtha 1 dam that resulted in the resettlement of 37 villages mostly indigenous Khmu and Lamet communities in Phaoudom district in Bokeo province and Nalae district in Louang Namtha Province.¹⁶

Opium cultivation and addiction

Opium addiction is still widespread in 2016 including in Lahu communities in Viengphoukha district and is a factor hampering Lahu children accessing education. Often both the husband and the wife will work a full day for Akha or Lue villagers in exchange of the quantity of opium the husband needs, taking away the resource needed to support the children's education. In Tasoum village, out of 50 students enrolled in primary school, 43 are Akha and 7 are Lahu. There are over 30 adults addicted to opium in Tasoum village. The Lahu case is not isolated as opium addiction occurs throughout Laos with over 12,000 opium addict inventoried in 2015 belonging mostly to Sino-Tibetan and Hmong-Ew-Hmien speaking indigenous people.¹⁷

In terms of access to education, the Lao-Tai groups displayed the highest literacy rate, 95 and 92 percent, for males and females, respectively. The lowest school attendance rate is for indigenous girls in remote areas who do not receive parental or community support to attend school, and who are expected to work within their households.¹⁸ Literacy among the various ethnic groups varied greatly. Mon-Khmer and Hmong-Ew-Hmien, the second and third largest groups, have similar literacy levels (71.1 and 69.8 percent, respectively). The lowest literacy was observed among the Sino-Tibetan speaking group at 46.8 percent. While cultural traits may explain some variations, socio-economic factors and geographical location that affect access to education may also have an impact. For example, in some indigenous people proportions who have never attended school

hit at least 50 percent, such as Lahu (63 percent), Akha (50 percent), Tri (54 percent), and Katang (41 percent).¹⁹



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Due to the sensitivity of some of the issues covered in this article, the author prefers to remain anonymous.

MYANMAR*

Myanmar's diversity encompasses over 100 different ethnic groups. The Burmans make up an estimated 68% of Myanmar's 51.5 million people. The country is divided into seven mainly Burman-dominated regions and seven ethnic states. The Burmese government refers to those groups generally considered to be indigenous peoples as "ethnic nationalities". This includes the Shan, Karen, Rakhine, Karenni, Chin, Kachin and Mon. However, there are more ethnic groups that are considered or see themselves as indigenous peoples, such as the Akha, Lisu, Lahu, Mru and many others.

Myanmar has been ruled by a succession of Burman-dominated military regimes since the popularly-elected government was toppled in 1962. The general election held on 8 November 2015 saw Aung San Suu Kyi's National League for Democracy (NLD) unseat the Union Solidarity and Development Party (USDP) in a landslide. The subsequent transfer of power took place peacefully and, after half a century of military-dominated rule, the new administration took office with a formal handover ceremony on 30 March 2016. The NLD, led by Aung San Suu Kyi as State Counsellor, has begun the process of "national reconciliation" in a delicate coexistence with the military, which retains 25% percent of unelected seats in the Hluttaw (House of Representatives), allowing it a veto over constitutional change.

Myanmar voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the UN General Assembly in 2007, but has not signed the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and nor has it ratified ILO Convention No. 169. It is party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), although it has thus far failed to take into account many of the CEDAW and CRC committees' respective recommendations.

Institutional and policy developments

The 6th and final draft of the National Land Use Policy (NLUP), which was adopted by parliament in 2016, includes a chapter on “*Land Use Rights of Ethnic Nationalities*” that refers to customary land tenure and land use mapping.¹ Customary land tenure protections are not limited to agricultural land but also include shifting cultivation practices in forest land as well as the recognition of communal land tenure systems such as swidden farming. The document also mentions Free, Prior and Informed Consent (FPIC) as a means of addressing “*land monopolization and speculation*”.² It is unclear how FPIC can be applied as a practical means of addressing these problems as they are not defined in the policy. The NLUP is a landmark in Myanmar’s reforms given that amendments to previous drafts have been made after public consultation and consideration of written and verbal statements from stakeholders across the country, and in no short part down to the work of indigenous peoples’ organisations in Myanmar. How the new national land policy (currently under draft) will harmonize a myriad of overlapping land laws and implement the policy remains to be seen. The long awaited 2016 Environmental Impact Assessment Procedure (EIA) offered a broad definition of Myanmar’s indigenous peoples as “*people with a social or cultural identity distinct from the dominant or mainstream society, which makes them vulnerable to being disadvantaged in the processes of development*”.³ The EIA also requires public consultations and disclosure of project information in large-scale infrastructure and development projects.⁴ Furthermore, the ongoing implementation of REDD+ will require a revision of current laws and policies in order to implement the Cancún Safeguards, respecting the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Despite encouraging policy developments, both state-sponsored and corporate development projects of all kinds have largely ignored international best practices regarding FPIC and internal policy designed to safeguard indigenous communities.

Establishment of the Ministry of Ethnic Affairs

As mandated under the Law Protecting the Rights of National Races 2015, the new administration has established a Union-level Ministry of Ethnic Affairs with two de-



partments: ethnic literature and culture, and the protection of ethnic rights. The Ministry of Ethnic Affairs' Union Minister, Nai Thwet Lwin, is an influential Mon political figure. A mixed amount of scepticism surrounded the initiation of the Ministry and whether it had been established to "placate" ethnic people.⁵ The early signs,

however, have been positive. The Union Minister, speaking publicly at the Day of the World's Indigenous Peoples in August 2016, specifically mentioned that the Law Protecting the Rights of National Races 2015 had provided the impetus for broader, more transparent ethnic and indigenous rights in the country and an opportunity to implement the UNDRIP. The Ministry has continued to engage in capacity-building initiatives with NGOs on the UNDRIP and consultations on a bylaw for implementation of the Law Protecting the Rights of Ethnic Nationalities 2015.

National reconciliation

Following the landslide victory in November 2015 (*See Indigenous World 2016*), Parliament approved Aung San Suu Kyi's close ally, Htin Kyaw, as the country's new President in April 2016, and he subsequently appointed Aung San Suu Kyi to the position of State Counsellor. This new position, created by the NLD and designed to circumvent the 59(f) constitutional restriction on her ability to be president, provided space for Aung San Suu Kyi to "*make all political decisions*", fulfilling her pre-election pledge.⁶ She was also elected as foreign minister, giving her control over external relations.

Key steps for national reconciliation initiated since the NLD took office include the establishment of a new Ministry of Ethnic Affairs, the release of over 100 political prisoners and the de-blacklisting of over 600 people.⁷ They have also established an executive committee to address land confiscation, initiated at the 21st century Panglong Peace Conference, and furthermore appointed indigenous representatives to senior positions within government, including a member of the Chin indigenous group, Henry Van Thio, as Vice President. This appointment was met with opposition from Buddhist nationalists.⁸ Concerns were also raised by indigenous community members from Chin State⁹ on the appointment of Tharu Aung Ko as the Union Minister for Religious and Cultural Affairs. Despite being seen as a pragmatic, politically-strategic decision by civil society, this does not sit well with national reconciliation objectives.¹⁰ How Aung San Suu Kyi and the NLD government approach the constitutionally-embedded military in national government will, however, be paramount for national reconciliation.¹¹

Panglong Peace Conference

One basic premise of the symbolic 21st century Panglong Conference was the stance of the NLD that it should include all Ethnic Armed Organisations (EAO), in an attempt to make it an “all inclusive” forum for dialogue. This meant that those who were either non-signatories of the Nationwide Ceasefire Agreement (NCA), or not recognized to do so, were also invited to attend – building on January’s Union Peace Conference, hosted by the then president, U Thein Sein.¹² This was welcomed by all eight signatories to the 2015 NCA as well as groups under the United Nationalities Federal Council (UNFC) umbrella. The conference, which took place in August 2016 over three days, was attended by all EAOs with the exception of the Arakan Army (AA), the Myanmar National Democratic Alliance Army (MNDAA), the Ta’ang National Liberation Army (TNLA), and the Nationalist Socialist Council of Nagaland – Khaplang (NSCN-K). These groups either did not attend due to the breakdown of negotiations on disarmament before the conference, or refused to attend on ideological grounds.¹³

Despite nothing substantive being debated, negotiated or concluded, it was clear that a difference of opinion exists over what a Federal Democratic Union will need to look like for sustainable peace. The EAO’s vision for the Union is set on administrative autonomy for the separate states and a separation of powers between the civilian government and the military whereas the civilian-military government foresees amendments to the 2008 Constitution in order to facilitate a decentralized structure of governance.¹⁴ This fundamental difference has provided the impetus for increased and intensified fighting.¹⁵

Ceasefire

Armed conflict increased steadily throughout 2016, particularly in Rakhine State involving the Rohingya ethnic minority, and in the North-East involving non-NCA members from Kachin and Shan based EAOs. The peace process has also been undermined by fighting involving Nationwide Ceasefire Agreement (NCA) members. In October, skirmishes broke out between Tatmadaw (Myanmar Armed Forces) and the Restoration Council of Shan State, (RCSS),¹⁶ and the Tatmadaw attacked a Democratic Karen Benevolent Army (DKBA) splinter group in Karen

State. Ongoing militarization and reinforcement of military bases has also been reported in ceasefire areas.¹⁷

Intensified fighting took place in November and December 2016 as a new alliance of non-NCA members joined forces under the name of the “Northern Alliance Brotherhood” (NA-B) and went on the offensive in Tatmadaw outposts along the Chinese border. This group is made up of the Kachin Independence Organisation (KIO), Ta’ang National Liberation Army (TNLA), Myanmar National Democratic Alliance Army (MNDAA) and Arakan Army (AA). The group coordinated attacks on Tatmadaw outposts in Northern Shan State, resulting in a further 32,000 internally displaced persons (IDPs) confirmed from Kutkai, Lashio, Muse and Namhkan townships. None of the NA-B members are part of the NCA, having either refused to sign or being deemed ineligible to take part in the negotiations.

Effect on civilian population

The continuation and escalation of fighting over the year has resulted in over 40,000 new IDPs in Myanmar.¹⁸ Chin in Paletwa continued to be affected by fighting between the Arakan Army and Tatmadaw in 2016.¹⁹ Airstrikes destroyed civilian buildings in Mong Koe, Northern Shan State resulting in four deaths and 63 injuries to civilians.²⁰ Tatmadaw airstrikes in Pang Mark Mu Village, Northern Shan State, resulted in the deaths of three civilians with a further seven injured, including two women and a five-year-old child.²¹ In June, the shallow graves of five villagers were discovered after a Tatmadaw interrogation in Moung Yaw sub-township had taken place.²² Amidst reports of land grabs by the military, farmers in Kachin State returned to work on their land despite ongoing fighting and risk of landmines.²³

Humanitarian support has been either slow to be authorized or blocked entirely during periods of fighting, affecting indigenous peoples and ethnic minorities in Shan, Kachin, Chin and Rakhine states²⁴ (this is also true of a public health crisis in the Naga Self-Administered Zone).²⁵ The Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, was denied access to areas where fighting had been taking place in Shan State and Kachin State during her official visit to Myanmar in June 2016.²⁶ The Special Rapporteur recently noted a common fear of reprisals among interlocutors after speaking to her about human rights issues affecting indigenous and ethnic minority communities.²⁷

Indigenous women's rights

The Myanmar delegation's claims at the 64th session of the United Nations Convention on the Elimination of Discrimination Against Women (CEDAW) Committee that women do not face "*social barriers in education, jobs and career advancement*"²⁸ belie the facts. In the 330 townships in Myanmar, not one township administrator is female, and out of 16,785 Village Tract/Ward Administrators only 42 are women.²⁹ The concluding observations of the committee highlighted the need for temporary special measures, including statutory quotas, to address the gender gap in decision-making positions within both the public and private sectors.³⁰

The delegation also defended the controversial Protection of Race and Religion Laws which, if implemented, would violate convention norms.³¹ The Committee urged the government to amend or repeal the cluster of laws, as well as constitutionally-embedded preconceptions of women's role in society.³² Women face major barriers in accessing justice for gender-based violence. The fear of reprisals felt by women from indigenous and ethnic minority communities when reporting sexual assault or rape by the armed forces was highlighted by the committee.³³ ○

Notes and references

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* The author and publisher of the this article are well aware of the existing Myanmar/Burma name dispute, however, Myanmar is here used consistently to avoid confusion.

*Founded in 1995, **Chin Human Rights Organisation (CHRO)** works to protect and promote human rights through monitoring, research, documentation, education and advocacy on behalf of indigenous Chin people and other ethnic/indigenous communities in Myanmar. The organization is a founding member of the Indigenous Peoples Network of Myanmar, made up of over 20 non-governmental organizations engaged in indigenous peoples’ issues in the country.*



SOUTH ASIA

INDIA

In India, 705 ethnic groups are recognized as *Scheduled Tribes*, and these are considered to be India's indigenous peoples by the Adivasis and Tribals of the Country.¹ In central India, the Scheduled Tribes are usually referred to as *Adivasis*, which literally means indigenous peoples. With an estimated population of 104 million, they comprise 8.6% of the total population. There are, however, many more ethnic groups that would qualify for Scheduled Tribe status but who are not officially recognized. Estimates of the total number of tribal groups are higher than the official figure. The largest concentrations of indigenous peoples are found in the seven states of North-east India, and the so-called "central tribal belt" stretching from Rajasthan to West Bengal.

India has several laws and constitutional provisions, such as the Fifth Schedule for Central India and the Sixth Schedule for certain areas of North-east India, which recognize indigenous peoples' rights to land and self-governance. The laws aimed at protecting indigenous peoples have numerous shortcomings and their implementation is far from satisfactory. The Indian government voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) with a condition that, after independence, all Indians are indigenous. However, it does not consider the concept of "indigenous peoples", and thus UNDRIP, applicable to India.

Legal rights and policy developments

On 25 October, while inaugurating the first ever tribal carnival in New Delhi, the Prime Minister of India, Narendra Modi, stated that "natural resources in forests should not be exploited at the cost of tribals" and warned of stringent action against those who "snatch" their land and rights. The Prime Minister also advocated the use of modern technology in mining, besides the gasification of coal at underground excavation sites, to help control pollution and damage to the health of people in the surrounding areas.²



The Prime Minister's public pronouncements regarding the inviolability of tribal rights did not, however, seem to have any effect on the state-level governments. Jharkhand is a case in point. On 23 November, the State Assembly of Jharkhand passed amendments to the two tribal-friendly Land Acts of the State, the Chhotanagpur Tenancy (CNT) Act of 1908 and the Santhal Parganas Tenancy (SPT) Act of 1949. The proposed amendments were passed without any discussion.³ The amendments to the CNT Act and the SPT Act allow government use of tribal land for non-agricultural purposes. Despite poor implementation, these two special laws had succeeded in protecting tribal lands and restricting their alienation, as well as ensuring the restoration of illegally transferred tribal lands.⁴ The amendment bills were sent to the President of India for his assent.⁵

Prior to the amendments passed by the State Assembly, the State Government of Jharkhand had attempted to amend these two special laws through ordinances. In May, the State Government of Jharkhand issued two ordinances, the Chhotanagpur Tenancy Act 1908 (Amendment) Ordinance, 2016 and the Santhal Parganas Tenancy Act, 1949 (Amendment) Ordinance, 2016.⁶ The amendments proposed through the ordinances led to widespread protests in the state, leading to the deaths of at least eight people in three incidents of police firing in Ramgarh, Hazaribagh and Khunti districts in August and October.⁷ Following protests, the ordinances were later withdrawn by the State Government. However, in their place they brought the two amendment bills, which were approved by the State Assembly – now pending the approval of the President.⁸

Human rights violations against indigenous peoples

According to the latest report “Crime in India 2015” of the National Crime Records Bureau (NCRB) of the Ministry of Home Affairs, a total of 10,914 cases of crime against Adivasis were reported in the country during 2015 as opposed to 11,451 cases in 2014, thus showing a 4.7% decrease from 2014 to 2015.⁹ These are only the reported cases of atrocities committed by non-advasis on Adivasis and do not include cases of human rights violations by the security forces.

In 2016, the security forces continued to be responsible for human rights violations against the tribals. In the areas affected by armed conflicts, the tribals are pinched between the armed opposition groups (AOGs) and the security forces. Cases are numerous and many not reported. Some cases became public and are included here to illustrate the severity of these violations. On 8 July, a 20-year-old Adivasi died following alleged torture in police custody in Ranchi, Jharkhand. The Adivasi was taken into custody by police the previous night on suspicion of supplying arms to the Maoists. The deceased’s family alleged torture, resulting in death.¹⁰ On 22 October, one Adivasi was killed and 12 others wounded by gunshots fired by the police at Soyko village in Khunti district, Jharkhand. The police allegedly opened fire on the villagers, who were going to join the protest rally in Ranchi against the Jharkhand Government’s attempt to amend the Chhotanagpur Land Tenancy Act and Sathal Parganas Land Tenancy Act.¹¹ On 10 December, a 17-year-old tribal student from the Auxiguri area in Kokrajhar district of Assam was allegedly killed by security forces during a confrontation. The de-

ceased's mother claimed that her son, a tuberculosis patient, was picked up by four to five armed personnel and later killed in a false confrontation.¹² On 16 December, a 13-year-old tribal boy from Metapal village in Jagdalpur district of Chhattisgarh was killed by security forces in an alleged encounter on the suspicion of being a Maoist. However, residents of the village and family members claimed that the deceased was not a Maoist. On 27 December, the Bilaspur High Court ordered a further post mortem of the deceased.¹³ On 27 December, a 40-year-old tribal farmer was allegedly killed by security forces at Laopani Ashra-
bari in Kokrajhar district of Assam. Security forces claimed that the deceased was a militant of the NDFB (S) faction. However, his family and the headman of the village contended that the deceased was not involved with any militant group. They said the deceased was allegedly picked up by security forces while returning home from a market. Following widespread protests, the State Government ordered an inquiry into the death.¹⁴

Armed opposition groups also continued to be responsible for gross violations of international humanitarian law, including killings. During 2016, the Maoists continued to kill innocent tribals on charges of being "police informers", or simply for not obeying their orders. The majority of the victims were killed in *Jan Adalats* ("People's Courts") held by the Maoists. The Naxal Division of the Ministry of Home Affairs recorded 21 *Jan Adalats* held by the Maoists during 2016.¹⁵ Some of the alleged killings took place at Koyalibeda area in Kanker district, Chhattisgarh on 16 February;¹⁶ at Hatbal village in Lohardaga district, Jharkhand on 17 September;¹⁷ at Raitorang village in Khunti district, Jharkhand on 26 September;¹⁸ at Nama village in Sukma district, Chhattisgarh on 4 November;¹⁹ and at Kudemuluguma village in Malkangiri district, Odisha on 27 December.²⁰

Alienation of tribal land

The 5th and 6th Schedule to the Constitution of India provide stringent provisions for the protection of land belonging to the tribal peoples. At the state level, there is furthermore a plethora of laws prohibiting the sale or transfer of tribal lands to non-tribals and restoration of alienated lands to the tribal landowners. However, these laws remain ineffective as none have been invoked and attempts are made to weaken these laws.

In Jharkhand, tribal lands were being illegally transferred to non-tribals through misuse of the compensation provision under the CNT Act. On 28 January 2016, the Tribal Advisory Council (TAC) recommended scrapping the norm of awarding compensation under the Chotanagpur Tenancy Act in lieu of tribal land to a non-tribal to settle title issues. As of late January 2016, there were 4,219 such cases pending with Scheduled Area Regulation (SAR) courts in various parts of Jharkhand.²¹ On the basis of the recommendation of the TAC, the Jharkhand Government revoked Section 71 of the CNT Act, which provides for compensation to tribals against the land obtained from them in the amendment bill passed in the State Assembly on 23 November. The Jharkhand Government states that all such land plots that were transferred from tribals to others would be restored to the owners.²²

Similarly, tribal lands were being sold to non-tribals in Maharashtra. Although, sale of tribal land to non-tribals is restricted under the Revenue Code, it can be sold with the permission of the collector, who has the power to allow such transactions with the government's approval. With such a system in place, a large amount of tribal land in the State has been alienated. In June, the Governor of Maharashtra issued a notification which stipulates that the District Collectors will have to seek the permission of the gram-sabhas before allowing transfer of occupancy from tribals to non-tribals in scheduled areas. Tribal activists claim that an estimated 3 million hectares of tribal land have been alienated in Maharashtra.²³

The conditions of the internally displaced tribal peoples

There were no reports of displacement caused by conflict during 2016. However, tribals who had been displaced over the years due to conflicts were yet to be rehabilitated at the end of 2016. Over 30,000 Bru (Reang) tribals continued to live in inhumane conditions in six temporary relief camps in Tripura after their displacement from Mizoram in 1997. The repatriation process of the Brus to Mizoram, scheduled to begin in 30 November, had not taken place due to various reasons by the year's end.²⁴

Land has been acquired for mining, industrialization and non-agricultural purposes, to make way for development projects in tribal areas. Tribals who lost their lands due to such projects were denied proper compensation, rehabilitation and other facilities, and those who opposed land acquisition or demanded proper rehabilitation were met with force. On 1 October, four tribals were killed when police

opened fire during a protest in Hazaribagh district, Jharkhand, against land acquisition by the National Thermal Power Corporation (NTPC). The NTPC had acquired 8,056 acres of land for the Pankri-Barwadih coal mining project in 2010. The protestors were demanding higher compensation, employment and rehabilitation.²⁵ On 29 August, two tribal farmers were killed and over 40 others injured when police opened fire on a crowd protesting a thermal plant in Gola in Ramgarh district, Jharkhand. The protestors claimed that their crops were being damaged because of excessive usage of river water by the power plant run by Inland Power Limited and because of the pollution it was causing.²⁶

Repression under forest laws

A large number of forest-dwelling tribals continue to be denied their rights. As of 31 October 2016, and according to information available from the Ministry of Tribal Affairs, a total of 4,243,668 claims (4,130,373 individual and 113,295 community claims) had been filed under the Forest Rights Act. Of these, nearly 87% were settled, for which 1,726,815 titles (1,678,623 individual and 48,192 community claims) were distributed.²⁷ The remaining claims were either rejected or are pending.

Section 4 (5) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006 provides that no member of a forest-dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from land under his occupation until the recognition and verification procedure for settlement of forest rights is complete.²⁸ However, tribals continue to face eviction in the name of forest conservation or are being threatened for opposing evictions or relocations. On 7 December, some 577 Jenu Kuruba tribal families were evicted from their homes in Diddalli in Devamachi Reserve Forests in Kodagu district, Karnataka.²⁹

Deaths and sexual exploitation in tribal residential schools

There are a number of schemes for tribal development in the country. One such scheme is the tribal residential (Ashram) schools which are established to educate the children of tribals living in the forests. However, there have been reports of deaths and sexual exploitation of the tribal students in these schools across the country.

In May 2016, the Tribal Development Department of Maharashtra established a committee headed by Dr Subhash Salunkhe following reports of deaths in tribal residential schools in the state. The Salunkhe Committee Report submitted to the Governor of Maharashtra in October stated that 1,077 students had died in these schools over the past 15 years. The Committee, which investigated 793 deaths, concluded that these deaths could have been avoided. The school authorities claimed the causes of these deaths were drowning, snake bites, suicides, major and even minor illnesses. The report stated that over half of the dead children were girls and indicated sexual exploitation.³⁰ On 10 October, the National Human Rights Commission (NHRC) issued a notice to the State Government of Maharashtra seeking a report into the deaths. However, the State Government has failed to take any initiatives to address the problem and has even failed to submit a report to the NHRC.³¹

Situation of Adivasi women

Adivasi women in India are deprived of many of their rights. Both collective and individual rights are violated in private and public spaces. The major issues are: sexual violence, trafficking, killing/branding as a witch, the militarization or state violence and the impact of development-induced displacement, etc. There are numerous, unreported cases of sexual violence by the security forces. In 2016, one case that was taken up by the media reveals the situation concerning women, particularly Adivasi women. In Bastar region of Chattisgarh, 16 Adivasi women from Kunna, Guler and Bellam Landra villages were raped and sexually assaulted from October 2015 to January 2016³² and, according to the NHRC, they were still awaiting statements from around 20 other victims.³³ Human rights defenders are under threat, such as Soni Sori, a local leader from Baster, who herself has already suffered state violence and was again attacked on 20 February in Geedam, where attackers threw a chemical substance into her face and threatened her because she is involved in the wider campaign against state violence.³⁴

Another case is from Gadchiroli, Maharashtra, where two women were picked up by C-60 Maharashtra police personnel near Todgatta village. They were released after active protest from the villagers. These women subsequently complained of sexual assault and sought legal intervention. However, as the victims were seeking legal assistance, and demanding a medical check to prove sexual assault, the police (without any concern for the constitutional rights prescribed

under Art. 19(1)(g) and due process) barged into the office of the advocate, in plain clothes, and abducted the women and their companions. These women were not checked for signs of sexual assault and rape - only a blood test was conducted in the name of a medical/legal exam.³⁵

The level of trafficked young Adivasi girls and women from Central India is very high, and the majority of these women and young girls are trafficked to ensure cheap labour in domestic service, construction work, factories and hotels. In one of the cases, 12 girls from Dumka district were caught on a train with an agent who said they were working in a meat factory in Uttar Pradesh, although he had no proof of their employment.

Witch branding and even killings are still taking place in India. In 2016, more than 54 women were killed in the name of witch hunting. Most of them are single women or widows. Physical and mental torture such as brutal beatings, stripping, shaving of the head, breaking of teeth, being forced to eat human excreta, drink urine or blood is deeply traumatizing, and robs the women of their dignity, and often their livelihood and home as they become outcasts in their community. Jharkhand has the highest number of reported cases; more than 156 cases were reported according to the NCRB 2014 record. Other states such as Orissa, Madhya Pradesh and Chhattisgarh had 32, 24 and 16 cases respectively. There is no national law protecting women from witch hunting. Jharkhand, Bihar, Chhattisgarh, Orissa and Rajasthan state do have laws but they need amendment and effective implementation.

Nagalim

With a population of approximately four million and comprising more than 50 different tribes, the Nagas are a transnational indigenous peoples inhabiting parts of North-east India and North-west Burma. The Nagas were divided between the two countries as a result of the colonial transfer of power from Great Britain to India in 1947. Nagalim refers to the Naga homeland transcending the present state boundaries, and is an expression of their assertion of their political identity and aspirations as a nation. The Naga people's struggle for the right to self-determination dates back to when the newly-formed Indian state sought to crush the Naga people's declaration of independence with violent repression and heavy militarization of the Naga territories. Armed conflict between the Indian state and the Nagas' armed opposition forces began in the early 1950s and it is one of the

longest armed struggles in Asia. In 1997, the Indian government and the largest of the armed groups, the National Socialist Council of Nagaland Isaac-Muivah faction (NSCN-IM), agreed on a ceasefire and have since then held regular peace negotiations. As a result of India's divide-and-rule tactics, the armed resistance movement was split into several factions fighting each other. Since the declaration of the ceasefire, CSOs (including the churches) have initiated reconciliation processes such as the one facilitated by the Forum for Naga Reconciliation (FNR). However, reconciliation both within society and among the armed resistance groups is yet to be realized.

The peace framework agreement with NSCN-IM

The political talks between the Government of India (GoI) and the NSCN-IM have been ongoing for 19 years but there is not much to show in terms of achieving peace, despite the framework agreement signed on 3 August 2015. The Naga public and CSOs, which received the Agreement with mixed feelings, continue to be skeptical (with some sections indeed opposing the Agreement) because the content has not yet been made public. Pressure has therefore been mounting on the GoI and NSCN-IM as the legitimacy of the Agreement is heavily questioned. The NSCN-IM also suffered a setback in June 2016 with the passing of their 85-year-old co-founder and Chairman, Mr Isak Chishi Swu. With the growing mistrust and unrest around the Agreement, the NSCN-IM leaders have held many consultations with CSOs. The key content of the agreement, shared with the people through consultations, is as follows:

- that Naga integration has been accepted (in principle) as part of the framework agreement
- that shared sovereignty in the framework agreement means that two entities will work together
- that salient features of competencies include the eminent right of the Nagas over land and its resources and internal affairs, including foreign affairs and joint defence in the context of external aggression.

Dissatisfaction over the consultations has been widely expressed by the public and CSOs, however, and the NSCN-IM now seems at its wits end and is desper-

ately trying to find a solution. The CSOs are conducting their own consultations as a reaction to the non-transparent nature of the peace process. The present situation is resulting in more fragmentation and tribalism, whether based on real or perceived threats posed by the framework agreement and the different factions of the armed resistance movements. As a result, there is an increasing tension within the Naga CSOs and many Tribe Hohos are withdrawing from the Naga Hoho (the primary traditional governing institution of the Nagas) while new CSOs are questioning the legitimacy of other organizations. It is clear that unless there is a clear intellectual content brought to the public for wide acceptance, fragmentation and frustration will continue. Another crucial point raised is the issue of inclusiveness i.e. ownership and the participation of other factions to the Agreement and the political solution that will be worked out.

On a positive note, Anthony Ningkhan Shimray, the Head of Foreign Mission of the NSCN-IM, who was jailed by the GoI on charges of purchasing arms for his organization, was released on 2 August 2016 to enable him to participate in the peace process. However, in the case of the forced exiling in 1995 of two prominent peace activists and members of the Naga Peoples Movement for Human Rights, Mr Luingam Luithui and Ms Peingamla Luithui, the Court of India has deferred the hearing eight times, thus denying them justice. ○

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BANGLADESH

Bangladesh is a country of cultural and ethnic diversity, with over 54 indigenous peoples speaking at least 35 languages, along with the majority Bengali population. According to the 2011 Census, the country's indigenous population is approximately 1,586,141,¹ which represents 1.8% of the total population of the country. However, indigenous peoples in the country claim that their population stands at about 5 million.² Approximately 80% of the indigenous population lives in the plain land districts of the north and south-east of the country,³ whereas the rest reside in the Chittagong Hill Tracts (CHT). In the CHT, the indigenous peoples are commonly known as *Jummas* for their traditional practice of swidden cultivation (crop rotation agriculture), locally known as *jum*. The Government of Bangladesh does not recognise indigenous peoples as "indigenous". Nevertheless, since the 15th amendment of the constitution, adopted in 2011, people with distinct ethnic identities other than the mainstream Bengali population are now mentioned.⁴ However, only cultural aspects are mentioned, whereas issues related to indigenous peoples' economic and political rights, not least their land rights, remain ignored.

The CHT Accord of 1997 was a constructive agreement between indigenous peoples and the Government of Bangladesh. Still, even after 19 years, major issues in the Accord, such as the Land Commission, the devolution of power and functions to the CHT institutions, preservation of the tribal area characteristics of the CHT region, demilitarisation, rehabilitation of internally displaced people, etc., remain unaddressed.

Moves towards implementing the CHT Accord

The Chittagong Hill Tracts (CHT) Land Dispute Resolution Commission Act 2001 (Act) was amended on 9 August 2016. It is now in line with the CHT Accord 1997 provision and the CHT Regional Council's 13-point amendment proposal. The old Act was not consistent with the CHT Accord provision, which was



adopted without any consultation with the apex body of regional administration, the CHT Regional Council. While the Act was passed in 2001, many of the clauses are contradictory. This was later resolved through dialogues between the CHT Regional Council and the government, a process that took 15 years. The Act of 2001 recognises the formation of the Land Commission with a composition of the relevant government, semi-government (CHT autonomous bodies) and traditional administrative representatives of the CHT. One of the functions of the Land

Commission is to resolve the land problems in the CHT and the Chairman of the Commission was given supreme authority in the decision-making process. This arrangement became controversial, protested by other members,⁵ and has remained dysfunctional and ineffective since its enactment in 2001.

With the recent amendment, the Act has been harmonised with the CHT Accord and the powers and functions bestowed upon the Land Commission in the Accord. According to the Accord, “The Commission shall resolve the disputes in consonance with the law, custom and practice in force in the Chittagong Hill Tracts”. The phrase “existing laws and customs in force in the Chittagong Hill Tracts” has now been included. The term “practices”, which is very important with regard to the land management system of CHT, has not. The recently amended Act of 2016 has successfully dealt with this and it is hoped that the recent amendment Act of 2016 will help overcome these issues and pave the way for proper resolution of land disputes and restitution of dispossessed lands belonging to the indigenous peoples.

Education of indigenous children and youth

At the national level, the government has recently undertaken a few measures to improve the state of education of indigenous children and youth. The Education Policy adopted in 2010 states that “Measures will be taken to ensure the availability of teachers from ethnic groups and to prepare texts in their own languages” and, in this regard, “the inclusion of respective indigenous communities will be ensured”.⁶ After years of dialogue, lobbying and advocacy, the government finally managed to distribute pre-primary level books in five indigenous languages, namely Chakma, Garo, Kokborok, Marma and Sadri in January 2017.

However, the government has yet to take any measures to train an adequate number of qualified teachers with the necessary language skills in the aforesaid languages. Moreover, the government has not yet come up with a concrete plan for introducing mother-tongue education into the subsequent stages for students graduating from the pre-primary level and, moreover, for other indigenous languages that have not been covered in the first phase. If pre-primary education of all indigenous children can be effectively ensured, it would significantly improve the state of education of indigenous youths in the future.

Land rights of indigenous peoples

The land rights of indigenous peoples in Bangladesh are one of the emergency issues and key factors of gross human rights violations. For example, on 6 November 2016, three indigenous Santal men were killed over a land dispute, and houses were looted, vandalised and set on fire in an eviction drive conducted by the local administration and sugar mill authority, with the help of police and hired goons in the Shahebgonj-Bagdair area of Gabindagonj under Gaibandha district. Moreover, some 1,200 indigenous families were forced to flee as their houses were destroyed and burnt to ashes.⁷ Instead of arresting the culprits of the incident, however, the police filed cases against more than 300 Santal people in this regard. Traditionally, the Santal indigenous community is the owner of this land and yet the government seized it in 1962 with the purpose of setting up a sugarcane mill. According to the agreement, only sugarcane would be farmed in the area and the condition was that the land would be returned to the original owner if it were used for any other purpose. However, the agreement was violated as the mill authority leased out most of the land for cultivating crops such as rice, wheat, mustard, tobacco and maize. In line with the conditions of the agreement, the original landowner is now therefore demanding its land back.

Similarly, the government has decided to acquire 9,145 acres of land in Modhupur in Central Bangladesh where Garo and Koch indigenous peoples live. They are the owners of this traditional land. The purposes of the land grab are: to preserve the biodiversity; to establish amusement facilities in the national forest, such as a safari park, especially protected area and prospective tourist spots; to stop the illegal poaching, hunting and wildlife trade; and, finally, to “settle the clashes” between the wildlife and the population. This government move would adversely affect more than 15,000 forest-dependent indigenous people who have been living in this area for generations. If the government’s decision is enforced, the livelihood, culture and tradition of these people will be extremely compromised, as their life is entirely dependent on the forests. Local indigenous leaders allege that the main objective of the government’s move is to grab the lands of local indigenous peoples by exploiting the loopholes in the Forest Act, 1927.

On the positive side with regard to land issues, the World Bank recently decided not to move forward on the construction a 123-kilometer road in Rangamati, Chittagong Hill Tracts. The government had submitted this road construc-

tion proposal without any consultation of the affected indigenous communities, representative bodies or other concerned indigenous institutions. The indigenous peoples and civil society organisations, traditional leaders, elected public representatives and human rights activists of Bangladesh submitted a letter of concern to the World Bank on its proposed funding of the road construction. They raised serious concerns about the lack of meaningful engagement of indigenous peoples in the project, including insufficient feasibility studies. The proposed project would have affected land issues in the Chittagong Hill Tracts (CHT), including the implementation of the Land Dispute Resolution Act (Amended) 2016, as well as have severe impacts on forest, environment and cultural sites.⁸ Indigenous peoples' leaders in the region called for meaningful engagement with local administrative bodies and traditional institutions, and consultation with indigenous peoples in the project area in compliance with the World Bank's safeguard policy.

Overall, the land rights situation has remained alarming in 2016. According to the Kapaeeng Foundation, "at least six indigenous people have been killed, including five from plain land and one from CHT, and 84 persons were injured in land related incidents in the country. At least 31,693 families, 600 families from CHT and 31,093 families from the plains have faced livelihood under threat in connection to land grabbing. Besides, 1,208 houses belonging to indigenous people were burnt to ashes in the plain land".⁹

Situation of indigenous women and girls

The situation of indigenous women has not improved. In 2016, Bangladesh was under review by the United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the situation of indigenous women was partially addressed through effective lobbying and advocacy work from different indigenous organisations. The concluding observations highlight that the government should: "effectively investigate all reports of gender-based violence against indigenous women connected with land grabbing and take measures to bring those responsible to justice".¹¹ Furthermore, the following issues were mentioned: indigenous identity, sexual and gender-based violence for land grabbing purposes and militarisation in indigenous areas, particularly in the Chittagong Hill Tracts.¹¹ The CEDAW also expressed concerns about the situation of indigenous

women, who “...face multiple intersecting forms of discrimination due to...indigenous identity”.¹²

From January to December 2016, there were 53 cases of human rights violations against indigenous women in Bangladesh in which a total 59 indigenous women and girls were the victims of sexual and physical violence. A total of 9 indigenous women and girls suffered attempted raped, 5 indigenous women were physically assaulted, 17 women were raped, 6 were killed following rape, 9 were gang raped, 2 sexually harassed and 5 kidnapped. In these human rights violations, of the 85 perpetrators, 14 were from indigenous communities while 71 were from the mainstream Bengali community and 1 was a member of the law enforcement agency. The age of the victims varied from 3 to 35.¹³

Civil and political rights of indigenous peoples

Indigenous peoples' organisations have been protesting against the increasing number of human rights violations, and are demanding protection, promotion and respect for their human rights. Arbitrary arrests, detentions, intimidation and criminalisation of indigenous peoples' activists carried out by state and non-state actors have been growing. The victims of these violations include innocent indigenous villagers, activists, indigenous peoples' human rights defenders (IPHRDs) and representatives from indigenous peoples' organisations (IPOs). Extrajudicial killings, torture and harassment continued unabated against the indigenous communities. Communal attacks on the indigenous peoples have been carried out, houses set on fire, and properties destroyed and looted – in many cases involving members of the law enforcement agencies. For example, a video has gone viral showing police officers directly involved in torching indigenous Santal houses in Gaibandha. The Supreme Court has taken an outrageous role in the matter of extrajudicial killings and other human rights violations of the Santal indigenous community in Gaibandha, as they have halted an order for a judicial inquiry into these atrocities.

For the first time, indigenous peoples' organisations in Bangladesh jointly demonstrated in 27 districts to demand the implementation of the CHT Accord and the formation of an independent land commission for the indigenous peoples in the plain land. The government responded negatively to this demonstration in some places, for example, in the CHT, where the Khagrachari district administra-

tion and law enforcement agencies obstructed the human chain of the demonstration.

UN-REDD Bangladesh National Programme

The Government of Bangladesh has approved the UN-REDD Bangladesh Programme and conducted an inception workshop in June 2016 in cooperation with its development partners, UNDP Bangladesh and FAO Bangladesh.¹⁴ Bangladesh has recently been playing a promising role by taking concrete measures to combat global climate change in line with its promises made under the United Nations Framework Convention on Climate Change (UNFCCC). The country joined the UN-REDD global family as a partner country in 2010. The Bangladesh National Programme has started supporting the government to achieve three of the four UNFCCC requirements to obtain REDD+ result-based payments. These are: 1) establishing a National Forest Monitoring System (NFMS) for Measurement, Reporting and Verification (MRV) in order to record reductions in Greenhouse Gas (GHG) emissions or enhanced carbon stocks over time; 2) establishing Forest Reference Emission Levels (REL) and Forest Reference Levels (RL) to serve as benchmarks for assessing each country's performance in implementing REDD+ activities; and, finally, 3) developing a national REDD+ strategy or action plan. Indigenous peoples are engaged in this national programme through the Programme Executive Board (PEB) and REDD Stakeholder Forum (RSF).

Supreme Court of Bangladesh upholds Chittagong Hill Tracts Regulation 1900

The significance of CHT Regulation 1900 is that it provides safeguards for indigenous peoples as it upholds the special legal and administrative status of the CHT region, and recognises customary laws over land, forests and other natural resources.

In June 2006, the High Court Division ruled that CHT Regulation 1900, the premier law of the semi-autonomous Chittagong Hill Tracts (CHT) region, was a "dead law" (expired and not applicable), on account of it being in contradiction with the Constitution of Bangladesh.¹⁵ After hearing the matter, the Honourable

Court admitted an appeal on the ruling. On 22 November 2016, the Appellate Division of the Supreme Court of Bangladesh subsequently overturned the ruling, thus reaffirming the significance of Chittagong Hill Tracts Regulation 1900.¹⁶ ○

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NEPAL

According to the 2011 census, the indigenous nationalities (*Adivasi Janajati*) of Nepal comprise 36% of the total population of 26.5 million, although indigenous peoples' organizations claim a larger figure of more than 50%. The 2011 census listed the population as belonging to 125 caste and ethnic groups, including 63 indigenous peoples, 59 castes, including 15 Dalit castes,¹ and 3 religious groups, including Muslim groups.

Even though indigenous peoples constitute a significant proportion of the population, throughout the history of Nepal indigenous peoples have been discriminated, marginalized, excluded, subjugated, dominated, exploited and internally colonized by the dominant caste groups in terms of land, territories, resources, language, culture, customary laws, political and economic opportunities and collective way of life.

The new Constitution of Nepal promulgated in 2015 denies the collective rights and aspirations for identity-based federalism of indigenous peoples,² in spite of the fact that Nepal has ratified ILO Convention 169 on Indigenous and Tribal Peoples and passed the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the WCIP Outcome Document. The implementation of ILO Convention No. 169, UNDRIP and the Outcome Document is still wanting. It is yet to be seen how the amendments in, or rewriting of, the new constitution and drafting of new legislation will comply with the provisions of these international human rights standards.

Failure in the implementation of the Constitution

The new Constitution of Nepal, promulgated in 2015 amidst controversy and the use of state violence against indigenous peoples and the Madhesi, has by and large failed in its implementation due to wrangling among the main political parties, a lack of meaningful inclusion of all groups in society in the drafting process, and continued protests by indigenous peoples and Madhesi (cf. Indige-

nous World 2016). As the new constitution lacks so many fundamental elements, such as the names of all seven provinces were not given, no special, protected or autonomous regions were set, elections were not held for federal and provincial parliaments, and elected local bodies were nowhere in sight, difficulty in implementation is obvious. Although the main political parties have claimed that the new constitution has many positive elements, including federalism, secularism, inclusive representation, and affirmative action, indigenous peoples' experts, movements and leaders have heavily criticized these as being doctored and misused in order to deny the collective rights of indigenous peoples. The Lawyers' Association for the Human Rights of Nepalese Indigenous Peoples (LAHUR-NIP) has identified four categories of discrimination against indigenous peoples in the constitution. These are as follows: (a) five provisions give racial supremacy to the Khas Arya caste group, (b) 11 provisions are against indigenous peoples, (c) 23 provisions discriminate against indigenous peoples, and (d) 49 provisions exclude indigenous peoples.³ The indigenous peoples' movement (and also the Madhesi movement) are thus demanding either total amendments, from the preamble through to the annexes, or a complete rewriting of the constitution in line with the UNDRIP, ILO Convention N° 169 and the Outcome Document. Failure could, at worst, either lead to a dictatorship or result in protracted ethnic and regional violence. The year 2016 thus ended with such uncertainties unresolved.

Rising controversy over amendments to the Constitution

Indigenous peoples, especially the Tharus, as well as the Madhesis, have been demanding a rewriting of the constitution to fulfil the mandate of the people's movement of 2006, Madhesi and indigenous peoples' movements of 2007, the interim Constitution of Nepal of 2007, which was agreed by all political parties of Nepal, and the indigenous peoples' movements. As the government, led by the Communist Party of Nepal-Unified Marxist-Leninist (CPN-UML), in coalition with Nepali Congress and other smaller political parties, has not taken any initiative to amend the constitution in order to address the demands of the Tharus and the Madhesis, successive governments led by the CPN Maoists, in coalition with the Nepali Congress and other smaller political parties, made efforts to table a bill in Parliament to amend the constitution. Opposition parties, namely the CPN-UML



and political parties of Madhesi and indigenous peoples took it as necessary but not sufficient.

Predatory restructuring of local bodies

As part of the process of implementing the new constitution, the government has established the Local Body Restructuring Commission (LBRC). This commission is mandated to suggest a restructuring of local bodies due to an urgent need to hold elections for these. It began its work on 17 March 2016 and was mandated to recommend the number and format of local bodies by 15 December 2016, which it did not do. The most problematic issue in the commission's work is that many indigenous peoples are worried about the suggested division of their local ancestral lands and communities into two or more village institutions known as *Gaunpalika* ("Village Councils"). The Sanghiya Samajbadi Forum, a political party of the Madhesi and Hill indigenous leaders, has had strong objections to the work of the LBRC on the grounds that local bodies should be decided by the respective provinces and not by the current central government. It should be noted that no free, prior and informed consent was sought from the indigenous peoples in question, as required by the UNDRIP and the WCIP Outcome Document.

Establishing the commissions

The Constitution of Nepal has provided for the establishment of two commissions: one for indigenous peoples and the other for the Tharus. While the idea is commendable, in reality it looks as if these two commissions will be powerless, with no judicial or other significant power or authority besides looking after some development work, such as income-generating activities, interactive programs, and capacity building of indigenous peoples' organizations. Former Prime Minister K. P. Oli expressed a view that the National Foundation for the Development of Indigenous Nationalities (NFDIN) should be shut down. Further, as the constitution states that the government shall review the need for these commissions 10 years after their establishment, it is very likely that it will be discontinued after this review.

Consultation on enhancing the participation of indigenous peoples in the General Assembly

As a part of the follow-up to the World Conference on Indigenous Peoples Outcome Document of 2014, a four-member advisory body formed by the UN Secretary-General to advise on enhancing indigenous peoples' participation in the General Assembly (GA), consultations on venue, modalities, representation and selection criteria are ongoing. Krishna B. Bhattachan, representing LAHURNIP, participated in a consultation held at the UN headquarters on 14-15 December 2016 and made statements focused on granting unique, permanent observer status to indigenous peoples. Concerning the criteria by which to define indigenous peoples, LAHURNIP suggested, in the Nepalese and South Asia context, including those who do not belong to the Hindu fourfold Varna and caste systems.⁴

Protests against aggressive developments

Protests against aggressive developments being pursued by the central and local governments of Nepal, many in collaboration with the World Bank and the Asian Development Bank (ADB), especially in hydropower projects, electricity transmission lines, road expansion and hunting ground reserve areas, intensified during

2016. More than 100 indigenous and local individuals signed a memorandum on road expansion in the Kathmandu Valley: “The memorandum calls for scrapping of the criteria drafted without consultation and consent of indigenous Newars and other locals as per their rights guaranteed in the Local Self Governance Act 1999 as well as International Labour Organization (ILO) Convention 169 and United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The memorandum further states that any development program should be undertaken only with Free, Prior and Informed Consent of indigenous peoples in the municipality and warns of protests if the demands are not addressed”.⁵ A total of 23 committees of indigenous Newars were formed in 2016 to protest against road expansion projects being implemented by the Kathmandu Metropolitan City. The committees stated they would close down the Kathmandu Valley on 4 January in protest.

Abuse of “Organized Crime Act”

New legislation known as the Organized Crime Act of 2014 reared its ugly head this year with the arrests of 13 political cadres associated with the Mongol Mul-basi Rastiyra Force. Generally, organized crime denotes drug lords, the illegal arms trade and trafficking but, in Nepal, any organized efforts by an organization, including political, not registered with the government and which engages in the disruption of communal harmony would be considered organized crime, as denoted by the government. The activities of organized groups’ whose mission is to achieve political goals should not be treated as organized crime but, unfortunately, this is the case in Nepal.

Climate change

Some key tasks on climate change and REDD+ were undertaken by the government in 2016. Nepal signed the Paris Agreement on 22 April 2016 and ratified it on 5 October 2016. The National Adaptation Plan (NAP) was initiated by the Ministry of Population and Environment (MoPE) in 2016. The country’s Intended Nationally Determined Contribution (INDC) was submitted by the Ministry of Population and Environment. Nepal’s REDD+ Readiness Package (R-Package)

(prepared by the REDD+ Implementation Center/ RIC under the Ministry of Forest and Soil Conservation (MoFSC)) was approved by the World Bank's Forest Carbon Partnership Facility (FCPF). The Emission Reductions Program Document (ERPD) for 12 districts of the lowlands (Tarai) was commenced by RIC under the MoFSC. The National Forest Reference Level (FRL) was submitted to UNFCCC. The government and international aid agencies continued to focus on carbon, ignoring the free, prior and informed consent (FPIC) of indigenous peoples and equal sharing of benefits.

All of these climate-change related actions have to be informed by, and be in line with, the UNFCCC Paris Agreement, which acknowledges the rights of indigenous peoples. Importantly, the Paris Agreement does not contradict any of the UN conventions or international instruments on indigenous peoples' rights, including the UNDRIP. However, there are still challenges facing Nepal's indigenous peoples in terms of participating in these programs and policy formulation processes due to a lack of awareness, access to information, advocacy, and the hegemonic mind-set of the policy makers. With the objective of ensuring indigenous peoples' issues and rights, the Nepal Federation of Indigenous Nationalities (NEFIN), through its Climate Change Partnership Program, has been following climate-change related matters. NEFIN has been providing its input to the country's REDD+ Readiness, including the National REDD+ Strategy and FRL. It has raised many issues, including capacity building, information dissemination and obtaining the FPIC of indigenous peoples on matters which affect them, during submission of the R-Package to FCPF. Secondly, NEFIN submitted a position statement on ERPD urging the government and relevant actors to ensure the collective rights of indigenous peoples in Emission Reductions Programs. So far, the National Adaptation Plan (NAP) development process has nine different Thematic Working Groups (TWG) in which indigenous peoples do not yet have any meaningful participation. NEFIN is in one TWG and is calling for more opportunities to engage. The INDC included very few indigenous peoples' inputs, which runs the risk of including "false solutions" to climate change, such as mega hydro power projects. Furthermore, the government, INGOs, NGOs, bilateral and multi-lateral agencies are all working on climate change but have so far neither consulted with indigenous peoples nor dealt with indigenous peoples' issues in an appropriate manner. ○

Notes and references

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THE MIDDLE EAST

ISRAEL

Israel's Arab Bedouin are indigenous to the Negev-Naqab desert. Centuries ago, they were semi-nomadic. Bedouin combined herding with agriculture in villages linked by kinship systems, which largely determined land ownership. Prior to 1948, about 90,000 Bedouin lived in the Negev. After 1948 most were expelled to Jordan and Sinai. Only about 11,000 survived in Israel. In the early 1950s, the Israeli government concentrated this population within a restricted geographical area that was about ten percent of the Bedouin's former territory, with a promise of return to their original lands within six months. This promise has yet to be fulfilled. According to the Central Bureau of Statistics (2009), currently around 75,000 Bedouin live in 35 "unrecognized villages", which lack basic services and infrastructure. Another 150,000 Bedouin live in seven townships and 11 villages that have been "recognized" over the last decade. However, these townships and villages hinder the traditional Bedouin way of life and provide few employment opportunities. The Bedouin are today politically, socially, economically and culturally marginalised and experience many forms of discrimination. Their representatives regularly attend and address UN bodies on indigenous peoples' issues, but their indigenous status is not officially recognised by the State of Israel. Israel has not ratified ILO Convention No. 169 and has violated many of its provisions. Additionally, Israel did not participate in the vote on the UN Declaration of the Rights of Indigenous Peoples and has failed to meet this Declaration's provisions.

2016 was marked by the Israeli Supreme Court (SCT) refusal to reconsider its 2015 ruling in the Atir-Umm al-Hiran case and the Israeli government's continued policy of house demolitions and crop destructions aimed at forcing the Bedouins to settle in the few existing townships and recognized villages.



The Atir-Umm al-Hiran case

On 17 January the Israeli Supreme Court (SCT) refused to have an extraordinary second hearing on the Atir-Umm al-Hiran case. It thus not only definitely closes the case for the 1,000 residents of Atir-Umm. It is also seen as giving the state a broader legal scope for destroying other Bedouin communities.

The 2015 court ruling involves the demolition of a Bedouin village and the establishment of a Jewish town and pasture for cattle on its ruins. It will entail the forced displacement of its inhabitants to the overcrowded and impoverished township of Hura.

By allowing the forced displacement of Atir-Umm al-Hiran the court disregarded the fact that two arguments generally made by the state in demolition and evacuation cases were disproved during court hearings. One argument was that the Bedouins were “illegal trespassers”. This was disproven since they had been moved to Atir-Umm by Israeli military order in 1956 after having being relocated twice since 1949 when they were first forced to leave their original village Khirbet Zubaleh where they had lived for centuries. The other argument - that the land on which they were living was not suitable for construction or residential use – was also disproved since the land on which Atir-Umm sits is zoned for residential use, forming part of a larger residential area in the plan for a new Jewish town (Hiran) set to be built on its ruins.

Nevertheless the SCT ruled in 2015 that the people of Atir-Umm could be evicted, on the grounds that the state had merely allowed the Bedouin citizens to use the land which was state land and that the state had the right to take it back and do with it what it wished even after 60 years of continuous land use and residence.¹ Thus, according to SCT the residents of Atir-Umm had acquired no ownership status or property rights to their land over the course of their decades of residence and land use.

By refusing to reconsider its ruling from May 2015, the Israeli SCT gave its final say in the case, which effectively means that the eviction and demolition of Atir-Umm can go ahead, and in November, the Israeli Land Authority announced its plans of demolition to start in 2017.

The wider implications of the SCT's decision

By concluding that the state is within its rights to destroy Atir-Umm and forcibly displace its Bedouin residents when there does not exist an essential public need and for the explicitly purpose of building in its place the Jewish town of "Hiran", the SCT decision constitutes a dangerous precedent since it potentially implies that the residents of most unrecognised villages also can be evicted for a clear discriminatory purpose in violation of their constitutional rights to property, dignity and equality.²

Israel's policy of harassment of Bedouin communities

On January 6, the mosque in the unrecognised village Rakhamah was demolished. Five days later, tractors came to plough the village fields and destroy the crops. At the end of January, the mosque that had been more or less reconstructed was demolished once more and so were the crops. In August the village's agricultural dams were destroyed.

Rakhamah is just one example of the ruthless and persistent efforts by the state of Israel to evict the Bedouin from their land. Throughout the year there have been numerous incidents involving the demolitions of houses and structures, animal pens, water tanks, uprooting of trees, crop destructions, confiscation of domestic animals, etc. The Negev Coexistence Forum for Civil Equality (NCF) has reported a total of 77 incidents during 2016, each one of them causing innumerable sufferings and losses to Bedouin families and threatening their livelihoods. House demolitions even occurred in townships and recognised villages.³

In most cases, these raids and abuses are met by peaceful protests. Villagers try to stop the tractors by standing in front of them and many have been detained. Their determination to remain on their land makes many of them return and start erecting new structures as soon as the Israeli authorities leave. This is the case in Al-Araqib, a settlement that has been the target of numerous demolitions since 2010. In 2016, the remaining residents experienced interventions by Israeli authorities every single month. Although the Al-Araqib case (see *The Indigenous World 2015*) is still being discussed in court, the Jewish National Fund (JNF) resumed work, planting trees on the last four lots that had not yet been cultivated.⁴

Spatial segregation

When forced to resettle, Bedouin communities have few alternatives. They comprise 34 per cent of the population in the Negev-Naqab area, but only 18 settlements out of 144 are officially designated for them. Most of these settlements are overcrowded since hardly any construction permits are being issued and do not offer much in terms of infrastructure or employment opportunities.

As for settling in some of the 126 Jewish settlements, this is only possible in 11 of them since state mechanisms, such as admission committees have been put in place in all the other ones in order to effectively prevent Arabs from moving in. This is done in flagrant violation of the Convention against Racial Discrimination (CERD), which Israel has ratified.⁵ ○

Notes and references

- 1 See Adalah, Position Paper “The dangerous implications of the Israeli Supreme Court decision to allow the forced displacement of Atir-Umm al-Hiran for the remaining unrecognised Bedouin villages in the Naqab (Negev). July 2015 – Updated February 2016, <http://www.adalah.org>
- 2 Ibid.
- 3 www.dukium.org
- 4 Ibid.
- 5 See NCF Report “Segregated spaces: the spatial discrimination policies among Jewish and Arab citizens in the Negev-Naqab, 2016, <http://www.dukium.org>

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PALESTINE

Following Israel's declaration of independence in 1948, the Jahalin Bedouin, together with four other tribes from the Negev Desert (al-Kaabneh, al-Azazmeh, al-Ramadin and al-Rshaida), took refuge in the West Bank, then under Jordanian rule. These tribes are semi-nomadic agro-pastoralists living in the rural areas around Hebron, Bethlehem, Jerusalem, Jericho and the Jordan Valley. These areas are today part of the so-called "Area C" of the Occupied Palestinian Territory (OPT). "Area C", provisionally granted to Israel in 1995 by the Oslo Accords and which was due to cease to exist in 1998, represents 60% of the West Bank. It is home to all West Bank Israeli settlements, industrial estates, military bases, firing ranges, nature reserves and settler-only bypass roads, all under Israeli military control.

The situation of the indigenous¹ Palestinian Bedouin refugees of 1948, some 27,000 pastoral herders living under full Israeli military control in Area C (60% of the West Bank, today home to some 400,000 Israeli settlers), is currently a major humanitarian issue, having deteriorated significantly in 2016. Most at risk are 7,000 Bedouin (60% of whom are children) living in 46 small communities in the Jerusalem Periphery. Structures (shelters, goat pens, water tanks, schools, etc.) funded by the donor community as humanitarian aid are being deliberately targeted: according to the UN Office for the Coordination of Humanitarian Affairs (OCHA), the Israeli authorities demolished in 2016 structures for an estimated value of 655,000 (US\$ 698,557).

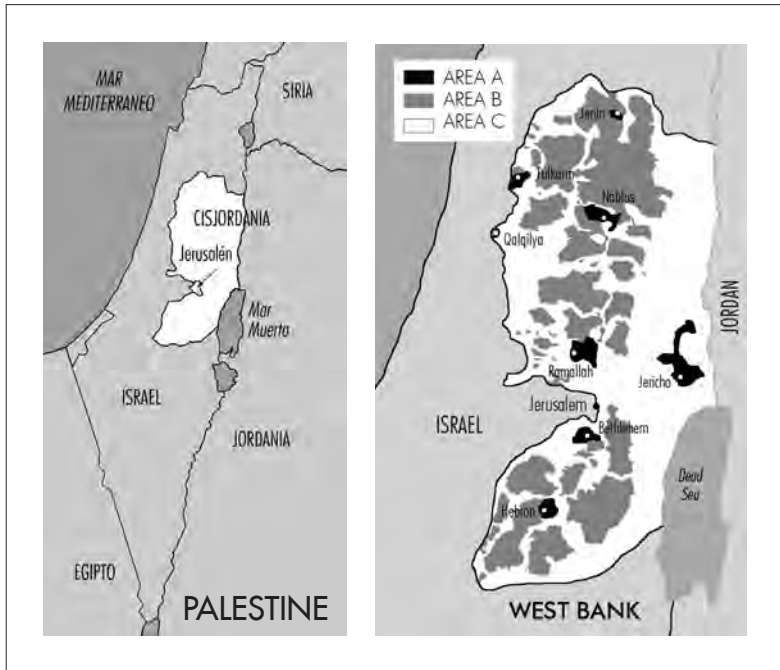
OCHA Report to UN Security Council, November 2016

Under-Secretary-General & Emergency Relief Co-ordinator Stephen O'Brien reported to the UN Security Council in November 2016 as follows:

The pace of demolitions and confiscations of Palestinian property by the Israeli authorities has far exceeded any previous years on record; more than double this year as compared to 2015. These have occurred mainly within herding communities in Area C, which count amongst Palestine's most vulnerable households. Obstruction to our operations in these areas is occurring in the most egregious way - with our relief items themselves frequently demolished or confiscated by Israeli forces; the rate of demolition or seizure of such donor-funded relief is on a trajectory to potentially triple as compared to 2015. Affected relief items include shelters and tents, water cisterns, animal pens and other basic structures for survival and livelihoods.

More fundamentally, Palestinians in Area C are living in an increasingly coercive environment created by discriminatory planning policies, demolitions, the active promotion of plans to relocate Bedouin to new townships and other practices that generate miserable living conditions and create pressure on people to move elsewhere. Much of this occurs in the line of sight of new or expanding Israeli settlements, illegal under international law as reiterated by successive resolutions by this Council. About one quarter of the structures targeted this year were in Palestinian Bedouin communities located within or near the area allocated to the E1 settlement expansion project on the outskirts of occupied East Jerusalem.

We need a coherent international response that will enhance the protection of civilians and deliver accountability for violations of international humanitarian law and international human rights law. This is especially important in the absence of an active political process between Israeli and Palestinian leaders. Israel, the main duty bearer, is a signatory to the Fourth Geneva Convention and has clear obligations as an occupying power, and both Israel and Palestine have ratified the major human rights treaties. They are bound by customary international law as well, as are all countries. The members of this Council have a vital role to play in motivating the parties to respect their obligations. Similarly, all parties to the Geneva Conventions have an obligation not only to respect, but also to ensure the respect by others, of these Conventions.²



[..] However, these actions notwithstanding, the principles of international humanitarian law do and must apply. This includes all members of this Council, all those in the Occupied Palestinian Territory, both the Israelis and the Palestinians, and all who have signed international legal obligations to which they are and must be held accountable; [..] And we look to you to address the underlying driver of Palestine's protection crisis through a political resolve to end the occupation, now approaching its 50th anniversary.

In a similar vein, in November 2016, the UN Coordinator for Humanitarian Aid and Development Activities, Robert Piper,³ condemned obstruction of relief items to Palestinian communities in the occupied West Bank:

On 7 November, the Israeli Civil Administration and the Israeli army seized nine donor-funded tents (two of which were not yet erected) in the Palestini-

an Bedouin community of Khirbet Tell al Himma in the northern Jordan Valley. The structures were all provided as humanitarian aid, following earlier demolitions in the same community on 27 September 2016, which left the affected families without shelter or kitchens.

[..] About one quarter of the structures targeted this year were in Palestinian Bedouin communities located within or near the area allocated to the E1 settlement expansion project. [..]

“Through a combination of law, policy and practice, Israel is building an increasingly coercive environment in Area C of the West Bank. This is both illegal and creating an entirely new reality on the ground,” added Mr. Piper.

The International Criminal Court

The issue has even reached the International Criminal Court. In his preliminary report from November 2016,⁴ the ICC prosecutor states:

130. Alleged settlement activities: [..] This settlement activity is allegedly created and maintained through the implementation of a set of policies, laws, and physical measures: [..] the confiscation and appropriation of land; demolitions of Palestinian property and eviction of residents; discriminatory use of basic infrastructure and resources, such as water, soil, grazing lands, and market; imposition of other forms of access and movement restrictions upon Palestinians; and a scheme of subsidies and incentives to encourage migration to the settlements and to boost their economic development.

132. [..] In parallel to demolitions, Israeli authorities reportedly advanced plans for relocation of several Palestinian Bedouin or herder communities located in Area C of the West Bank, including in the Jordan Valley and in the area located immediately east of the Jerusalem municipal boundary, so-called E-1 area.

The Bedouin - the “Gatekeepers of Jerusalem”

Described by President Arafat as the “Gatekeepers of Jerusalem”, Jerusalem Periphery Bedouin guard the strategic eastern entry to Jerusalem; as such they are also the guardians of a Two-State Solution. Legislation currently underway to annexe Ma’ale Adumim settlement, east of Jerusalem, aims to end all prospect of a viable Palestinian state. This emphasises the strategically political nature of the Bedouin issue: their planned forcible displacement has been heralded as “the last nail in the coffin of the Two-State Solution” which Education Minister, Naftali Bennett, is already proclaiming as officially dead with the election of President Donald Trump.

For the Bedouin, living in a culture that is being deliberately eroded, and an environment that is deliberately coercive such that they are increasingly impoverished and vulnerable, the future is bleak and their situation tragic. No Israeli plans for their forcible displacement promote their free, prior and informed consent, nor are the plans – past and present – designed to uphold the rich tradition of Bedouin sustainability, independence or cultural integrity. ○

Notes and references

- 1 Israel denies both indigenous status to Israeli Palestinian Bedouin citizens and their historic presence, despite evidence to the contrary. See *Dr. Mansour Nasasra: The Naqab Bedouins: A Century of Politics and Resistance* (In press. New York: Columbia University Press) and *The Naqab Bedouin and Colonialism: New Perspectives (2015)*, edited by *Mansour Nasasra, Sophie Richter-Devroe, Sarab Abu-Rabia-Queder, Richard Ratcliffe* (UK: Routledge 2014). The issue is more complex with regard to the indigenous status of refugee Bedouin living in the OPT since the 1950s, or those who have lived there longer. Few OPT Bedouin own land, unlike those in the Naqab, and they have no rights in Area C. However, in the new body of emerging law/academic studies on indigenous rights for those living under the Occupation, academics are staking out the status of refugee Bedouin, so that they may be able to access increasing protection under the terms of IHL, IHRL and the body of indigenous rights. See also *Dr. Mansour Nasasra and Ahmad Amara “Bedouin Rights under Occupation: International Humanitarian Law and Indigenous Rights for Palestinian Bedouin in the West Bank.”* Norwegian Refugee Council, November 2015. <http://www.nrc.org>
- 2 <http://www.reliefweb.int/updates>
- 3 <http://www.ochaopt.org/content/un-coordinator-aid-palestine-condemns-continued-obstruction-relief-items-palestinian>

- 4 International Criminal Court, Prosecutor's Office, "Report on Preliminary Examination Activities (2016)", 14 November 2016, <https://unispal.un.org/DPA/DPR/unispal.nsf/0/F0E483D9B3A89A558525806E0070B4DA>

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NORTH AND WEST AFRICA

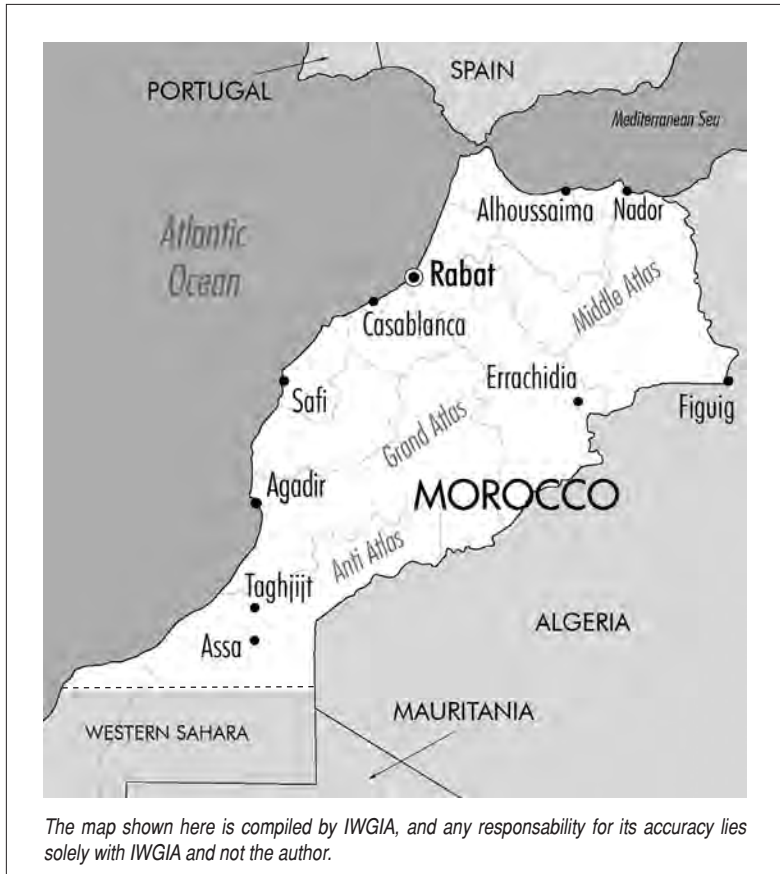
MOROCCO

The Amazigh (Berber) peoples are the indigenous peoples of North Africa. The most recent census in Morocco (2016) estimated the number of Tamazight speakers to be 28% of the population. However, the Amazigh associations strongly challenge this and instead claim a rate of 65 to 70%. This means that the Amazigh-speaking population may well number around 20 million in Morocco, and around 30 million throughout North Africa and the Sahel as a whole.

The Amazigh people have founded an organisation called the “Amazigh Cultural Movement” (ACM) to advocate for their rights. It is a civil society movement based on universal values of human rights. There are now more than 800 Amazigh associations established throughout the whole of Morocco.

The administrative and legal system of Morocco has been highly Arabised, and the Amazigh culture and way of life is under constant pressure to assimilate. Morocco has for many years been a unitary state with a centralised authority, a single religion, a single language and systematic marginalisation of all aspects of the Amazigh identity. The Constitution of 2011 officially recognises the Amazigh identity and language. This could be a very positive and encouraging step forward for the Amazigh people of Morocco but unfortunately its official implementation is still pending enactment of the organic law that would establish rules as to how Tamazight is to be officially implemented, along with methods for incorporating it into teaching and into life generally as an official language. Work to harmonise the legal arsenal with the new Constitution has not, in fact, yet commenced and no steps have been taken to implement the Constitution.

Morocco has not ratified ILO Convention 169 and did not vote in favour of the UN Declaration on the Rights of Indigenous Peoples.



Implementing official recognition of the Amazigh language

Between 2013 and 2015, the government set out a legislative plan for finalising the organic bill of law implementing official recognition of Tamazight. However, the government's term in office ended in October 2016 without this law having been adopted in line with this legislative process. This was despite the Amazigh Cultural Movement (ACM) (800 organisations) warning the government of the need to speed up the process for adopting this law:

“Human rights organisations, women’s rights organisations, as well as coordinating bodies of Amazigh associations at national, regional and international level are signing this statement to make known the following: All Moroccans, men and women, are equal in rights and duties, and it is therefore essential that public policies are in place to put an end to discrimination between the two official languages, Arabic and Tamazight, by strengthening the strategies necessary for their protection and promotion. Moroccans have the right to benefit from scientific and spiritual knowledge, literary, artistic and philosophical knowledge in the Amazigh language, and the struggle to defeat illiteracy in this language requires its institutionalisation and rehabilitation along with the provision of modern media resources in this regard. It is the State’s duty to respond to the demands of Morocco’s citizens, to provide them with the conditions necessary for investing in their Tamazight skills in order to use the language and develop it, making it one of the main ways of exercising their duties. The official Amazigh language must be included in the different sectors of public life, in line with a global vision, taking into account changes in discriminatory allocations, whether in education, the media or other areas. Tamazight is indissociable from the Amazigh cultural values system and forms an integral part of justice, equality and dignity, all of which form an essential lever for the successful transition to democracy in our country, inescapably and tightly linked to the democratic project. Moroccans, men and women, await these organic laws as procedural measures with which to build the rule of law, to respect the minimum without which neither human dignity nor global development can be envisaged...”

The statement recommends to:

Give priority in organic laws to implementing the official status of the Amazigh language, respecting its primacy, and to all other organic laws stipulated in the Constitution.

Explicitly recognise the fact that the Amazigh and Arabic languages are equal but different in form, communication and advocacy, in all State institutions and in the different spheres of public life.

Strengthen the official bilingualism that characterises Morocco in its different sectors and areas of public life.

Insist on the fact that the Arabic and Amazigh languages enjoy equal access to financial and qualified human resources in different areas and sectors.

Create appropriate institutions to guide and support the implementation of the different stages of organic laws on Amazigh identity in the different ministries and government sectors.

Improve educational gains, particularly those related to the standardised Amazigh language, compulsory at all levels of education, and transcribed into its original "Tifinagh" alphabet; create departments and sectors, establish specialisations and training in the different universities and faculties, training centres and in different national institutes with programmes that are in line with the Constitution, particularly those linked to a reconsideration of the teaching of Morocco's history from a new scientific and objective reading.

Set precise deadlines and anticipate planning within a reasonable delay with effective rules in all government and semi-public sectors, in order to implement the official status of the Amazigh language and evaluate its application (...)

As a result of all of the above, we ask that you take all your responsibilities in accordance with your duty to the Constitution, within the framework of the official missions that have been assigned to you, and that you work for the participation of civil society associations active in the field of defending language and cultural rights and for their involvement in all stages of the advancement of the law in order to progress towards the construction of the rule of law and a successful and peaceful transition to democracy".¹

Just before the end of the government's term in office, it published a draft bill of law on Tamazight.² This was despite the fact that its legislative mandate was technically already at an end, which raises a constitutional problem. This bill of law has elicited strong reactions from the Amazigh Cultural Movement (ACM). A coalition of 370 Amazigh organisations published a memorandum describing this bill as a methodological instrument for burying the Amazigh language.³

The ACM has denounced the Prime Minister's approach to the Amazigh language and his indifference to implementing official status for the Amazigh language through this bill, as recommended by the Constitution. The text of the law

proposed by the head of government just prior to the legislative elections was produced hastily, without the involvement of either civil society or the Amazigh organisations and without being put out for public consultation.⁴

A large meeting took place in Nador, in the north of Morocco. The memorandum made by the Amazigh organizations⁵ was sent to King Mohamed VI in order to get him to review the bill. The Amazigh organisations' criticisms relate to several points: in the first place, the methodology of the consultation, which was limited solely to the Prime Minister sending an email calling for proposals for the draft bill of law. The ACM rapidly rejected this approach. They also rejected the fact that the teaching of Tamazight is not compulsory in the government's draft bill of law, thus highlighting the discrimination existing between the two official languages: Arabic, which enjoys all the resources of the State and Amazigh, which is simply a secondary language.

This lack of any requirement to teach Tamazight at secondary school level underscores the government's negative attitude towards both the Amazigh identity and language, given that Arabic is compulsory at all levels of the Moroccan education system. The terms used in the draft bill of law do not reflect a strong or clear commitment from the government to implement Article 5 of the Moroccan Constitution. For example Article 6 of the draft law says that "*it is possible*" (and not mandatory) to create courses and departments for Amazigh in higher education facilities, ed. note).⁶ The ACM has denounced the government's failure to respect the Constitution by not submitting the draft bill within the normal deadlines, thus demonstrating the Prime Minister's ill will and indifference towards the Amazigh identity. The draft bill of law was rejected by the ACM, who called on the King to step in and arbitrate as Head of State.

Amazigh language teaching: a blocked project

Teaching of the Amazigh language is of paramount importance to the ACM as a strategic and inalienable demand. It was introduced into the Moroccan education system in 2003 but a decline has been noted in its progress since 2008. The Minister of Education has, in fact, taken a hostile position with regard to the teaching of this language in the 2030 plan produced by his cabinet, in which Tamazight was not even mentioned.

This teaching seems to have been neglected, awaiting enactment of the organic law. According to the report submitted by the Amazigh associations to the

118th session of the Human Rights Committee at the Palais Wilson in Geneva from 24 to 25 October 2016, which was devoted to considering the 6th periodic report of the Government of Morocco, the Amazigh language is currently taught to only 12.9% of primary school pupils. In addition to a major shortage of Tamazight-speaking teachers, further obstacles have been created by the government. Trainee teachers went on strike for several months in protest at the decisions of the Minister of Education.

Land, a problematic issue

Like most African countries colonised by France, there has been a land problem since independence where France expropriated hundreds of hectares of land from the Amazigh tribes. Following independence, these tribes were never able to recover their land despite their demands and protests. The government now considers these lands to be State lands. In his speech to participants of the National Conference on “The State’s Land Policy” on 8 December 2014, King Mohamed VI did, however, issue instructions to review the situation of the lands, i.e. the lands managed by the tribes. The problem has not yet been resolved, however.

Amazigh media in retreat

The Amazigh language has been officially recognised since the 2011 Constitution. Instead of making progress in its expansion throughout the media, however, it has been in decline. There are currently 10 TV channels broadcasting in Arabic in Morocco, and only one in Tamazight. This latter broadcasts only six hours a day, although the terms governing the audio-visual field anticipated 24 hours from 2013 on. Broadcasting hours in Arabic total some 195 hours per day while the Amazigh language exceeds no more than six, even though both languages are official languages of the State.⁷

The Morocco of the future is plural

Although 2016 was a year of waiting with regard to laws on implementing the official status of the Amazigh language and identity, some symbolic actions were

achieved on behalf of Tamazight. This relates to its appearance, in its Tifinagh script, on some signs (boards) outside ministries as well as on State administrative buildings and in some public places.

Moreover, on the occasion of the COP22 on climate change, hosted by Morocco, the whole world noted the existence of the Amazigh language on the posters and all signage for the event, which painted Morocco in a favourable light with regard to recognising the identity of the Amazigh people and implementing its commitments to promoting the Amazigh language and identity.

It seems that the history of Morocco, the flexibility of its system of governance, King Mohamed VI's desire to reconcile his country's past and present and to build a modern kingdom based on linguistic, cultural and political plurality, and on law and tolerance, all offer a hope of seeing Morocco become a reference point for Amazigh rights in the Mediterranean region. ○

Notes and references

- 1 <http://www.e-joussour.net/fr/memorandum-des-associations-sur-lidentite-amazigh-au-maroc/>
- 2 www.medias24.com for the full text of the organic law.
- 3 http://www.huffpostmaghreb.com/2016/09/09/memorandum-roi-amazigh_n_11933782.html
- 4 www.tamurt.info
- 5 http://www.huffpostmaghreb.com/2016/09/09/memorandum-roi-amazigh_n_11933782.html
- 6 Ibid.
- 7 Abdelwahab Bouchart; Tamazight dans le champ audio visuel du Maroc in <http://www.al-janoub24.com/?p=19183>

Mohamed Handaine is the President of the Confederation of Amazigh Associations of South Morocco (*Tamunt n Ifus*), Agadir, Morocco. He is a university graduate, historian and writer, and board member of the Coordination Autochtone Francophone (CAF). He is a founder member of the Amazigh World Congress and has published a number of works on Amazigh history and culture. He is the President of the Indigenous Peoples of Africa Co-ordination Committee (IPACC), the IPACC North African Regional Representative as well as a member of the steering committee of the ICCA Consortium in Geneva. He is Director of the Centre for Historical and Environmental Amazigh Studies.

ALGERIA

The Amazigh are the indigenous people of Algeria, as well as of other countries of North Africa and the Sahara, and have been present in these territories since ancient times. However, the Algerian government does not recognise the indigenous status of the Amazigh. Because of this, there are no official statistics concerning the number of Amazigh. Based on demographic data relating to the territories in which Tamazight-speaking populations live, associations defending and promoting the Amazigh people estimate the Tamazight-speaking population to be around 11 million people, or 1/3 of Algeria's total population.

The Amazigh of Algeria are concentrated in five large regions of the country: Kabylia in the north-east (50% of Algeria's Amazigh), Aurès in the east, Chenwa, a mountainous region on the Mediterranean coast to the west of Algiers, Mزاب in the south (Taghardayt), and Tuareg territory in the Sahara (Tamanrasset, Adrar, Djanet). Many small Amazigh communities also exist in the south-west (Tlemcen, Bechar...) and in other places scattered throughout the country. It is also important to note that large cities such as Algiers, Blida, Oran, Constantine, etc., are home to several hundred thousand people who are historically and culturally Amazigh but who have been partly Arabised over the years, succumbing to a gradual process of acculturation.

The indigenous population can primarily be distinguished from other inhabitants by their language (Tamazight) but also by their way of life and their culture (clothes, food, beliefs...). After decades of demands and popular struggles, the Amazigh language was finally recognised as a "national and official language" in the Constitution in 2016. Despite this achievement, the Amazigh identity continues to be marginalised and folklorised by State institutions. Officially, Algeria is still presented as an "Arab country" and anti-Amazigh laws are still in force (such as the 1992 Law of Arabisation).

Internationally, Algeria has ratified the main international standards, and it voted in favour of the UN Declaration on the Rights of Indigenous

Peoples in 2007. However, these texts remain unknown to the vast majority of citizens and, thus, not applied, which has led to the UN treaty monitoring bodies making numerous observations and recommendations to Algeria in this regard.

Amazigh language recognised as national and official language

The Algerian parliament adopted a new Constitution in March 2016, Article 4 of which states that “Tamazight is also a national and official language.”¹ Article 3, however, indicates that “Arabic is the national and official language. Arabic remains the official language of the State.” For many observers, the way in which Articles 3 and 4 are formulated demonstrates the lack of equality between the two official languages. The primacy given to Arabic is clear and also confirmed in the Recitals to the Constitution which state that “Algeria is an Arab country”, in contradiction with the country’s historic, social, cultural and linguistic reality.

Moreover, Article 4 adds that “the methods for applying this article shall be set out in an organic law” but it fails to specify any deadline for this. Considering that the government and the vast majority of parliamentarians are of an Arabo-nationalist persuasion, Algeria’s Amazigh are convinced that their language will never effectively become an official language. The poor example of Morocco, which granted Tamazight the status of official language in 2011 but which has adopted no implementing regulations since, only reinforces the scepticism of Algeria’s Amazigh population.

Algeria’s Amazigh organisations further note that Tamazight’s status of “national language” since 2002 has resulted in no concrete progress in favour of this language and that there is no recognition or rehabilitation of the indigenous Amazigh identity in the new constitutional text, where their identity remains largely marginalised in relation to the Arabo-Islamic identity. Article 212 of the new Constitution reinforces the supremacy of the Arabo-Islamic component of Algerian identity by noting that “no constitutional revision may jeopardise Islam, as State religion, or Arabic, as national and official language”. The Amazigh language is not mentioned in this article, evidence that it is not protected in the same way as Arabic within the Algerian Constitution.



Algerian legislation therefore remains seriously discriminatory given that there is one priority language, Arabic, and one secondary one, Tamazight, and consequently a hierarchy of citizens: Arabs, full citizens and Amazigh, second-level citizens. The Amazigh organisations have firmly and unanimously denounced this.

Police repression in M'zab and Kabylia

There were fewer acts of violence in the M'zab region (Amazigh region 600 km south of Algiers) in 2016 than noted in the previous three years. The police, however, who have a high presence in the region continued to make arbitrary arrests of Mozabite² citizens and to ban all forms of public expression or demonstration. Phone and internet communications were also placed under heavy surveillance. During the year, more than 20 Mozabites were arrested and imprisoned, bringing

the total number of Mozabite political prisoners to around 140. They are being held in prisons in Taghardayt (Ghardaya) and El-Ménéa in the south of Algeria. Most of them have been incarcerated for more than 18 months now without trial, which is completely unlawful. In fact, Article 125 of Ruling 15/02 of 23 July 2015³ stipulates that “preventive detention may not exceed 4 months” and that, in case of need, it may be extended “once only for a further 4 months”. In protest at their continuing unlawful detention and their inhuman detention conditions, the Mozabite prisoners have resorted to repeated hunger strikes, resulting in a serious deterioration in their health, particularly that of the older detainees and those affected by chronic illness (diabetes, asthma...). Youcef Oulad Dadda was released in March 2016, having spent two years in prison for posting a video on the internet showing Algerian police stealing goods from a shop. Salah Dabouz, President of the Algerian Human Rights League and lawyer representing the M'zab prisoners, was arrested and then released in February and again in July 2016 in an attempt to force him to drop their cases. He is currently under judicial supervision, which requires him to report to Algiers every week to sign an attendance sheet even though he lives in Taghardayt (600 km away).

In Kabylia, the activities and traditional events of Amazigh non-governmental organisations (Yennayer, Amazigh New Year, Amazigh Spring...) are disrupted, banned or forcibly prevented by the police. Members of the Amazigh World Congress (CMA) living in Kabylia have been arrested, questioned and then released time and again over the past year. At the police offices, they are threatened with prison and violence against their families if they do not halt their activism. The President of the CMA has been out of work since 2015 and now finds himself without any source of income, reliant on the solidarity of family and friends. Members and supporters of the Movement for Kabyle Self-Determination (MAK), a political movement not recognised by the administration, are particularly harassed by the Algerian authorities: arbitrary arrests, threats, bans on public events, etc. The Algerian administration hinders public and private investment in Kabylia while encouraging it in other parts of the country. Private Kabyle businesspeople suspected of being close to the MAK are placed under surveillance by the authorities and find themselves facing abnormal administrative and regulatory difficulties.

On 6 September, Slimane Bouhafs, a Christian living in Ait-Wartilane (Kabylia) was sentenced to three years in prison by the Sétif Court of Appeal for “jeopardising the precepts of Islam”. According to the Algerian Human Rights League, this was an extremely harsh punishment given that “Slimane Bouhafs was mere-

ly expressing his opinion by belonging to another religion” and that “freedom of religion is recognised by the Algerian Constitution and guaranteed by the international human rights conventions ratified by Algeria”.⁴

On the occasion of International Human Rights Day, the Amazigh World Congress and numerous other associations called on the people to gather symbolically in support of human rights in Algeria and around the world. These gatherings were banned and prevented by a strong police presence. Anyone who did manage to get to the meeting points was arrested and detained all day at a police station, particularly those in Tizi-Wezzu and Vgayet in Kabylia.

Under the pretext of the war on terror and drug trafficking, Algeria keeps its border with Morocco closed (since 1994) and has even been reinforcing it by constructing a wall and putting increased means of control in place. It is the same for the border with Libya. As for its borders to the south, with Azawad (North Mali) and Niger, these are closely monitored and often closed. Such obstacles to free movement prevent traditional exchanges between indigenous populations, depriving them of family and community relationships. Worse still, life itself is quite simply threatened in these arid regions when basic necessities such as food and medicines cannot move around freely. ○

Notes and references

- 1 Official Journal of the Algerian Republic, <http://www.joradp.dz/HEN/Index.htm>
- 2 The Mozabites (At-Mzab) are Amazigh people living in the Mzab region (600 km south of Algiers). They form a community of 300,000 people who live in small towns which they themselves built, the most important of which is Taghardayt (Ghardaya), which was declared a World Heritage Site by Unesco in 1982. The Mozabites are predominantly religious Muslim but of rite Ibadite, a rite not recognized and not accepted by the Algerian State. Since the independence of Algeria (1962), the government has sought to implant Arab populations in the territories of the Mzab, with the aim of destructuring the At-Mzab civilization in order to domesticate this people. As a result, with the support of the Algerian authorities, the Arabs forcibly occupy the At-Mzab territory and threaten their traditions and way of life. This is the source of the current problems in Mzab.
- 3 Official Journal of the Algerian Republic, <http://www.joradp.dz/HEN/Index.htm>
- 4 www.la-laddh.org

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TUNISIA

As elsewhere in North Africa, the Amazighs form Tunisia's indigenous population. There are no official statistics regarding their number in the country but Amazigh associations estimate that there are around 1 million speakers of Tamazight (the Amazigh language), being around 10% of the total population.¹ It is in Tunisia that the Amazigh have suffered the greatest forced arabisation. This explains the low proportion of Tamazight speakers in the country. There are nonetheless many Tunisians who, while no longer being able to speak Tamazight, still consider themselves to be Amazigh rather than Arab.

The Amazighs of Tunisia are spread throughout all of the country's regions, from Azemour and Sejnane in the north to Tittawin (Tataouine) in the south, passing through El-Kef, Thala, Siliana, Gafsa, Gabès, Djerba and Tozeur. As elsewhere in North Africa, many of Tunisia's Amazighs have left their mountains and deserts to seek work in the cities and abroad. There are thus a large number of Amazighs in Tunis, where they live in the city's different neighbourhoods, particularly the old town (Medina), working primarily in skilled crafts and petty trade. The indigenous Amazigh population can be distinguished not only by their language (Tamazight) but also by their culture (traditional dress, music, cooking, Ibadite religion practised by the Amazighs of Djerba).

Since the fall of the Ben-Ali regime in 2011, numerous Amazigh cultural associations have emerged with the aim of getting the Amazigh language and culture recognised and used. The Tunisian state does not, however, recognise the existence of the country's Amazigh population. Parliament adopted a new Constitution in 2014 that totally obscures the country's Amazigh (historical, cultural and linguistic) dimensions. In its recitals, the text refers to the Tunisians' sources of "Arab and Muslim identity" and expressly affirms Tunisia's membership of the "culture and civilisation of the Arab and Muslim nation", committing the State to working to strengthen "the Maghreb union as a stage towards achieving Arab unity..." Article 1 goes on to reaffirm that "Tunisia is a free State, (...), Is-

lam is its religion, Arabic its language” while Article 5 confirms that “the Tunisian Republic forms part of the Arab Maghreb”.²

On an international level, Tunisia has ratified the main international standards and voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007. However, these international texts remain unknown to the vast majority of citizens and legal professionals, and are not applied in the domestic courts.



The Amazighs of Tunisia denied

The State and its bodies continue to conceal and totally marginalise Amazigh issues, denying Tunisia's history and human and socio-cultural reality. Amazigh cultural heritage is exploited only in the form of local folklore to attract foreign tourists. There is consequently no legislative text in Tunisia, nor any public institution, dedicated to promoting the cultural, economic and social rights of the country's Amazigh population. The Amazigh language is barred from use in the public administration and schools, and indigenous Amazigh history is absent from school textbooks. Even civil society organisations ignore or boycott Amazigh issues. In their annual reports from the last five years, for example, neither the Tunisian Human Rights League nor the Higher Committee for Human Rights and Fundamental Freedoms have made any mention of the violations of the fundamental rights of the Amazigh population.

To justify this negation of the Amazigh people, the Tunisian government – through the Minister responsible for relations with the constitutional institutions, civil society and human rights – declared in September 2016 that “no-one is stating or claiming their Amazigh identity in the country”.³

This is clearly not the case, as witnessed by the blossoming of new Amazigh associations, the Amazigh protests outside Parliament, their public statements, and so on. Moreover, some Amazigh do not dare to demand their fundamental rights, in particular as an indigenous people, because of a feeling of inferiority in comparison to the Arabo-Islamic identity that has been imposed for centuries, and for fear of the ensuing stigma, rejection and repression. The Amazighs of Tunisia consequently dare not even state freely and without fear that they are Amazighs and so they go as far as to stop themselves from speaking their own language in public. They thus protect themselves from danger at the cost of their silence and the suppression of their identity.

The Amazigh identity in Tunisia is therefore completely proscribed, and the only authorised – proclaimed - identity that each citizen is required to defend is the Tunisian identity, based on Islamism and Arabism. Any declaration or claim of any other identity, particularly the Amazigh identity, may be classified as an act of treason by the authorities.

Thanks to the political changes that have taken place in Tunisia since 2011, Tunisian Amazighs from different regions have, however, decided to take matters

into their own hands and create the conditions for a revival of their language and culture. There are now ten or more Amazigh associations established with a mission to defend and promote the Amazigh language and culture in Tunisia. They regularly organise awareness raising activities consisting of traditional events, conferences and festivals with a local dimension. Steps have also been taken to convince some parliamentarians of the need to change Tunisian legislation in favour of recognising the Amazighs rights in the country.

UN recommendations on Amazigh rights

Following the alternative reports presented by the Amazigh World Congress (CMA), in partnership with the Tunisian Association for the Amazigh Culture (AT-CA) and other Amazighs rights associations in Tunisia, the UN Committee on Economic, Social and Cultural Rights (CESCR) expressed its concerns and made the following recommendations to the Tunisian government when examining Tunisia's report at its 59th session (19/09-7/10/2016):⁴

- the Committee is concerned at information received regarding the discrimination suffered by the Amazigh minority, in particular when exercising their cultural rights and that a lack of data broken down by ethnic and cultural belonging makes it impossible to assess the real situation of the Amazighs,*
- the Committee notes that the State Party's definition of the Arab and Muslim identity could lead to violations of the cultural and linguistic rights of the Amazigh minority, particularly by imposing Arabic as the sole language of teaching in public education. The Committee also notes and regrets the lack of funding allocated to the culture and protection of the cultural heritage of the Amazigh population,*
- the Committee recommends that the State Party recognise the language and culture of the Amazighs indigenous people and provide them with the protection and promotion required by the Committee on the Elimination of Racial Discrimination in 2009.*

Furthermore, the State Party should:

- a. collect, on the basis of self-identification, statistics broken down by ethnic and cultural belonging,*
- b. take administrative and legislative measures to ensure teaching of the Amazigh language takes place at all levels of education and to encourage a knowledge of the Amazigh history and culture,*
- c. revoke Decree No.85 of 12/12/1962 and enable the registration of Amazigh first names in the civil registry,*
- d. facilitate the smooth running of cultural activities organised by the Amazigh cultural associations”.*

No UN body has never before made observations and recommendations of this magnitude to the Tunisian State. The Amazighs of Tunisia feel this is a striking victory for the Amazigh cause. It remains to be seen whether the Tunisian government will implement these recommendations or whether they will fall on deaf ears. Given the weakness of the Amazigh movement in Tunisia, continuing international pressure will be decisive if progress is to be made on Amazigh rights in the country. ○

Notes and references

- 1 The number of Amazighs is estimated on the basis of demographic statistics from areas where the Amazigh language and culture are practised.
- 2 Constitution de la Repulique Tunisienne 20 April 2015, <http://www.legislation.tn/sites/default/files/news/constitution-b-a-t.pdf>
- 3 Speech by Mr Mehdi Ben Gharbia, Minister for Relations with Constitutional Institutions, Civil Society and Human Rights, at the 59th session of the Committee on Economic, Social and Cultural Rights, 22 September 2016, Palais des Nations, Geneva.
- 4 Committee on Economic, Social and Cultural Rights, E/C.12 / TUN/CO/3, www.ohchr.org

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MALI

Mali's total population is estimated at around 17.8 million inhabitants. The Tuareg or Tamashek-speaking people today represent approx. 3.5% of the population.¹ They live mainly in the northern regions of Timbuktu, Gao and Kidal, which together cover 2/3 of the country's area of 1,241,021 km². The Tuareg, the Songhaï, the Fulani (Peul) and the Berabish Arabs represent the largest groups in northern Mali, and are historically and economically opposed to each other.²

Traditionally, Tuareg are semi-nomadic pastoralists, rearing dromedaries, goats and sheep. They occasionally engage in trade, bartering game and dromedary meat, along with rock salt, in return for dates, fabrics, tea, sugar and foodstuffs.

Tuareg living in Mali belong mainly to three different traditional political entities called "confederations": the Kel Tademekat, living around and to the north of Timbuktu; the Iwellemeden, living east of Gao and having Ménaka and In Gall in the state of Niger as their main urban centres; and the Kel Adrar living around the Adrar Massif and the city of Kidal. Each of these political entities has a paramount chief, or *Amenokal* in Tamashek. Each confederation is subdivided into a web of sub-clans (or tribes) traditionally belonging to one of the five classes of Tuareg society: the *imazaghen* or nobility, the *ineslimen* or religious experts, the *imghad* or vassals, the *inaden* or handicraft workers and the *iklan* or servants/slaves. Today, the rigid difference between these classes is disappearing but the Kel Adrar (*Iforagh*) and the Iwellemeden are still the most influential *imazaghen* clan, with differing interests. The *imghad* clans are often opposed to the *imazaghen* clans. Today these social and political structures and alliances are reproduced in the membership of the different armed groups and political orientations in Mali.

The Constitution of Mali recognises cultural diversity and the National Pact recognises the specific nature of the Tuareg-inhabited regions. In addition, legislation on decentralisation gives local councillors, including some Tuareg, a number of powers although not the necessary resources with which to exercise them. Mali voted in favour of the United Nations

Declaration on the Rights of Indigenous Peoples (UNDRIP). However, the state of Mali does not recognise the existence of indigenous peoples on its territory as understood in the UNDRIP and ILO Convention N° 169 concerning Indigenous and Tribal Peoples in Independent Countries.

Insurrection and peace agreements

Mali has been deeply affected by violent insurrections, inter-ethnic clashes and attacks by Jihadi groups³ in the northern regions since 2012. On 20 June 2015, the Malian government, the Algiers Platform (a coalition of pro-government armed groups) and the CMA (Tuareg-led Azawad Movement Coalition)⁴ signed the Algiers Peace Agreement (see *The Indigenous World 2014 and 2016*). By the end of 2015, inter-communal peace agreements had been signed, first by Ifoghas and Imrad Tuareg leaders, then by the Tuaregs and the Berabish Arabs. With these inter-communal agreements, Mali moved closer to a lasting peace.

Implementation of the peace agreement

Despite the peace agreements, however, the violence continued. Jihadist groups, not included in the Algiers Agreement, intensified their attacks, and old hostilities and mistrust flared up between the different ethnic-based armed groups (see *The Indigenous World 2014*).

In January 2016, a high-level consultative meeting of the members of the Agreement Monitoring Committee (AMC) was held in Algiers. The CMA and the Algiers Platform expressed frustration over the slow implementation of the agreement, and the shortcomings in the government's engagement. They also expressed hesitation at the idea of proceeding with the cantonment process⁵ while progress on political and institutional reforms remained limited. During the consultative meeting, the Malian parties⁶ agreed to move forward with the security aspect of the agreement, and to accelerate the implementation of other crucial provisions of the agreement such as decentralisation and institutional reforms, disar-



mament, demobilisation and reintegration (DDR), security sector reform, national reconciliation and development in the north.

The establishment of interim authorities in the north and the implementation of DDR for combatants was the priority of the signatory armed groups. The CMA and the Algiers Platform agreed on an implementation timeline focusing on the establishment of interim authorities for the north, progress in security conditions and provisions related to the preparations for the upcoming communal elections.

The prerequisite for a distribution of seats in the different commissions and under-commissions⁷ stated in the Algiers Agreement remained a point of contention. In June, however, the Malian parties reached a new agreement on the modalities for establishing interim administrations in the five northern regions. Gov-

ernors took office in Gao, Ménaka and Timbuktu, while the governors for Kidal and Taoudenni stayed in Timbuktu because of the security situation in the regions. However, progress in the gradual restoration of State authority in the north, and the cantonment and integration of armed groups remained limited.⁸ By September, only a third of State officials for the northern regions had been deployed to their regions.

To support the government and to calm the situation, MINUSMA (UN peacekeeping forces) facilitated inter-communal dialogue and, in partnership with local NGOs and the International Organization for Migration (IOM), implemented 44 community violence reduction projects reaching 30,000 community members, especially youth, around the cantonment sites.⁹

Insecurity

The slow implementation of the Algiers Agreement continued to fuel the volatile security environment in central and northern Mali which, in turn, further prevented progress in its implementation. Attacks by criminal groups and Jihadist groups¹⁰ became ever more intensive and widespread throughout the country. There was a significant increase in attacks on the Malian defence and security forces and the peacekeeping forces (MINUSMA) but the signatory armed groups (CMA and the Algiers Platform) and the humanitarian organisations were also targeted.¹¹

The armed confrontation between the MNLA (National Movement for the Liberation of Azawad) and GATIA (*Groupe d'autodéfense des Touaregs imghad et alliés*)¹² continues to aggravate the conflict between the CMA and the Algiers Platform. Tensions over the control of Kidal¹³ had been latent since the agreement in October 2015. MINUSMA intervened to calm the situation, and an agreement was signed by the two groups on the joint management of Kidal and other measures to reduce tensions.

At the 10th Agreement Monitoring Committee (AMC) meeting held in Bamako on the 25 July, the CMA and the Algiers Platform reiterated the need to urgently establish interim administrations in the five northern regions. The government announced at the meeting that resources had been allocated for the interim administrations and asked the CMA and the Algiers Platform to nominate their candidates for appointment. The parties agreed to adjust the

timeline for establishing the interim administrations, and to accelerate the process of DDR. Delays continued, however, and significant challenges remained in advancing political and security measures due to the continued mistrust among the signatory parties.

In the central region, the Jihadist groups reinforced their strongholds and inter-communal violence increased between the Bambara, Fulani and other groups. Old tensions over land rights and water resources flared up in the wake of the Asawad conflict. The radicalisation of young people continued not only in Kidal, Gao, Ménaka and Timbuktu but also spread to the region of Mopti. Facing a future with no jobs and no education, the young people constitute an easy target for recruitment by the Jihadist groups.

A very high number of UN peacekeepers and soldiers from the Malian army were killed or injured during 2016. One year after the Algiers Agreement, there had been 191 attacks with at least 385 dead (civilians, Malian soldiers, peacekeepers, assailants and combatants).¹⁴

Elections

The deficit in interim authorities became a huge challenge for the preparation of the commune-level elections. On 20 November 2016 the voters were invited to elect 12,000 councillors throughout the country in the first municipal elections since the insurrection in 2012. Both the opposition parties and the signatory armed groups had criticised the planned election, expressing strong concerns over the challenges facing the elections in the north due to the lack of interim administrations, the weak presence of the State authorities, high insecurity and the difficulty in including refugees and displaced people. The CMA expressed support for local opposition to elections stating that, in accordance with the peace agreement, no elections should be held before the interim authorities had been established.

Polls were cancelled in at least seven districts in the north for security reasons. In Timbuktu, ballot boxes were burnt, and one candidate was kidnapped during the elections. Many people boycotted the election, and a Jihadist group allegedly killed five soldiers transporting ballot boxes. Low turnout was reported in most parts of the country outside of the capital, Bamako.¹⁵ The results of the election are still not known.

Humanitarian situation

Ongoing inter-communal violence, attacks and suicide bombings have left the population of northern and central Mali in a situation of lawlessness and insecurity, threatening the livelihoods of the population and affecting their access to market, communication lines, education, food and water.¹⁶ The situation has been exacerbated by reduced access to grazing lands for animals and increasing numbers of farmers abandoning their fields for fear of attacks by armed groups. Armed men have driven off entire herds of livestock, while traders describe being robbed on their way to local village markets, without any action from the government.

The increase in violence has further aggravated the situation of displacement, destabilised local communities and prevented people from returning to their homes. On the Malian-Niger border, a number of well-coordinated attacks have been carried out, destabilising the refugee hosting areas of Tahoua and Tillabery in Niger, where soldiers were killed and a UNHRC health centre looted.

According to the UN Office for the Coordination of Humanitarian Affairs (OCHA)¹⁷ more than two million people are currently suffering from food insecurity. Furthermore, the violence severely undermines the delivery of humanitarian aid. Access to basic services remains low. Many schools are still closed in the Gao, Kidal and Timbuktu regions, with 380,000 children between 7 and 15 years of age remaining out of school in the north. The worsening security situation in the central region has led to further closures of schools in the Mopti and Ségou regions. Landmines, improvised explosive devices and the explosive remnants of war are also threatening the health and life of the population, especially the children.

By the end of 2016, around 36,690 internally displaced people were still living in host communities or camps. Some 139,000 refugees remained in neighbouring Burkina Faso (32,295), Mauritania (42,867), Niger (60,813) and Algeria (up to 15,000).¹⁸ Many of these are Tuareg, Berabish Arabs and Fulani who have lost their cattle, crops or shops in looting and revenge attacks.

Human rights

Amnesty International and Human Rights Watch have released several reports concerning human rights violations committed by both sides in Mali.¹⁹ Human

rights violations have increased since the insurrection in 2012. MINUSMA has documented several hundred cases of violations and abuses of human rights and international humanitarian law, also including children, during 2016. The cases involved instances of executions or attempted killings, amputation, ill-treatment or torture, illegal detention, extortion or looting, attacks against humanitarian or peacekeeping personnel, abduction, recruitment of child soldiers, sexual violence, military use of a hospital, forced displacement, illegal taxation etc.²⁰ The violations have allegedly been committed by government forces, the CMA, the Algiers Platform and other armed groups, mostly in the northern and central parts of Mali; however, the UN peacekeeping forces have also been involved.

The Ministry of Justice and Human Rights launched 12 investigations aimed at reviewing and addressing the human rights violations documented by MINUSMA. Limited progress has been made in combating impunity for serious violations and abuses, however, including conflict-related sexual violence. Investigations and the effective capacity of regional courts are blocked by a lack of material and human resources. In December, the UN Independent Expert on the situation of human rights in Mali expressed deep concern at the time taken to investigate and bring to trial cases of war crimes and human rights violations committed during the conflict.²¹

Recently, however, an Islamic extremist pleaded guilty at the International Criminal Court (ICC) to destroying shrines and damaging a mosque in the ancient city of Timbuktu.

Women's issues

The National Assembly adopted a quota law on 12 November 2015 which requires that at least 30 percent of elected or appointed officials be women. In September 2016, a new electoral law was signed emphasising the need for a minimum 30 percent of female candidates on the electoral lists. Implementation remains limited, however. Despite the fact that women's organisations, especially in northern Mali, have played a key role in reconciliation processes between the Tuareg movement and the Malian government, women's representation in the implementation phase of the peace agreement is still very low.²²

Progress in the investigation and prosecution of sexual violence has been limited owing to death threats against local monitors and the limited capacity of national justice institutions.



Notes and references

- 1 The Tuareg (pastoralists) and the Songhai (sedentary traders and agriculturalists from Gao and Timbuktu) represent the largest groups in northern Mali. Other significant populations are the Fulani (pastoralists), Berabish Arabs (pastoralists), Arabs (traders) and smaller numbers of Dogon (agriculturalists), Bozo (fisher nomads) and Bambara (majority in the south).
- 2 The Tuareg and the Songhai have been in conflict over the caravan trade in Sahara since the 17th century. As the Songhai Empire declined, it was overrun by Moroccans and, later, by the Tuareg. The Fulani and Berabish Arabs have also been opposed to the Tuareg as well as to each other.
- 3 At the end of the 2012, the rebellion drastically changed its character. From the MNLA (National Movement for the Liberation of Azawad) fighting a campaign against the Malian government for independence or greater autonomy for the northern region in Mali known as Azawad (Kidal, Timbuktu, Gao) the political and military offensive was taken over in April 2012 by the Jihadist groups of Ansar Eddine, AQMI (Al-Qaeda in Islamic Maghreb), MUJAO (Movement for Oneness and Jihad in West Africa) and the Belmoctar group, now united in Al-Mourabitoune. While the goal for the MNLA was to fight for an independent, secular, multi-ethnic homeland for the Azawad people, the goal for the Jihadist groups was to fight for an Islamic state ruled by Sharia law. Furthermore, militias from different ethnic groups such as the FNLA (National Liberation of Azawad) (Arab group supported by the Malian government), Ganda Koy (Songhai) and Ganda Izo (Fulani) were opposed to the MNLA vision of the partition from Mali. They saw the project as a Tuareg project and therefore supported the Jihadist groups against the MNLA.
- 4 Pro-Azawad coalition formed of the HCUA (High Council for Unity of Azawad), MNLA (National Movement for the Liberation of Azawad), MAA (Arabic Movement for Azawad) and MAA dissidents.
- 5 Internment of the combatants in secure camps (disarmament, demobilisation and reintegration).
- 6 The Malian government, CMA (Pro-Azawad coalition) and the Algiers Platform (pro-government coalition).
- 7 The Agreement Monitoring Committee (AMC), Technical Security Committee (CTS). The Truth, Justice and Reconciliation Commission. Commissions on DDR (disarmament, demobilisation and reintegration), the National Council for Security Sector Reform, Operational Coordination Mechanism etc.
- 8 UN Security Council, Statement, 3 November 2016, http://www.securitycouncilreport.org/atf/cf/%7B65BF969B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_prst_2016_16.pdf
- 9 United Nations Security Council. Report of the Secretary-General on the situation in Mali. 29 September 2016.
- 10 Ansar Eddine, AQMI (Al-Qaeda in Islamic Maghreb), MUJAO (Movement for Oneness and Jihad in West Africa), Boko Haram (Nigeria terrorist group), Al-Mourabitoune (comprises MUJAO and the Belmoctar group), the Macina Liberation Front (latest franchise of Al Qaeda in the Islamic Maghreb).
- 11 United Nations Security Council. Report of the Secretary-General on the situation in Mali, 29 September 2016.
- 12 GATIA (*Groupe Autodéfense Touareg Imghad et alliés*) is a pro-government militia supported by the government and member of the Algiers Platform. Their leader is an Imghad Tuareg, General Gamou, who has been serving in the Malian Army and who is responsible for many attacks against Tuareg camps and villages. He is considered a traitor by the Tuareg community. He

- broke the ceasefire in 2012 many times, and has continues to break the Algiers Peace Agreement since 2015 by attacking MNLA strongholds such as Anafi, Ménaka, Kidal etc.
- 13 In northern Mali. Centre and stronghold for the MNLA and Ifoghas Tuareg.
 - 14 Le Républicain /Maliink Investigative Reporting Group 04/07/16/
 - 15 African News 24/11/16 and DW (Deutsche Welle) <http://www.dw.com/en/violence-mars-local-elections-in-mali/a-36466388>
 - 16 UNCHR regional update, Mali Situation, November 2016.
 - 17 OCHA, Humanitarian Bulletin Mali, October –November 2016.
 - 18 UNHCR, Operational Update Mali November 2016.
 - 19 Human Rights Watch: World Report 2017, Mali.
 - 20 United Nations Security Council. Report of the Secretary-General on the situation in Mali, 29 September 2016.
 - 21 Report of the Independent Expert on the situation of human rights in Mali, UN Human Rights Council, January 2017.
 - 22 The Ministry for the Advancement of Women, Children and the Family is not represented on the national committee of coordination for the implementation of the Agreement on Peace and Reconciliation.

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BURKINA FASO

Burkina Faso has a population of 14,017,262 (4th General Census of Population and Housing, December 2006) comprising some 60 different ethnic groups. The indigenous peoples include the pastoralist Peul (also called the *fulbe duroobe egga hoddaabe*, or, more commonly, *duroobe* or *egga hoddaabe*) and the Tuareg. There are no reliable statistics on the exact number of pastoralists in Burkina Faso. They can be found throughout the whole country but are particularly concentrated in the northern regions of Séno, Soum, Baraboulé, Djibo, Liptaako, Yagha and Oudalan. The Peul and the Tuareg most often live in areas which are geographically isolated, dry and economically marginalised and they are often the victims of human rights abuses. Burkinabe nomadic pastoralists, even if innocent of any crime, have thus been subjected to numerous acts of violence: their houses burned, their possessions stolen, their animals killed or disappeared, children and the elderly killed, bodies left to decay and their families forbidden from retrieving them.

Peul pastoralists are gradually becoming sedentarised in some parts of Burkina Faso. There are, however, still many who remain nomadic, following seasonal migrations and travelling hundreds of kilometres to neighbouring countries, particularly Togo, Benin and Ghana. Unlike other populations in Burkina Faso, the nomadic Peul are pastoralists whose whole lives are governed by the activities necessary for the survival of their animals and many of them still reject any activity not related to extensive livestock rearing.

The existence of indigenous peoples is not recognised by the Constitution of Burkina Faso. The Constitution guarantees education and health for all; however, due to lack of resources and proper infrastructure, the nomadic populations can, in practice, only enjoy these rights to a very limited extent. Burkina Faso voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples.



The nomadic Peul pastoralists of Burkina Faso

The culture and way of life of the nomadic Peul pastoralists of Burkina Faso continued to be the object of discrimination and scorn in 2016. Over the year, thousands were forcibly displaced both inside and outside the country and, as in previous years, the overriding issue for the nomadic Peul pastoralists remained their security. Indeed, their most basic rights are still being violated, whether in Burkina Faso or abroad.

Within Burkina Faso, the events in the rural commune of Guiaro in Nahouri province are among the most noteworthy. In this commune, the Peul living in the camp in Koeniassa neighbourhood of Bouya village were, in July 2016, the victims of serious human rights violations committed by the resident farmers. Such violations included: the demolition of huts, burning of grain stores and other assets, and dispersion and dispossession of livestock. 127 people became homeless and this brought about an emergency. Some victims were temporarily housed in classrooms at the commune's school although others cannot currently be located.¹

Outside Burkina Faso, Peul pastoralists are no safer. In Côte d'Ivoire, for example, Peul from Burkina Faso, most of them livestock herders, had to flee the violence that took place in the area surrounding Bouna commune. Indeed, as of Tuesday 5 April 2016, according to Yaya Sanou, High Commissioner of Nounbiel Province, there were 2,168 persons displaced from Bouna to Burkina Faso, while another 567 went up to Ghana.² In other parts of Burkina Faso, however, the Peul pastoralists have been less disturbed, thanks to the emergence of the Koglweogo or village associations, aimed at ensuring the safety of all people and their property in the whole area.

The Koglweogo self-defence group

In recent years, whenever nomadic pastoralists have been attacked, no-one from the other village communities has come to their rescue, and the authorities have arrived very late. Pastoralists have suffered badly from theft of their livestock and this has, to a large extent, been happening with impunity as those responsible have not been brought to justice. This has led to the emergence of local self-defence groups known as Koglweogo, aimed at helping to ensure the security of the nomadic pastoralists.³

It is clear that, during 2016, the pastoralists have enjoyed greater security in the province of Mossi Plateau, where the Koglweogo have been established. This is because there is no more stealing in the villages. Indeed, the thieves and those running criminal networks, who were previously very well-organised and able to make people believe that the nomadic pastoralists were responsible, have all been neutralized.

The Koglweogo are very well-organised and much appreciated by the rural populations, particularly the Peul pastoralists from the Mossi Plateau. Their emergence confirms yet again that the numerous injustices and other forms of corruption experienced by individuals in Burkina Faso have been due to an absence of justice. The Koglweogo include the nomadic pastoralists, vulnerable populations, in all their activities. This will clearly have an influence on pastoralism in years to come if the Koglweogo become full militia, undermining the authority of the State.⁴

Towards nomadic pastoralists' self-organisation

There are Peul who are called Fulbe duroobe egga hodfaabe or "duroobe" by other Peul. These people, whether they are settled or transhumant with their animals, also call themselves "duroobe".

Until now, the "duroobe" have been considered the only indigenous Peul population under the terms of the ACHPR's definition, i.e. "particular groups who have been left on the margins of development, who are perceived negatively by dominant mainstream development paradigms and whose cultures and lives are subject to discrimination and contempt".⁵ Numerous not-for-profit associations have been helping provide them with training for many years (adult literacy, raising awareness of child education, specific technical training...). More recently, however, the Peuls' most fundamental rights have been so violated that even settled Peul, far from being "duroobe", have paid a high price. Indeed, the settled Peul who were chased out of their villages in 2015 and who sought refuge in the Ziniaré gendarmerie station were forced to leave the compound at the start of 2016 with nowhere to go but into the bush. Markers are now being put down in their village, clearly to allocate plots of land to new purchasers. This kind of injustice brings both the settled and nomadic pastoralists closer together in the same battle, that of their rights to land and life. The nomadic pastoralists' indigenous movement is thus currently in the process of rebuilding itself.

The nomadic pastoralists' indigenous movement in Burkina Faso has also been marked by the emergence of a group of pastoralist leaders known as Rugga. The Rugga are nomadic pastoralist leaders elected by the pastoralists themselves with responsibility for pastoralism within their community. All Rugga are Peul pastoralists. Around 40 of them took part in a Congress that was organised in Ouagadougou from 22 to 24 October 2016. They all come from the north-east, east and centre-east of Burkina Faso. Aged between 25 and 60, none of them can read or write. The *ruggaaku* or Rougga vision, which focusses on achieving peaceful pastoralist societies by drawing on internal pastoral specialists, is much appreciated by the livestock herders. As this movement also exists in other countries, such as Niger, it can be considered a truly indigenous movement, aware of the challenges facing pastoralism and organised solely by pastoralist leaders. And it is now emerging in Burkina Faso.

Conclusion

The situation of Peul pastoralists in 2016 shows how, as in previous years, wealthy men and women living dignified lives can find themselves destitute overnight. So many Peul families who were previously very happy have had their lives completely destroyed: no cattle, no land, no social security, just accusations from all sides. Perhaps President Roch Marc Christian Kaboré's new government will show more concern for their fate, as he seems committed to fighting injustice and its consequences. ○

Notes and references

- 1 <http://www.abcburkina.net/fr/nos-dossiers/vu-au-sud-vu-du-sud/938-509-conflits-entre-agriculteurs-et-eleveurs-dans-le-nahouri>
- 2 Le Monde Afrique. "Au Burkina Faso, avec les déplacés du conflit entre Peul et Lobi", *Le Monde Afrique*, http://www.lemonde.fr/afrique/article/2016/04/06/au-burkina-faso-avec-les-deplaces-du-conflit-entre-peul-et-lobi_4897041_3212.html
- 3 Prof. Albert Ouédraogo partly justifies the birth of the Koglweogo in these terms: "The people have suffered thefts of their livestock. They have become a daily occurrence but when the perpetrators are caught and brought to justice, they are often released either at the gendarmerie, the police station, or the court house. So this shows how seriously those responsible for handing down justice have failed. And it is this failure that is at the root of some people's need to organise independently." (Dimitri Kaboré, 2016).
- 4 With the emergence of the Koglweogo, the police stations and gendarmeries are losing ground in rural areas, and the people on the ground seem to feel that the Koglweogo provide justice and security. The corruption of the State security services in Burkina seems to have turned police officers and gendarmes into hated people, and for the moment, the Koglweogo are the epitome of justice. But the question is whether this will last or not. And it is also questionable as to whether non-statutory forces should play this role. And what if the Koglweogo end up more corrupt than the State forces? For the moment, however, the nomadic pastoralists are well protected, and this is thanks to the Koglweogo.
- 5 The African Commission on Human and Peoples' Rights' Working Group on Indigenous Populations/Communities in Africa. *Indigenous peoples in Africa: the forgotten peoples*. ACHPR and IW-GIA, Copenhagen. Also found at: <http://www.ilo.org>; <http://www.ohchr.org>; <http://www.ipacc.org.za>.

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CENTRAL AFRICA

CAMEROON

Among Cameroon's more than 20 million inhabitants, some communities self-identify as indigenous. These include the hunter/gatherers (Pygmies), the Mbororo pastoralists and the Kirdi mountain communities. The Constitution of the Republic of Cameroon uses the terms indigenous and minorities in its preamble; however, it is not clear to whom this refers. Nevertheless, with the developments in international law, civil society and the government are increasingly using the term indigenous to refer to the above-mentioned groups.

Together, the Pygmies represent around 0.4% of the total population of Cameroon. They can be further divided into three sub-groups, namely the Bagyeli or Bakola, who are estimated to number around 4,000 people, the Baka - estimated at around 40,000 - and the Bedzan, estimated at around 300 people. The Baka live above all in the East and South regions of Cameroon. The Bakola and Bagyeli live in an area of around 12,000 square kms in the south of Cameroon, particularly in the districts of Akom II, Bipindi, Kribi and Lolodorf. Finally, the Bedzang live in the Central region, to the north-west of Mbam in the Ngambè Tikar region.

The Mbororo people living in Cameroon are estimated to number over 1 million people and they make up approx. 12% of the population. The Mbororo live primarily along the borders with Nigeria, Chad and the Central African Republic. Three groups of Mbororo are found in Cameroon: the Wodaabe in the North Region; the Jafun, who live primarily in the North-West, West, Adamawa and East Regions; and the Galegi, popularly known as the Aku, who live in the East, Adamawa, West and North-West Regions. The Kirdi communities live high up in the Mandara Mountain range, in the north of Cameroon. Their precise numbers are not known.

Cameroon voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007 but has not ratified ILO Convention 169.



Legislative changes, national policies and programmes

No major legislative changes took place in 2016. There was no progress in any of the laws that are under revision. These laws include the laws on forests and fauna, the law on land tenure and the pastoralist code, to which indigenous peoples and civil society have made important contributions. Through their respective organisations, indigenous peoples have participated in the activities of CISPAV (*Comité de Suivi des Programmes et Projets Impliquant les Populations Autochtones Vulnérables*). This committee was created by the Ministry of Social Affairs on 6 August 2013 and, among others, its roles include:

- Identifying the need for the socio-economic inclusion of indigenous peoples in Cameroon,
- Identifying and evaluating the human, technical and financial resources available and required to be able to put major development activities for indigenous peoples into action,
- Coordinating and supervising all programmes within the different sectoral administrative bodies, NGOs and CSOs in favour of indigenous peoples,
- Making proposals on how to improve all actions so that they can better serve indigenous peoples.

The committee holds its annual session in August to take stock of all the various initiatives for indigenous peoples.

In terms of programmes carried out for indigenous peoples in Cameroon by the government in 2016, the PNDP (*Programme National de Développement Participatif*) provided potable water, community halls and equipment for 47 schools in the East region aimed at hunter-gatherers. The FEDEC (*Fondation pour l'environnement et le Développement au Cameroun*) - an NGO that was put in place by the World Bank to support indigenous peoples affected by the Chad Cameroon Pipeline project - carried out sensitization campaigns related to health for Mbororo pastoralists around the Yoko-Tibati Park as well as immunisation campaigns for their children. They also provided some classrooms and scholarships for Mbororo children and distributed Bracaria seeds (a type of improved grass for animals) to help the Mbororo around the park improve the state of their pastures.

PACA, a World Bank-financed project, constructed four community halls for indigenous peoples in the East, North-West, South and Coastal regions of the country. Through the Ministry of Basic Education, five primary schools were created for Mbororo pastoralists in the Adamawa Region, which is renowned for having a very low rate of school enrolment. The creation of these schools was accompanied by the recruitment of four Mbororo teachers.

REDD+ and climate change

The REDD+ process in Cameroon is still in its national strategy development phase. The first draft of the national strategy was supposed to be finalised by September 2016. Unfortunately, all the important studies which were meant to

feed into the national strategy could not be completed due to administrative bottlenecks. This subsequently led to the World Bank's team, during their evaluation meeting in October 2016, extending the timeframe by 18 months. Nevertheless, most of the important studies have been launched and are now expected to be finalised in June 2017. These studies include an analysis of the factors of deforestation and forest degradation, including a study on the design and implementation of a mechanism for conflict management, a study on benefit-sharing mechanisms and, finally, a study on environmental and social strategies for REDD+.

The indigenous peoples are important stakeholders in the REDD+ process and are therefore seeking to participate in all the process activities. During May 2016, indigenous peoples' leaders from the forest and pastoralist communities were trained in institutional and organisational capacity building in order to be better equipped to participate in the REDD+ process in Cameroon. They received laptops and Internet keys which should permit them to access and share information on the REDD+ process. The training was organised by the African Indigenous Women's Organisation-Central African Network (AIWO-CAN) and many feedback meetings were held on the REDD+ process within indigenous communities in three regions of the country.

It is also important to note that several indigenous peoples' leaders from Cameroon also took part in the COP22 in Marrakech, Morocco, in November 2016.

Mobilisation of indigenous peoples

Under the auspices of the Ministry of Social Affairs, over 1,000 Mbororo pastoralists gathered on 9 August 2016 in the West region of Cameroon, more precisely in Didango, a Mbororo locality in Noun Division. The purpose of this mobilisation was to celebrate the International Day of the World's Indigenous Peoples. In 2008, the Government of Cameroon passed a decree officially recognising International Day of the World's Indigenous Peoples and, since then, the government and indigenous peoples have organised many activities during the month of August, culminating in the celebration of the day itself. An indigenous community is selected for the official ceremony on International Day, most often alternating between hunter-gatherer and Mbororo communities. When the celebration is held in hunter-gatherer communities, the Mbororo travel to these places to participate but when the day is celebrated in the political capital of Yaoundé, both communi-

ties are invited to attend. This notwithstanding, under the banner of the Mbororo Social and Cultural Development Association (MBOSCUDA), indigenous peoples in other regions of the country also celebrate this day as it has become a popular ceremony with numerous festivities, speeches, dancing, horse races, exhibitions of cultural artefacts and sporting activities. It has also become an opportunity for the government to announce what they intend to do for indigenous peoples.

On 5-6 December 2016, the pastoralists' cultural festival was organised in the Meiganga town, Adamawa Region. The festival has become a social jamboree in which thousands of Mbororo people gather for two days to celebrate and revive their culture, including activities such as horse racing, dancing and folklore, traditional games, exhibitions of arts and crafts, and also the election the festival's beauty pageants.

Indigenous representation and participation in decision-making

On the special instructions of the President of the Republic of Cameroon, which state that indigenous peoples should be appointed to government positions, an Mbororo leader (Dr. Ibrahim Manu) was appointed as Officer of Special Duties in 2016, in the department of the Prime Minister. This appointment follows that of the National President of MBOSCUDA (Mr. Manu Jaji) as Secretary General of the Ministry of Livestock and Fisheries in early 2016. These appointments have raised expectations among the Mbororo people that their situation may improve in relation to accessing jobs, being admitted into professional schools and having their human rights abuses resolved.

Civil strife and its effects on indigenous peoples

From what began in November 2016 as social demands by teachers' and lawyers' unions from the two English-speaking regions, the South-West and North-West regions, the situation has developed into civil strife with a demand for autonomy. As a result, school activities have since been grounded and economic activities have been paralysed in these regions. This situation, which has caused a fall in the demand for beef, has affected the Mbororo people, who depend on the sale of cattle as a source of revenue. The Mbororo in the two regions are worried about their situation as the dominant communities are accusing them of not

participating in the protests or showing support for their struggle for regional autonomy. Another negative impact of this situation is the decline in school enrolments among Mbororo children, which had recently been on the rise, thus thwarting MBOSCUDA's two-decade-long efforts to promote education.

Development projects affecting hunter-gatherers

Large infrastructure projects such as the Lom Pangar Hydro Electricity Dam in the East region, and the Kribi Deep Sea Port and the Memvele Hydro Electricity Dam in the South region, are in their final stages. These projects are located on the territories of the Baka and Bagyeli peoples and will come into operation in the coming months. The indigenous communities of these regions have not benefited from these projects either in the form of social projects or in the form of jobs. The compensation, social projects and jobs all went to the dominant communities.

In June 2016, an important project entitled “NGOs Collaborating for Equitable Community Livelihood in the Congo Basin Forests”, funded by UK development aid (DfID) was launched in Yaoundé. It is an ambitious project with a coalition of international NGOs who will use local organisations on the ground for project implementation. The organisations are: the International Institute for Environment and Development (IIED), Rainforest Foundation, Client Earth, FERN, Forest Peoples Programme and Well Grounded. In Cameroon, the Centre for Environment and Development (CED) and OKANI (a Baka-based organisation) will partner with Forest Peoples Programme to help carry out the project in the hunter-gatherer communities. The Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights is on the board of the consortium to ensure that the rights of the indigenous peoples in the Congo Basin are respected and that they will effectively benefit from the project. ○

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THE REPUBLIC OF CONGO

Located at the heart of the second-largest mass of forest cover in the world, the Republic of Congo covers 342,000 km² of Central Africa. At the time of the last census, the country had 3,697,490 inhabitants (2007 General Census of Population and Habitat - RGPH). The Second Survey (Second Congolese Household Survey / ECOM 2011) provided an update to these figures, with an estimated 2011 population of 4,085,422.

The Congolese population comprises two groups: the indigenous population and the Bantu. The indigenous population are hunter-gatherers who have inhabited the region since time immemorial while the Bantu are farmers descended from people who arrived in the region more recently and who became a dominant majority through conquest, occupation and other means.

The names of Congo's indigenous peoples vary from department to department. They may be known as: Bakola, Tswa or Batwas, Babongo, Baaka, Mbendjeles, Mikayas, Bagombes, Babis, etc. They are officially estimated at some 50,000 individuals, or around 1.2% of the total 2007 population. However, a report published in 2008 (Analysis of the situation of indigenous children and women, UNICEF 2008) suggested that they make up a far greater proportion of the population, as much as 10%. According to the different available sources, the indigenous population is one of the poorest and most marginalised sectors in the country.

In 2011, the Republic of Congo became the first country in Africa to enact a specific law on indigenous populations. There has been virtually no enforcement of this law, however, due to a lack of implementing regulations. The Republic of Congo has not ratified ILO Convention No. 169, but did vote in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007.



Constitutional reform

Protection of the rights of indigenous peoples has been constitutionally enshrined since October 2015. Article 16 thus stipulates that: “*The law guarantees and provides promotion and protection of the rights of indigenous peoples*”. The Ministry of Justice and Human Rights is responsible for promoting indigenous rights. It has an advisor on promoting the rights of indigenous peoples until a text establishing the General Department for Promoting the Rights of Indigenous Peoples can be passed.

Process of implementing regulations on the Law promoting and protecting the rights of indigenous peoples

The President of the Republic of Congo enacted Law N° 5-2011 of 25 February 2011 on promoting and protecting the rights of indigenous peoples in the Republic of Congo following a participatory process that lasted nearly eight years. This law, which is the first law of its kind in Africa, is much needed legislation in terms of overcoming the marginalisation and discrimination suffered by indigenous populations. And yet several obstacles need to be surmounted for it to be effective:

- Awareness raising of all involved, particularly those responsible for enforcing the law, and the indigenous peoples themselves. They must take ownership of it if they are to be able to demand its enforcement.
- Publication of the implementing regulations for this law. This process is currently suspended. The Ministry of Justice and Human Rights is giving no response to the different requests being made by civil society and the indigenous populations in this regard.

Process of revising the Forest Code

A decade on and the Congolese legislative and regulatory framework on forests is facing new challenges: changes in sustainable forest management and the realities on the ground, the demands of the FLEGT-VPA (Forest Law Enforcement, Governance and Trade Voluntary Partnership Agreements), REDD+ (Reducing Emissions from Deforestation and Forest Degradation), climate change, the involvement of indigenous populations and local communities in forest management and so on.

The Ministry for Sustainable Development, Forest Economy and the Environment (MDDEFE) thus decided to revise Law 16-2000 of 20 November 2000 on the Forest Code. To do this, the government requested the support of the French Development Agency (AFD). Civil society organisations, including indigenous rights organisations through the Platform for Sustainable Forest Management (PGDF), organised a number of activities to produce their contribution document,

which was sent to the appropriate officials. A series of departmental consultations was held, along with multi-actor validation workshops, culminating in the production of a draft bill of law in 2014. This was sent to the General Secretariat of the Government for consideration before submission to Parliament. However, the General Secretariat of the Government recommended that this bill be accompanied by its implementing regulations. Throughout 2016, civil society, including indigenous rights organisations, therefore contributed to producing these implementing regulations through the Forests and Economic Diversification (PFDE) project, with the financial support of the World Bank.

The MDDEFE has informed civil society that it intends to organise a national validation workshop for the draft Forest Code and its implementing regulations before sending these texts on to the government for validation and submission to Parliament for adoption.

The Forests and Economic Diversification (PFDE) project

With the support of the World Bank, the government (through the MDDEFE) is implementing the Forests and Economic Diversification (PFDE) Project. Commencing in 2012, this five-year project aims to build the capacity of the MDDEFE, to promote implementation of forest legislation and to create an environment favourable to the involvement of the private sector, indigenous populations and local communities in sustainable forest management and reforestation.

In terms of supporting the involvement of indigenous populations and local communities in natural resource management, several activities were undertaken in 2016. The Republic of Congo has been experimenting with forest management since 2000. This structuring of the space sets aside part of the forest concessions for indigenous populations and local communities (Community Development Series - SDC). During 2016, the PFDE implemented support activities for indigenous populations and local communities aimed at producing simple management plans for these SDC. In addition, it organised capacity building activities and information and awareness raising campaigns on indigenous populations' and local communities' rights and duties in relation to natural resource management.

The Reducing Emissions from Deforestation and Forest Degradation (REDD+) programme

The Republic of Congo was chosen, by the World Bank's Forest Carbon Partnership Facility (FCPF) in 2009 and the UN-REDD Programme in 2010, to contribute to implementing the Reducing Emissions from Deforestation and Forest Degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks (REDD+) Programme.

In the context of implementing the national REDD+ strategy, the Dedicated Grant Mechanism for Indigenous Peoples and Local Communities (DGM) was instituted in 2016. The DGM is a financing mechanism, a special initiative designed and developed as a special window in the context of the Forest Investment Programme (FIP), aimed at placing funds in the hands of the indigenous peoples (IP) and local communities (LC) with a view to improving their capacity to contribute to initiatives and thus strengthen their participation in the FIP and other local, national and international REDD+ processes. The amount allocated to the Republic of Congo is US\$ 4,500,000, which is held by the World Bank and is intended to support three project components:

- Component 1: Strengthening the role of indigenous peoples and local communities in the REDD + process.
- Component 2: Support for the development of income-generating activities, and the economic and sustainable management of natural resources.
- Component 3: Coordination, communication, monitoring and evaluation.

Village level consultations thus took place from 16 to 27 June 2016, conducted by members of the GTT- DGM-CONGO (Technical Working Group-DGM-Congo) in order to establish national bodies.

The indigenous movement

Created in 2007, the National Network of Indigenous Populations of the Congo (RENAPAC) is a platform aimed at representing indigenous civil society. RENA-

PAC has been involved in most of the political processes affecting indigenous peoples. Nevertheless, the network is challenged in terms of capacity among its organisers and, there is furthermore a need to strengthen their ownership of the law promoting and protecting the rights of indigenous peoples. Despite the law, the indigenous population continues to suffer discrimination and marginalisation, which explains the need for a more dynamic civil society. ○

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THE DEMOCRATIC REPUBLIC OF CONGO

The concept of “indigenous peoples” is accepted and endorsed by the government and civil society organisations in the Democratic Republic of Congo (DRC). The term indigenous peoples in the DRC refers to the Mbuti, Baka and Batwa peoples who consider their generic appellation of “pygmies” as derogative and discriminatory.

The exact number of indigenous peoples in the DRC remains unknown. The government estimates that there are around 600,000 (1% of the Congolese population), while civil society organisations argue that there are up to 2,000,000 (3% of the population). They live in nomadic and semi-nomadic groups in almost all the country’s provinces. The life of indigenous peoples is closely linked to the forest and its resources: they live from hunting, gathering, collecting and fishing and they treat their illnesses with the help of their pharmacopoeia and medicinal plants. The forest forms the heart of their culture and their living environment.

The situation of the indigenous peoples in the DRC remains of great concern. Their ancestral lands and natural resources are facing increasing external pressure; they are being forced to relinquish their traditional economy and live on the margins of society in extreme poverty. Indigenous peoples are not represented in decision-making at all levels and their access to basic services, including health and education, remains below the national average.

Unless their rights, as guaranteed under international standards, are duly protected, indigenous peoples’ living space will shrink yet further, depriving them of the resources on which they depend for their survival and resulting in the disappearance of their culture and their traditional knowledge. The human rights situation of indigenous peoples is alarming. In Katananga region, there are growing numbers of indigenous Batwa people killed in an ethnic conflict with neighbouring dominant communities. In the meantime, the process of adopting a specific law aimed at providing special protection for indigenous peoples is still stalled in Parliament, despite recent

efforts to move it forward. The DRC endorsed the UN Declaration on the Rights of Indigenous Peoples and its climate change-related programmes refer to indigenous peoples' rights.



First ever Policy Dialogue on indigenous peoples in the DRC

From 14-16 June 2016, the first ever multi-stakeholder Policy Dialogue on indigenous peoples in the country was held in the DRC. The initiative was funded by both the International Fund for Agriculture and Development (IFAD) and the Office of the High Commissioner for Human Rights (OHCHR/Geneva),

and implemented with the collaboration of the International Work Group for Indigenous Affairs (IWGIA) and a national umbrella organisation called *Dynamique des Groupes des Peuples Autochtones* (DGPA). The Policy Dialogue was aimed at fostering implementation of the United Nations Declaration on the Rights of Indigenous Peoples, as outlined in the Outcome Document of the World Conference on Indigenous Peoples held in 2014.

The Policy Dialogue was aligned with the IFAD Engagement Policy with indigenous peoples and the United Nations 2015 Sustainable Development Goals (SDGs), which seek to ensure that no one is left behind, including by paying particular attention to those furthest behind, most notably indigenous peoples in many countries. The meeting brought together over 100 representatives of indigenous communities from across the country, and representatives of the Congolese state, civil society organisations (CSOs), parliamentarians, UN agencies, bilateral and multilateral partners. The participants also included senior representatives from the Presidency, several ministries and key state institutions. Among the presentations, featured a state of implementation of Universal Periodic Review (UPR) Recommendations by the Congolese Ministry of Justice. The participants in the Policy Dialogue identified two major priority areas for immediate follow-up activities, notably (1) the drafting process of a specific law on indigenous peoples' rights and (2) devising a global intervention framework on indigenous peoples in the DRC.

Launch of the Dedicated Grant Mechanism for indigenous peoples

Alongside the Policy Dialogue, the World Bank launched the Dedicated Grant Mechanism for Indigenous Peoples and Local Communities (DGM), which “is a global initiative that was conceived and developed as a special window under the Climate Investment Funds’ (CIF) Forest Investment Program (FIP) to provide grants to Indigenous Peoples and Local Communities (IPLCs) intended to enhance their capacity and support initiatives to strengthen their participation in FIP and other REDD+ processes at the local, national and global levels”.¹ There are eight pilot countries for this mechanism, including the DRC with an endowment of 6 million USD.

The event coincided with a reflection on the World Bank’s engagement with indigenous peoples in the DRC over the last years, following the historic World

Bank's Inspection Panel decision on DRC in 2005. Following the World Bank's funding of a Congolese reform of the forestry sector that failed to pay particular attention to the rights of Batwa indigenous peoples in the DRC, a complaint was lodged with the World Bank Inspection Panel, which decided in favour of the complainants. Following this decision, the World Bank management revised its operations in the Congolese forestry sector and required the Congolese government to develop an indigenous peoples' development plan, as required by the then Operational Policy (O.P.4.10) on indigenous peoples.

Congolese indigenous peoples have engaged the World Bank on the need to assess the progress made 10 years after the decision of the Inspection Panel and the DGM is considered a part of that dialogue.

Killings of Batwa indigenous people continue unabated in Katanga region

Over the last four to five years, the lethal conflict between the dominant Luba community and Batwa indigenous peoples in Katanga province has continued unaddressed. The causes of this persisting conflict include disputes over natural resources, lands and customary practices, whereby indigenous Batwa communities have been subjected to human rights violations over the years. On one occasion in 2016, the more than 10 Batwa indigenous people were killed due to an unfair customary practice that requires them to give part of their collected forest produce (caterpillars, considered a local delicacy) to their Bantu (Luba) neighbours, who consider themselves masters of the lands and resources and therefore entitled to a share of anything collected by the Batwa. Over the years, CSOs have been educating Batwa indigenous communities to resist such illegal taxes and this is exactly what happened in October 2016, when the Batwa refused to continue to bear the burden of this discriminatory practice of paying the "caterpillar tax". This led to a conflict that left over 16 people dead, most of them indigenous community members.

Many independent reports from human rights organisations and media houses have continued to highlight the plight of the Batwa peoples of Katanga, including IWGIA's own latest report "The Indigenous World 2016". So far, conflicts in Katanga have led to over 200 deaths, more than 13 villages have been burned down and there are an estimated 100,000 internally displaced persons.² In its

2016 report, the internationally recognised organisation, Human Rights Watch, indicates that in one single incident: "... in Nyunzu, in the north of former Katanga province, ... assailants killed at least 30 civilians from the marginalized Batwa community, known as 'Pygmy' with machetes, arrows, and axes and burned down the camp. Dozens of others remained missing and feared dead. The attack followed deadly raids on Luba by Batwa militias".³ In May-June 2016 alone, a UNICEF assessment estimated there were up to 2,000 internally displaced households, "the largest conflict-related population movements reported in Haut Katanga since the Luba-Pygmy conflict during the spring of 2015".⁴ The United Nations-funded Okapi Radio in the DRC has also continued to report on the Batwa-Luba conflict in Katanga, including detailed media accounts of repeated attacks.⁵

The Government of the DRC has done very little to address the situation. Despite numerous calls for particular attention, there has been no Parliamentary Commission inquiry into this situation. Nor have the security forces or political elites taken any significant measures to address the conflict. An indigenous peoples' umbrella organisation, the DGPA, has recently engaged numerous UN agencies, including UNHCR, OHCHR, UNICEF and UNFPA, with a view to triggering concerted actions or interventions aimed at addressing the root causes of this conflict, which appear to enjoy scant political attention from the government.

Undue delay in the law on indigenous peoples in the DRC

During its 2014 UPR examination, the Democratic Republic of Congo agreed with the following recommendations, which it considered already implemented or in the process of being implemented:

*Continue working towards the recognition of indigenous peoples at the national level... Ensure land rights of indigenous communities within protected natural parks, in particular Pygmies. Likewise harmonize projects of greenhouse gas reduction, deforestation reduction and forest degradation in line with the United Nations Declaration on the Rights of Indigenous Peoples.*⁶

A process of adopting a specific law on indigenous peoples has been underway in the DRC for several years. This endeavour was initiated by a consortium of non-governmental and indigenous peoples' organisations coordinated by the DGPA in 2003. Following countrywide consultations, including with indigenous communities, the first draft of the law was submitted to Parliament in 2015.

A Group of Parliamentarians has since then joined and owned the process, including through several targeted advocacy activities, with a view to ensuring that the law is placed on the parliamentary agenda for debate and eventually passed. To this end, in June 2016, the Parliamentary Caucus in question presented several technical challenges faced by the draft law to the participants of the IFAD-supported national policy dialogue on indigenous peoples, including persistent questions regarding its rationale coming from other Members of Parliament and certain quarters of government.

In collaboration with the OHCHR, IWGIA, IFAD, DGPA and Rainforest Foundation Norway, the same Parliamentary Caucus on indigenous peoples organised a parliamentary interactive dialogue on the draft law on indigenous peoples in September 2016, bringing together dozens of Members of Parliament. As keynote speaker, a senior representative of the Congolese government gave a presentation highlighting the government's support for the draft law, which is considered a means of implementing the government's UPR-related commitments on indigenous peoples. The meeting also enabled several Members of Parliament to seek clarification on international standards regarding indigenous peoples, most notably the United Declaration on the Rights of Indigenous Peoples.

Justice still delayed for indigenous peoples

The Batwa indigenous peoples of the Kahuzi-Biega in South Kivu continue to wait for justice in relation to their ancestral lands, which became a protected area in the 1970s and then a UNESCO World Heritage Site in 1980, following their brutal and uncompensated expulsion.

In 2008, the affected peoples decided to seek justice through the Congolese courts and lost, including at the Court of Appeal. In 2013, they went to the Congolese Supreme Court but the case has not been heard since then. Deciding that the Congolese justice system was unable to deliver justice, and with the

support of local NGOs and Minority Rights International the concerned Batwa of Kahuzi-Biega forests lodged their case, including for land restitution, before the Banjul-based African Commission on Human and Peoples' Rights in November 2015. In 2016, they heard initial procedural arguments but it has yet to make a decision on the admissibility of the case.⁷

Conclusion

The situation of indigenous peoples in the Democratic Republic of Congo is yet to achieve any key milestones, despite several efforts and initiatives. There are tangible actions being taken by civil society and other actors, including international partners such as the World Bank, IFAD, OHCHR and so on. There is also a fine line of initiatives from certain quarters of government, including through the REDD+ process and UPR-related engagements. Persistent conflicts affecting indigenous communities have, however, delayed justice and the continuing lack of any legal or policy framework specifically targeting indigenous communities prevents all initiatives from delivering real and sustainable change. ○

Notes and references

- 1 See World Bank DGM Global page: <http://www.dgmglobal.org/about-us/>
- 2 See on United Nations Radio in DR Congo (OKAPI): <http://www.radiokapi.net/actualite/2015/05/20/katanga-martin-kobler-choque-par-le-degre-des-violences-entre-pygmees-ban-tous-nyunzu>
- 3 Human Rights Watch, *World Report 2016 - Democratic Republic of Congo*, 27 January 2016, available at: <http://www.refworld.org/docid/56bd9946c.html>
- 4 See more at: <http://reliefweb.int/report/democratic-republic-congo/drc-humanitarian-situation-report-may-june-2016>
- 5 See more Okapi media reports at: <http://www.radiokapi.net/2016/11/02/actualite/securite/tang-anyika-kabalo-et-nyunzu-se-vident-apres-le-conflit-entre-pygmees>
- 6 Human Rights Council, Report of the Working Group on Universal Periodic Review: Democratic Republic of Congo, A/HRC/27/5, 7 July 2014
- 7 See more updates on this case at the MRG website: <http://minorityrights.org/law-and-legal-cases/minority-rights-group-international-et-environnement-ressources-naturelles-et-developpement-au-nom-des-batwa-du-parc-national-de-kahuzi-biega-rdc-v-republique-democratique-du-congo-rdc/>

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EAST AFRICA

ERITREA

Since independence in 1991, and aggravated by a political crackdown in 2001, Eritrea has been a closed country run by an extremely repressive government. Reliable data on the exact numbers of ethnic groups, including disaggregated data on the socio-economic situation of indigenous groups, is hardly available. The approximate percentage of indigenous peoples is estimated at between 5% and 7% of the total population. The references to indigenous peoples in this article are first and foremost based on the claim of indigeneity made by some Eritrean ethnic groups, such as the Afar and Kunama. Eritrea is a State party to the CERD, CEDAW and CRC but not to ILO Convention 169. There is, however, a huge gap between the commitments undertaken through these treaties and the government's actual practice. Eritrea has not adopted the UNDRIP as it was absent during the voting. Eritrea does not have a national legislative or institutional framework that protects the rights of indigenous peoples. The country does not have an operative constitution or a functioning parliament. It has never held free and fair national elections. Rights to freedom of association and expression are severely curtailed. The rights of indigenous peoples are not formally acknowledged, nor are there any representative organisations advocating for the rights of indigenous peoples.

A situation of crimes against humanity

Eritrea suffers from gross human rights violations. In June 2016, a Commission of Inquiry mandated by the UN Human Rights Council published a landmark report which stated that the human rights situation in Eritrea amounted to crimes against humanity. At the time of writing, Eritrea is the only country in Africa in which there is an ongoing situation of crimes against humanity officially verified as such by a fact-finding mission mandated by the UN.¹



Reviews by relevant UN bodies

Eritrea's international obligations are frequently reviewed by the relevant UN treaty monitoring bodies or processes, such as the UPR, the CEDAW and the CRC committees. None of these reviews have adequately addressed the plight of indigenous peoples in Eritrea. The UN Special Rapporteur on the rights of indigenous peoples is also yet to come up with a formal report on the situation of indigenous peoples' rights in Eritrea.² In contrast, the UN Commission of Inquiry on Human Rights in Eritrea and the UN Special Rapporteur on the situation of human rights in Eritrea (Ms Sheila B. Keetharuth) have made a number of observations on the rights of indigenous peoples in Eritrea. The first Keetharuth report, for example, singles out abuses committed against two minority ethnic groups: the Afar and Kunama. The Afar ethnic group is predominantly pastoralist and nomadic while the Kunama ethnic group is agro-pastoralist. Both groups are marginalized in a number of ways. The rights of these groups are said to have been

violated by the government's policy of: a) encouraging highlanders to settle on land traditionally belonging to lowlanders; b) turning land into State property, thereby undermining clan-based traditional land tenure systems, and leading to competition between agro-pastoralists and new settlers, and c) displacing people from their ancestral land.³

Repression of ethnic group identities

There are nine officially recognised ethnic groups in Eritrea, listed here in alphabetical order: Afar, Blien, Hidareb, Kunama, Nara, Rashaida, Saho, Tigre, and Tigrinya. Other claims to official recognition of group identity, such as that of the Jeberti and Tekurir, have been denied.⁴ The core values and policies of the government or the People's Front for Democracy and Justice (PFDJ) – which is the ruling and only political party – are nationalistic and fiercely hostile to ethnic or socio-cultural autonomy, given the PFDJ's history as a national liberation movement.

Eritrea does not have any form of independent civil society organisations let alone organisations advocating for the rights of indigenous peoples. All special interest groups or associations are effectively controlled by the government. There are institutionalised “mass movements” which represent key sectors of society, such as the national associations of women, youth and workers, all of which function as the respective wings of the PFDJ. Even in this context, there are no organisations or mass movements representing indigenous peoples or minority groups.

As noted above, claims of indigeneity or other claims to group identity have never been officially acknowledged by the Eritrean government. One of the earliest claims to group identity to have been made inside Eritrea was that of the Jeberti, articulated by some representatives of the group in the early 1990s. The Jeberti share the same language as the largest ethnic group, which is Tigrinya. In Eritrea, the language and official name of each ethnic group is the same. The Tigrinya is an entirely Christian community. The Jeberti group is distinguishable by its religion, which is Islam, and the distinct socio-political status traditionally attached to this.⁵ The claim to distinct group identity made by the Jeberti in the early 1990s was met with draconian persecution against its representatives and no such claim has been entertained inside the country since. All other similar claims, including claims of indigeneity, are now made by exiled activists and political groups.

Among the well-documented claims of indigeneity made from exile are those of the Afar and Kunama ethnic groups, represented by their respective political organisations. To our knowledge, the most articulate claim has been that made by the Eritrean Afar State in Exile (EASE), which is an exiled political organisation of the Eritrean Afar people advocating self-rule for the Eritrean Afar. The Afar ethnic group transcends three national borders, namely Djibouti, Eritrea and Ethiopia, inhabiting the area known as the “Afar Triangle”.⁶

EASE asserts that the Afar people of Eritrea meet the essential requirements of indigeneity, listed by EASE as being: prior occupation of a defined territory; voluntary perpetuation of cultural distinctiveness; self-identification and identification by others as a distinctive community, and a situation of non-dominance.⁷ EASE goes as far as to articulate its claim by referring to the Afar homeland as the “cradle of humanity”, in which the well-known “Lucy”, one of the oldest humanoid skeletal remains in history, was discovered. In support of its claim, EASE also makes reference to a more recent scientific discovery in June 2016, in the Afar region, of 800,000-year-old footprints believed to belong to a key predecessor of modern man.⁸

The most visible violation suffered by two of the potential indigenous groups in Eritrea, the Afar and Kunama, is their inability to maintain a peaceful life with their kin across the national borders of Eritrea and Ethiopia and, in the case of the Afar, also across the national border with Djibouti. There has been no physical contact between the said ethnic groups living on the borders between Djibouti, Eritrea and Ethiopia, including normal exchange of trade and other social activities, since 1998. This is true in particular since Eritrea remains in a prolonged situation of conflict with Ethiopia and Djibouti, necessitating a complete blockage of their common border. Moreover, due to the extremely repressive political situation in Eritrea, and like other ethnic groups situated along the border, a considerable segment of the Afar and Kunama ethnic groups have been forced to flee to Ethiopia and other countries – in the context of Eritrea’s well-documented mass exodus of population.

In the area of natural resources, the government has entered into long-term mining agreements with foreign companies such as the Australian South Boulder Mining and the Canadian Nevsun Resources Ltd., which are exploiting natural resources on land belonging to potential indigenous groups, such as the Afar and Kunama. Mineral extraction is taking place in circumstances that do not respect the principle of Free, Prior and Informed Consent. Of particular importance to this debate is a pending court case on corporate social responsibility at the Supreme Court of British Columbia in Canada, aimed at challenging the alleged complicity

of Nevsun Resources Ltd. in the perpetration of human rights violations committed at the company's mining site in Eritrea. The main allegation relates to a broad range of violations allegedly committed in the process of extracting minerals but not necessarily related to infringements of indigenous peoples' rights. A partial landmark judgement, against the Canadian company, was pronounced on 6 October 2016.⁹ A final verdict on the case is still pending. There are potential issues that could be raised in similar court cases on violations resulting from an infringement of the principle of Free, Prior and Informed Consent. ○

Notes and references

- 1 *Second Report of the UN Commission of Inquiry on Human Rights in Eritrea*, A/HRC/32/47, 8 June 2016, paragraphs 59-95. See also in general K. Tronvoll and D. R. Mekonnen, *The African Garrison State: Human Rights and Political Development in Eritrea* (James Currey, 2014; second revised edition 2017); K. Tronvoll, "Eritrea," in M. Ember and C. R. Ember (eds.), *Countries and Their Cultures*, Vol. 2 (Macmillan Reference, 2001), pp. 724-732.
- 2 No UN special rapporteur or other treaty monitoring body has been allowed into Eritrea for investigations.
- 3 *First Report of the Special Rapporteur on the Situation of Human Rights in Eritrea*, Sheila B. Keetharuth, A/HRC/23/53, 28 May 2013, paragraphs 43 and 77.
- 4 *Eritrea: Constitutional, Legislative and Administrative Provisions Concerning Indigenous Peoples* (a joint publication of the International Labour Organization, the African Commission on Human and Peoples' Rights, and the Centre for Human Rights, University of Pretoria, 2009).
- 5 *Ibid.*, p. 3.
- 6 Eritrean Afar State in Exile (EASE), *Indigenous Rights Policy* (2016), <http://dankalia.org/ease-policy/ease-indigenous-rights-policy/>.
- 7 *Ibid.*
- 8 "Earliest Footprints of Homo Erectus Found in Eritrea," 15 June 2016, <https://archaeologynews-network.blogspot.ch/2016/06/earliest-footprints-of-homo-erectus.html#AsELpR8hMCGxjtc7.97>.
- 9 *Araya v. Nevsun Resources Ltd.* 2016 BCSC 1856.

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ETHIOPIA

The Indigenous Peoples of Ethiopia make up a significant proportion of the country's estimated 95 million population. Around 15% are pastoralists and sedentary farmers who live across Ethiopia, particularly in the Ethiopian lowlands, which constitute around 61% of the country's total landmass. There are also a number of hunter-gatherer communities, including the forest-dwelling Majang (Majengir) and agro-pastoralist Anuak people who live in the Gambella region. Ethiopia is believed to have the largest livestock population in Africa, a significant amount of which is concentrated in pastoralist communities living on land that, in recent years, has become the subject of high demand from foreign investors. The political and economic situation of Indigenous Peoples in Ethiopia is a tenuous one. The Ethiopian government's policy of villagization has seen many pastoralist communities and small-scale farmers moved off of their traditional grazing lands, and Indigenous Peoples' access to healthcare provision and to primary and secondary education remains highly inadequate. There is no national legislation that protects them, and Ethiopia has neither ratified ILO Convention 169, nor was it present during the voting on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

Government policy and legislation: a threat to indigenous peoples' rights

2016 saw a further deterioration in the human rights situation in Ethiopia, including the imposition of a six-month long state of emergency that came into operation on 8 October, in what has been called the "worst political and human rights crisis since the government of the Ethiopian People's Revolutionary Democratic Front came to power in 1991".¹ Between October 17 and 20 alone, over 2,600 people were reportedly arrested as a result. The new laws imposed during the state of emergency included a ban on the use of social media and on participation in, or organization of, protests, unless authorized by the government. Such meas-

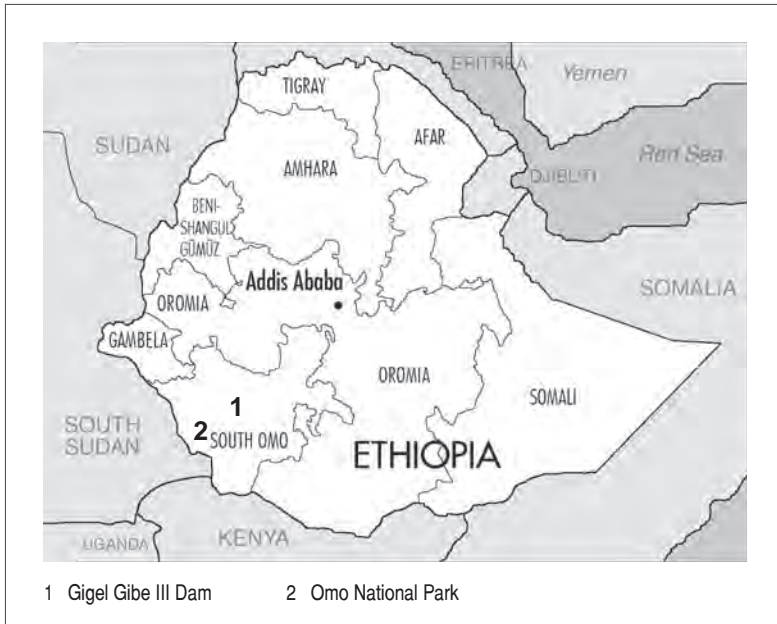
ures were aimed at addressing a developing culture of protest in Ethiopia, including demonstrations organized by Amhara and Oromo people, the two largest ethnic groups. The Oromo people have been protesting a government plan to expand the capital city, Addis Ababa, into neighbouring Oromo land since 2015.

Moreover the situation for Indigenous Peoples in Ethiopia continued to deteriorate in 2016. Once again there was no improvement in any national legislation that could offer protection to Indigenous Peoples and Ethiopia's obligations under those international human rights mechanisms that it has ratified - e.g. the International Convention on the Elimination of All Forms of Racial Discrimination, and which call for special attention to be paid to Indigenous Peoples - continues to be unfulfilled. Human rights groups – including the International Work Group for Indigenous Affairs (IWGIA), Human Rights Watch (HRW); Minority Rights Group International (MRGI) and the Oakland Institute – continue to express their significant concerns: concerns that have only increased given the continued impact of the Ethiopian government's alleged use of anti-terror laws to curtail freedom of speech, as well as the state of emergency.

For Indigenous Peoples, the situation became acute with the arrest in Addis Ababa of seven activists heading to a food security workshop in Nairobi in March 2015. Although of the seven activists originally arrested only one, Pastor Omot Agwa, continues to face the possibility of an extended prison term, his situation, and the situation of Okello Akway Ochalla, a Norwegian citizen and indigenous land rights defender who was kidnapped in South Sudan in March 2014 and subsequently "renditioned" to Ethiopia, continue to cause grave concern amongst human rights defenders both within and outside the country, as well as in a number of leading human rights organizations. In addition, the Ethiopian government's continued imprisonment of six Anuak leaders, including Bakwach Mamo, Philemon Kwot Agid and Ojulu Thatha, despite the high court ruling that acquitted them, continues to concern the Anywaa Survival Organization (ASO) and Anuak community.

Land grabbing and the policy of villagization

A key element in the deteriorating situation for Indigenous Peoples in Ethiopia is the ongoing policy of "land grabbing" where companies lease large tracts of land from the Ethiopian government in return for significant levels of foreign investment. Since 2008, when widespread concern about the possibility of a potentially



global food crisis increased demand for agricultural land, the Ethiopian government has leased millions of hectares of land throughout the country to agricultural investors, both foreign and domestic. The Ethiopian government says that investments like this are important for guaranteeing food security and, in particular, for addressing the vulnerability of pastoralist communities to drought. The policy is also seen as an important element in Ethiopia's development strategy because it means that land that is categorized as "under-utilized" can be used productively. However, much of this land is not in reality under-utilized but instead is used by pastoralists whose customary rights to the land are being consistently violated. Moreover, the way in which the land is used under the new leasing arrangements arguably does little for food security as there is little food produced. Instead, it is chiefly used for an array of non-food products such as flowers or for growing food products destined for the export market. In the case of the fertile region of Gambela, Anuak farmers have also reported that investors from Addis Ababa have purchased large plots of land using bank loans and then proceed to leave the plots vacant, using the money for alternative business purposes. There has been little reaction from the government to these fraudulent practices.

The Ethiopian government continues to highlight the employment opportunities of such investment for those living in lowland areas but much of the employment in these areas has gone to “highlanders” from the central and northern areas of Ethiopia who have moved there to find work. The latter has also increased the possibilities of ethnic tensions, something that has been seen in the Gambela region and in the lower Omo valley in particular. In the latter case, the building of the Gilgel Gibe III Dam, which was officially opened by Prime Minister Hailemariam Desalegn on 17 December 2016, has significantly impacted water security in the Omo valley region. According to publicly available data, water levels are falling in the Omo River, a source that is vital for the 500,000 indigenous people living in that region. This has meant a heightened threat to food security and, in turn, increased conflict over existing resources. Reports from external sources have said that the lives of those Indigenous Peoples living in the region have been “fundamentally and irreversibly” changed by the building of the dam, making it very difficult for the half a million indigenous people living in the area and sustaining their traditional livelihoods. According to the Dam’s Public Consultation and Disclosure Plan, only 93 members of four indigenous communities were consulted and this happened only after construction of the dam had already begun.²

In the Gambela region, the deteriorating political situation in South Sudan has resulted in an influx of Nuer refugees, further marginalizing the Anuak and fundamentally altering the region’s demography, as well as causing increased pressure on land and other resources. Violence in the region has increased, with cross-border attacks including the kidnapping of children and livestock in Anuak and Nuer villages in Ethiopia by attackers from South Sudan.

Part of the Ethiopian government’s policy on land management includes the pursuit of a policy of villagization which aims to resettle those who live in rural areas - often Indigenous Peoples - into communities with improved access to basic amenities, such as clean water, medical services and schools. In reality, however, such amenities have not been provided, and many of the communities have too little food for the population that now exists there. Many people find that when they try and return to the land that they have left in order to resume their previous way of life the land has been leased and they no longer have access to it. Indigenous communities thus find themselves displaced and deprived of their traditional livelihoods and of access to their natural environment, including access to water, grazing and fishing grounds, arable lands and forest resources.

Moreover, the Ethiopian government's lack of a specific policy or programme to address Indigenous Peoples' special needs and status has further aggravated their situation. Ethiopia is a key political actor in Africa, and the second most populous country in the continent. It is a glaring omission that such a significant political actor has not attempted - in consultation with the country's Indigenous Peoples and their representative institutions - to develop policies and programmes that are in accordance with guidelines from the UN and other relevant bodies and that would bridge the social and economic gaps that are currently causing such distress. Indeed the declaration of the state of emergency only served to curtail further any hopes for moving the rights of Indigenous Peoples in Ethiopia forward. The Ethiopian government is therefore failing to address widely reported concerns regarding the human rights of indigenous people in Gambela, the lower Omo valley, Benishangul Gumuz, Afar, Somali, and Oromia regions – all areas that have been part of the government's land lease policy and villagization programme.

It remains important, in considering the future for Indigenous Peoples' rights in Ethiopia, that there be a country-wide, inclusive and participatory movement in the country that would be able to ensure that pastoralist and agro-pastoral peoples' concerns are considered as part of key government policies and programmes. The country's lack of formal mechanisms in which to consider such issues, as well as legal restrictions on freedom of association and speech, appear to preclude this. This is despite the fact that the Ethiopian constitution - though lacking in clear provisions directly related to Indigenous Peoples – does include a provision for dealing with the development needs of pastoralist communities. However, despite this, the overall outlook for a nationwide Indigenous Peoples' movement is promising. Consensus is underway amongst various groups that - with the support of international organizations and a more positive government view – could enable the country's marginalized communities to face a more positive future.

Violence in Gambela

Gambela region, which hosts 330,211 refugees and asylum seekers,³ mainly Nuer from South Sudan, has seen violent conflicts between migrants and host communities. In January 2016, 11 Anuak prisoners were killed in a systemic massacre organized by Nuer⁴ prison guards at the central prison in the town of Gambela. According to a witness, Nuer prison guards sent Anuak and Majang col-

leagues home for the day and then proceeded to arm Nuer prisoners with knives, machetes and cudgels. Nuer prison guards and prisoners began systematically separating Anuak prisoners from their Majang and Habesha peers into an isolated group and began killing them. According to a witness, the Ethiopian People's Revolutionary Democratic Front arrived at the prison after the guns had stopped firing to halt the massacre. Two Anuak prisoners attempted to escape the prison by climbing over the wall but were allegedly killed by a Nuer crowd that had gathered outside the prison. It is suspected that the EPRDF, a leading coalition political party and some members of its senior regional leadership, allowed the attack to occur. In February 2016, four Nuer were killed at the prison in the town of Abobo during a retaliatory attack for the Gambella prison massacre. The rising ethnic tensions between the Anuak and Nuer are exacerbated by the porous border between South Sudan and Ethiopia, allowing for free movement of people and arms, as well as the refugee crisis. Along with the increased Nuer population, tensions and violence have escalated with Anuak communities over claims to traditional lands and access to jobs. Meanwhile, the EPRDF and federal government have remained partisan to this violence, often disarming the indigenous Anuak population while Nuer arms continue to cross the border, fuelling inter-regional political tension. The EPRDF also continues to imprison Anuak human rights activists on terrorist charges, to jail, torture and harass Anuak youth without cause or due process, and to intimidate Anuak refugees in Kenya and South Sudan. The unsettled political dynamics and violent conflicts between the migrants and Indigenous Peoples in the region have strained the capacity of numerous NGOs operating in Gambella. ○

Notes and references

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- 2 <http://firstpeoples.org/wp/a-dam-brings-food-insecurity-to-indigenous-people/#more-1199>
- 3 <http://data.unhcr.org/SouthSudan/region.php?country=65&id=36>
- 4 The Nuer is a pastoralist ethnic group largely found in South Sudan.

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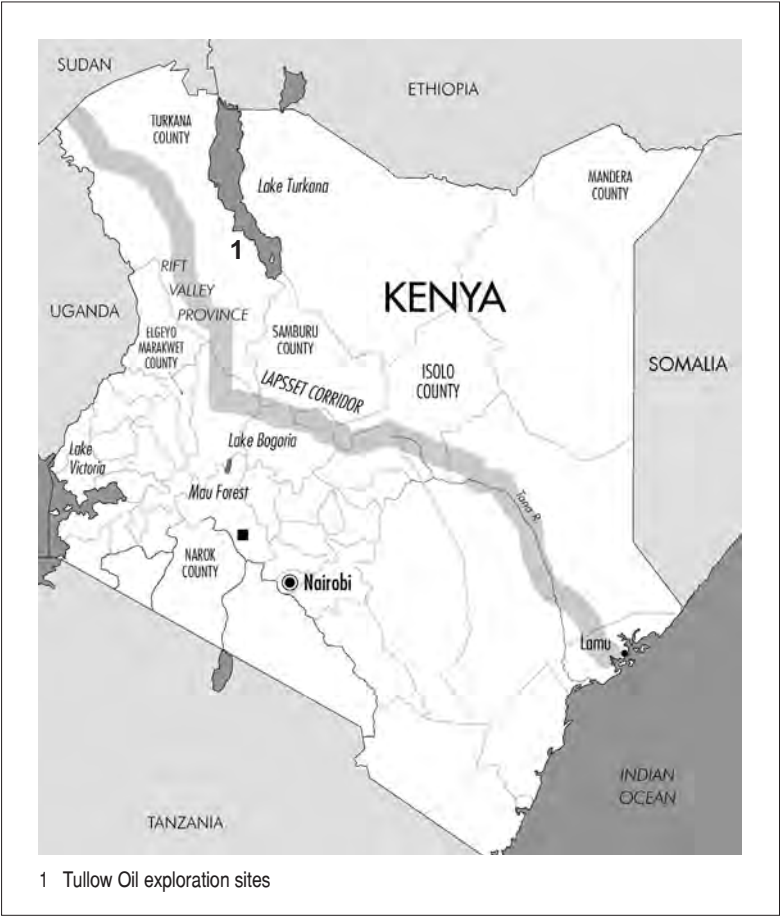
KENYA

In Kenya, the peoples who identify with the indigenous movement are mainly pastoralists and hunter-gatherers, as well as some fisher peoples and small farming communities. Pastoralists are estimated to comprise 25% of the national population, while the largest individual community of hunter-gatherers numbers approximately 79,000. Pastoralists mostly occupy the arid and semi-arid lands of northern Kenya and towards the border between Kenya and Tanzania in the south. Hunter-gatherers include the Ogiek, Sengwer, Yaku, Waata and Aweer (Boni), while pastoralists include the Turkana, Rendille, Borana, Maasai, Samburu, Ilchamus, Somali, Gabra, Pokot, Endorois and others. They all face land and resource tenure insecurity, poor service delivery, poor political representation, discrimination and exclusion. Their situation seems to get worse each year, with increasing competition for resources in their areas.¹

Kenya's indigenous women are confronted by multifaceted social, cultural, economic and political constraints and challenges. Firstly, by belonging to minority and marginalized peoples nationally; and secondly, through internal social cultural prejudices. These prejudices have continued to deny indigenous women equal opportunities to rise from the morass of high illiteracy and poverty levels. It has also prevented them from having a voice to inform and influence cultural and political governance and development policies and processes, due to unequal power relations at both local and national levels.

Kenya has no specific legislation on indigenous peoples and has yet to adopt the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) or ratify International Labour Organization (ILO) Convention 169. However, Kenya has ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Rights of the Child (CRC). Chapter Four of the Kenyan Constitution contains a progressive Bill of Rights

that makes international law a key component of the laws of Kenya and guarantees protection of minorities and marginalized groups. Under Articles 33, 34, 35 and 36, freedom of expression, the media, and access to information and association are guaranteed. However, the principle of Free, Prior and Informed Consent (FPIC) remains a pipedream for indigenous peoples in Kenya.



Even with a new constitution, it's still a man's world for Kenya's indigenous women

Discrimination on the basis of sex is prohibited in the 2010 Kenyan Constitution.² In practice, however, indigenous women in Kenya continue to face numerous forms of discrimination and are confronted by a gender gap that denies them opportunities to pursue their ambitions and potential, especially in terms of seeking leadership opportunities within decision-making frameworks at all levels, from local to national.³ A majority of Kenya's indigenous women still remain unaware of their rights because of discriminatory social practices, low levels of education and inequitable participation in economic and governance spheres. This perpetuates the current gender gap and jeopardizes the contribution of indigenous women to overall development issues in Kenya.

As Kenya prepares, in August 2017, for the second elections under a devolved system of governance, concerted efforts need to be made to support and facilitate indigenous women's full participation in the electoral process by seeking decision-making positions in partial fulfilment of: Article 10 (2) (a) of the Constitution on the right to participation of the people (including women) in all processes affecting them; Article 21 (3) that directs all State organs and all public officers to address the needs of vulnerable groups within society, including indigenous women, members of minority or marginalized communities e.g. pastoralists, and members of particular ethnic, religious or cultural communities; Article 27 (3) that safeguards the rights of women to equal treatment, equal opportunities in political, economic, cultural and social spheres; Article 27 (8) that directs the State to take legislative and other measures to implement the principle that not more than two-thirds of the members of elected or appointed bodies shall be of the same gender; Article 40 (1) on the protection of rights of women to property (land and non-land); Article 60 on women's right to access land; Article 56 on the rights of minorities and marginalized groups; Article 91(f) on respect for and promotion of human rights and fundamental freedoms, gender equality and equity; and the Convention on the Elimination of Discrimination against Women (CEDAW).⁴ Empowering indigenous women fuels thriving economies, spurs productivity and growth and promotes peaceful co-existence and community wellbeing.

Financial ability plays a pivotal role in Kenya's electoral processes because large amounts of money are required for electoral campaigns. The fact that indig-

enous women lack access to substantial financial capital therefore forms one of the major impediments to indigenous women's aspirations for political leadership.

The Kenya Women Parliamentary Association (KEWOPA) seeks to influence legislation to be more responsive to women's issues, consolidating the voices of women leaders and advocating for the general welfare of Kenyan women. KEWOPA is advocating for support for women from minority and marginalized communities in terms of consolidating the requisite resources to enable women to realize their political aspirations in the August 2017 elections. In addition, the KEWOPA caucus is lobbying for political parties and both national and county governments to secure nominated positions for women, especially those from marginalized regions of the country and minority communities. However, it is not clear how KEWOPA intends to ensure that indigenous women achieve their constitutional rights to representation and participation in the August 2017 elections.

New Community Land Law adopted

In the six-plus years since the promulgation of the 2010 Kenyan Constitution, indigenous peoples have witnessed interesting interplays between their interests as members of communities whose lands fall within the constitutional "community land" classification and the interests of other external actors, ranging from commercial livestock ranchers to local and multilateral corporations, national government, conservation agencies and other private individuals - with each sector pushing its own agenda targeted at community land.

It is a fact that land is a key aspect of the new constitution, aimed at righting the pre-colonial and post-colonial land-related grievances that have continued to cast long shadows, especially over indigenous peoples. The key principles governing land issues in Kenya are embedded in Article 40 (1) of the Constitution and include: equitable access; security of land rights; sustainable and productive management of land resources; transparent and cost effective administration; and elimination of gender discrimination in law, customs and practice related to land and property.

After many years of debate and consultations, a Community Land Act was finally adopted in 2016, giving effect to Article 63 (5)⁵ of the new Constitution.⁶ The Community Land Act came into effect on 21 September 2016, thereby legally recognizing community tenure and officially marking the transition from Trust

Land and Group Ranch tenures. The Community Land Act is potentially a very important piece of legislation for indigenous peoples in Kenya due to the fact that most communities under the community land regime are pastoralists and hunter-gatherers.

Land deals in community lands have been and continue to be a major issue and problem for indigenous peoples and this was thoroughly documented in the 2004 Paul Ndung'u Commission Report on irregular and illegal alienation and allocation of land in Kenya.⁷

The new Constitution bans land deals in community land until a specific law on community lands has been developed and adopted. However, this ban has been largely ignored. The new Community Land Act reiterates the prohibition against disposal of unregistered community land; however, this hardly limits compulsory acquisition for public purposes, to which all landholders - especially indigenous peoples - are vulnerable. In this event, the Community Land Act instructs county governments to hold compensation for the affected community until it secures formal title. This means that the Government of Kenya can take over community land for use that is to the benefit of the public; however, in such cases when a community is not registered during the takeover/compulsory acquisition, then the county government acts on behalf of the community as a trustee and holds the compensation for the community until such time when they are duly registered and can therefore receive the compensation.

Lack of clarification of community lands

One of the key challenges with the Community Land Act⁸ is the fact that the Constitution of Kenya itself, which forms the mother law of the Community Land Act, lacks clarity over precisely what community land is - especially in areas where there exist overlaps with public land. Despite strong recommendations from indigenous peoples during the consultation processes, the Community Land Act has not delivered clarity on what can be registered as community lands - and whether community lands take precedence over public lands.

Another concern is the existence of confusing provisions highlighted under section 13 (3) (f) of the community land law stipulating that registered community land can be reserved "*for the promotion or upgrading of public interest*" and that this can be decided by the community or the national or county government. It is unclear what level of choice the community has in this regard and it is unclear

whether this reserved land then becomes public land (section 26 (2)). There is genuine concern among indigenous peoples that this could be a veiled attempt to coerce community members to subdivide as much community land as possible, ultimately transferring hitherto community lands to individual lands as there can be no incentive for a community to reserve part of its lands for communal uses if there is a risk of such land being gazetted as public property.

Urgent need for land formalization

Another concern is that community lands will not be secure until they are safely under formal title, and that there is every possibility that the process of registering community land and issuing titles could take a long time, especially if disputes between communities and government agencies arise.

A key purpose of the Community Land Act is to establish a formalization procedure that requires communities to define and register themselves and await adjudication, survey, demarcation and registration of their land. Considering that the National Land Commission reported that over a million parcels were awaiting title under existing adjudication exercises in 2014 (Ministry of Lands data), one can only fear that the formalization work to be carried out as per the Community Land Act will take a very long time indeed. When the lands and territories of indigenous peoples need to be identified, demarcated, registered and titled as community lands in a consultative and participatory manner, it is to be feared that this will become a very slow process. In addition, there are no formal community-level government institutions in Kenya (such as in Tanzania or Ethiopia, for instance) and, in connection with community land titling, Kenyan communities will therefore have to formally establish themselves, their land rules and land governance institutions from virtually nothing.

Implementation of the Community Land Act

There are legitimate concerns among communities, including indigenous peoples, as to the extent to which the national government - especially the Ministry of Lands - is committed to ensuring unhindered implementation of the Community Land Act given the myriad of hurdles that some government actors placed in the

path of generating this law. It is the responsibility of the Cabinet Secretary (minister) for Lands and Settlement to ensure that a community land adjudication programme is launched and implemented with expediency. For this to be realized, regulations will need to devolve key functions to county governments and empower civil society actors to work with communities in order to fulfil all steps and resolve all local conflicts until their final adjudication and registration. Civil society, indigenous peoples and the media will need to be extremely vigilant to ensure that delivery is taking place in accordance with the terms and spirit of the Constitution.⁹

Indigenous peoples bear the brunt of ravaging drought

Drought forms one of the major disruptions and devastating natural occurrences affecting Kenya's indigenous peoples, who depend largely on the environment and traditional production modes for their food security and general wellbeing. In 2016, 23 of Kenya's 47 counties were reported to be affected by drought and famine. The estimated population under threat of hunger was estimated at some 2.7 million.¹⁰ The counties hardest hit by drought and famine included Turkana, Marsabit, Elgeyo-Marakwet, Baringo, Isiolo, Samburu and Mandera - all inhabited by indigenous peoples who are mainly pastoralists.

According to the United Nations Children's Fund (UNICEF), an estimated 175,000 school-going children withdrew from early primary and primary schools due to the effects of the drought and famine in the 10 affected counties, with children under 5 years being susceptible to nutritional deficiencies. In addition, the National Drought Management Authority (NDMA) reported that an estimated 11,000 livestock herds were at risk of imminent death due to drought, with further gloomier projections that pastoralist communities would lose around 90 percent of their herds by April 2017.¹¹

While the focus of the government and media in relation to the ravaging drought is often on pastoralist peoples, it is a fact that hunter-gatherers, peasant farmers and fishing communities also suffer the effects of these cyclical calamities because of a depletion of their sources of livelihood and incomes and the degradation of agrarian, marine and forest ecologies.

As Kenya embarks on implementing the Vision 2030 development blueprint that seeks to promote significant economic growth, reduce poverty and improve food security, among other things, practical mechanisms to reduce indigenous

peoples' vulnerability to climate-related shocks, drought, flooding and disease must be put in place. In addition, indigenous peoples who, for more than 100 years, have paid the ultimate price during droughts must be involved in playing a decisive role in terms of coming up with strategies to combat climatic shocks and hunger, combining structural and emergency actions and making timely and pre-emptive interventions, especially at the county and sub-county levels.

Extractive industries and indigenous peoples' rights

Land and natural resources are central to indigenous peoples' existence since land, in addition to securing subsistence and livelihood, is considered sacred. Internationally, there exists a standard practice that acknowledges that land owners, especially individuals and communities, have the right not only to be consulted but also fully informed and engaged when their lands are mooted for takeover, for example for the construction of huge infrastructural projects, or the extraction of resources such as oil, gas, geothermal energy and wind power, among others. This standard resonates with Article 10 (2) (a) of the Constitution of Kenya on the right of citizens to be included and to effectively participate in such processes and the protection of marginalized lands.

In 2016, Tullow Oil Company, which is undertaking massive oil exploration in Kenya's Turkana, Pokot and Baringo counties, commissioned a study to establish the applicability of the International Finance Corporation (IFC) Performance Standard 7 on Indigenous Peoples in the context of the following criteria: (i) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; (ii) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; (iii) customary cultural, economic, social, or political institutions that are separate from those of the mainstream society or culture; or (iv) a distinct language or dialect, often different from the official language or languages of the country or region in which they reside.

In addition, during the same period, Africa Oil Corporation (AOC), a Canadian oil and gas company with assets in Kenya and Ethiopia and with interests in exploration in the East African Rift basin system, undertook an independent review to establish whether Africa Oil Corporation and Tullow Oil Company were performing in compliance with International Finance Corporation Environmental

and Social requirements, including involving communities in planning for emergency responses to assist in building better community relationships and incorporating a Free, Prior and Informed Consent framework into Community Stakeholder Engagement Plans and existing Land Access Procedures.¹²

These twin developments form an entry point for Kenya's indigenous peoples to monitor and engage with the companies in ensuring responsible extraction of resources.

No justice yet for the Endorois, Ogiek and Sengwer indigenous peoples

Kenya's Ogiek, Sengwer and Endorois indigenous peoples living in the Mau Forest, Cherangany Hills and Lake Bogoria regions of Kenya's Rift Valley are still waiting for justice. The Sengwer and Ogiek hunter-gatherers have been the targets of government-sponsored evictions from Cherangany Hills in the North Rift and Mau Forest in the South Rift, respectively, under the guise of protecting the country's forests and achieving 10 percent forest cover in the country. The Ogiek have taken their case to the African Commission on Human and Peoples' Rights, which has referred it to the African Court on Human and Peoples' Rights, and a final judgement is still awaited.

The Endorois people are still waiting for implementation of the progressive decision of the African Commission on Human and Peoples' Rights relating to the takeover of their land around Lake Bogoria for the establishment of a national park.

The net effect of the lack of implementation of court rulings in favour of the communities is a blatant violation of the right to justice and a contravention of the right to land, natural resources and livelihoods. The uncertainties surrounding the quest for justice for these indigenous peoples continue to cast long shadows over their collective future. ○

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UGANDA

Indigenous peoples in Uganda include former hunter/gatherer communities, such as the Benet and the Batwa, also known as Twa. They also include minority groups such as the Ik, the Karamojong, and the Basongora who are not recognised specifically as indigenous peoples by the government.

The Benet, who number slightly over 8,500, live in the north-eastern part of Uganda. The 6,700 or so Batwa, who live primarily in the south-western region, were dispossessed of their ancestral land when Bwindi and Mgahinga forests were gazetted as national parks in 1991.¹ The Ik number about 13,939 and live on the edge of the Karamoja/Turkana region along the Uganda/Kenya border. The Karamojong people live in the north-east and number around 988,429.² The Basongora, numbering 15,897, are a cattle-herding community living in the lowlands adjacent to Mt. Rwenzori in Western Uganda.

All these communities have a common experience of state-induced landlessness and historical injustices caused by the creation of conservation areas in Uganda. They have experienced various human rights violations, including continued forced evictions and/or exclusions from ancestral lands without community consultation, consent, or adequate (if any) compensation; violence and destruction of homes and property, including livestock; denial of their means of subsistence and of their cultural and religious life through their exclusion from ancestral lands and natural resources; and, consequently, their continued impoverishment, social and political exploitation and marginalisation.

The 1995 Constitution offers no express protection for indigenous peoples but Article 32 places a mandatory duty on the state to take affirmative action in favour of groups that have been historically disadvantaged and discriminated against. This provision, which was initially designed and envisaged to deal with the historical disadvantages of children, people with disabilities and women, is the basic legal source of affirmative action in favour of indigenous peoples in Uganda.³ The Land Act

of 1998 and the National Environment Statute of 1995 protect customary interests in land and traditional uses of forests. However, these laws also authorize the government to exclude human activities in any forest area by declaring it a protected forest, thus nullifying the customary land rights of indigenous peoples.⁴

Uganda has never ratified ILO Convention No. 169, which guarantees the rights of indigenous and tribal peoples in independent states, and it was absent from the voting on the UN Declaration on the Rights of Indigenous Peoples in 2007.



Summary

The year 2016 did not bring many positive changes to the lives of indigenous and minority peoples in Uganda. This was especially so regarding access to their land which, during colonial and postcolonial times, was taken over for conservation purposes. Lack of land tenure security is thus a key problem. The indigenous peoples of Uganda also continue to suffer from marginalisation in terms of representation. More action is required from courts, government agencies such as the Equal Opportunities Commission and the international community to ensure that the indigenous peoples of Uganda receive treatment equal to other members of the population in terms of access to social services, justice and the right to land.

The Ik community

The Ik's major positive achievement in 2016 was that they were able to secure election of their own Member of Parliament for the first time, enhancing their voices in decision-making fora. Their land tenure remains fragile, however, and their security is at risk largely due to their position between two communities that enjoy a cat-and-dog relationship.

The predominantly arable farming Ik people, numbering 13,939 individuals, inhabit Kamion Sub County of Kaabong district in North-eastern Uganda. They are referred to as the Teuso or people of the mountain by the Dodoth, who are their dominant neighbours. This term is considered derogatory by the Ik. Kamion Sub County is one of the hot spots in a transboundary conflict between the pastoralist communities of the Dodoth of Uganda and the Turkana people from Kenya. The Ik often find themselves in the crossfire between the two communities, making them very vulnerable. Violent and serious incidents of men being killed in the wilderness, women and girls being raped and children abducted are unfortunately common in the area. In March 2016, for instance, four people were killed at Narukeny in Kamion Parish and over 89 head of cattle lost.

The land tenure of the Ik remains insecure due to neighbouring pastoralists and agro-pastoralists encroaching on their land. Furthermore, 70% of the Ik's land has been lost to conservation initiatives.

The Ik have largely been left out of decision-making processes both at the local and central government level. In 2015, however, the government created the Ik constituency and, in February 2016, Hillary Lokwang was elected as the first Ik Member of Parliament.⁵ For once, the Ik are now able to have their voices heard directly and not through their Dodoth neighbours. One of the main Ik issues of concern is poor service delivery in the community. In fact, their current Member of Parliament is their first and only surviving university graduate, the other having passed away. Much hope is therefore placed on the new and youthful Member of Parliament in terms of lobbying for the development of the Ik people.

The Benet people

The Benet people (referred to as the Ndorobo by their neighbours) are a hunter-gatherer community numbering 8,500 people. They are the indigenous inhabitants of Mount Elgon, situated in Eastern Uganda. The community has had a longstanding feud with the authorities over their ancestral land, which was declared a protected area in 1926 without their consent or compensation. In 2005, the High Court ordered the government to return the protected land to the Benet community but this ruling has, to this day, not yet been implemented.

During the campaigns leading up to the 2016 presidential, parliamentary and local elections in Uganda, the main opposition candidate visited the squalid camps that the Benet were being forced to live in. Their poor living conditions embarrassed the government, which responded with a campaign visit by the country's Prime Minister on 11 December 2015. During the visit, the Prime Minister promised that the government was going to seek an immediate solution by resettling the Benet people on alternative lands. Further, in a bid to gain the votes of the Benet, the community was allowed to graze its livestock in the forest and beyond, up on the mountain. The community embraced this opportunity enthusiastically and even erected temporary huts deep in the forest. However, as soon as the elections were over and new leaders sworn in, the government backtracked on its promise and began harassing, beating and mistreating the Benet community with renewed vigour.

People found grazing in the park were arrested and some, such as Simon Teta and Julius Cheptoyek, were killed. Cattle were impounded and hefty fines imposed as a precondition for releasing them. It is estimated that, during the

months of May and June 2016, fines of up to UGX 181,100,000 (approximately USD 51,742.86) were paid by community members. Despite the leadership petitioning the president, arrests have continued and around 50 people who were released are still not truly free because they have to submit weekly reports to the police in Kween.

Severe human rights violations are the order of the day for the Benet people. For instance, between the months of September and November 2016, two people were shot dead in Bukwo district while grazing their cattle on the moorlands in accordance with the permission that had been granted to them prior to the elections, and in the absence of a notice to stop grazing in the park. On 28 July 2016, Chelangat Recho, a Benet woman, was raped by a park ranger who was subsequently identified. The authorities, however, took no action against the perpetrator. In a nutshell, the Benet community continues to live in fear, unsure of when their woes will end.

The Basongora people

Another indigenous community living in fear is that of the Basongora in the lowlands close to Mt. Rwenzori in Western Uganda. They were evicted when the Queen Elizabeth National Park was created in 1952. Today, the Basongora live in Kasese district where they are a minority compared to the Bakonzo. In addition to losing their land to the Bakonzo, who do not recognise the minority's land rights, the Basongora are denied the right to use their language in school. In December 2016, the Basongora filed a court case against the government demanding the return of their lost land.

In addition, political constituencies are divided in such a way that favours the majority Bakonzo, and the Basongora presently have no representative of their own in Parliament. When the government mooted the idea of subdividing Kasese district in 2016, which would have led to the creation of a predominantly Basongora district called Katwe, the Bakonzo majority vehemently opposed the idea and they have so far succeeded in frustrating the subdivision.

On 25-26 November 2016, conflict between the Rwenzururu Kingdom (*Obusinga*) of the Bakonzo people and the government reached a point where government forces stormed the palace of the King (*Omusinga*), killed over 150 royal guards and arrested over 150 people, including the *Omusinga* Charles Wesley Mumbere. The ongoing

political uncertainty in the area does not auger well for the minority Basongora, who are perceived as being more sympathetic to the government.

The Batwa people

Batwa children continue to seriously suffer from a lack of access to education and Batwa children continued to drop out of school during 2016. On a happier note, however, two Batwa boys made it to university in 2016. ○

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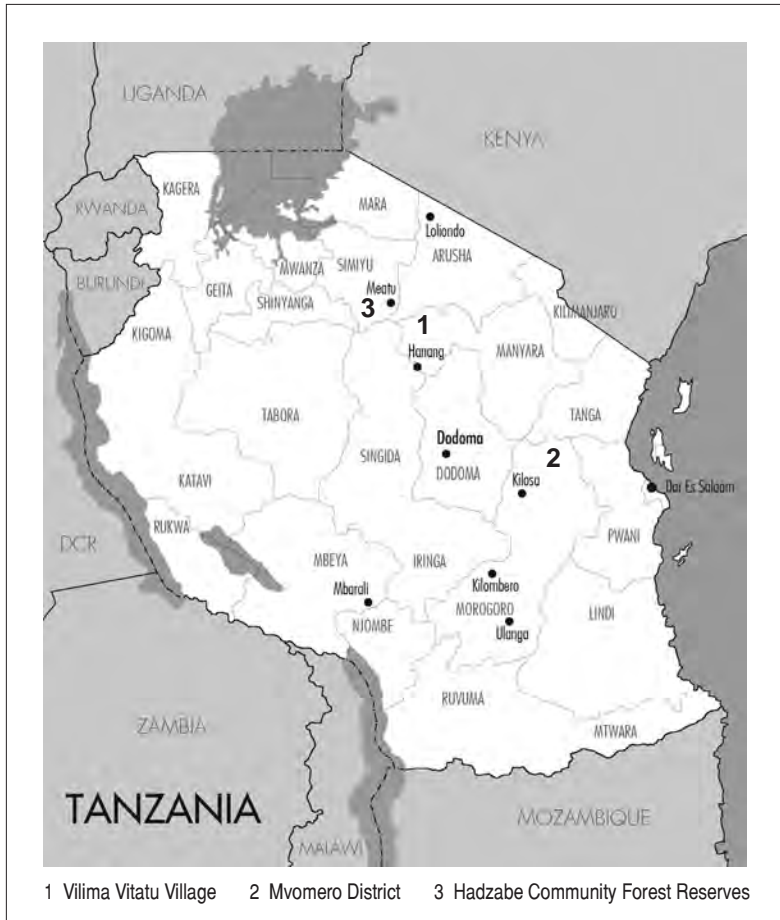
TANZANIA

Tanzania is estimated to have a total of 125-130 ethnic groups, falling mainly into the four categories of Bantu, Cushite, Nilo-Hamite and San. While there may be more ethnic groups that identify themselves as indigenous peoples, four groups have been organizing themselves and their struggles around the concept and movement of indigenous peoples. The four groups are the hunter-gatherer Akiye and Hadzabe, and the pastoralist Barabaig and Maasai. Although accurate figures are hard to arrive at since ethnic groups are not included in the population census, population estimates¹ put the Maasai in Tanzania at 430,000, the Datoga group to which the Barabaig belongs at 87,978, the Hadzabe at 1,000² and the Akiye at 5,268. While the livelihoods of these groups are diverse, they all share a strong attachment to the land, distinct identities, vulnerability and marginalization. They also experience similar problems in relation to land tenure insecurity, poverty and inadequate political representation.

Tanzania voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007 but does not recognize the existence of any indigenous peoples in the country and there is no specific national policy or legislation on indigenous peoples *per se*. On the contrary, a number of policies, strategies and programmes that do not reflect the interests of the indigenous peoples in terms of access to land and natural resources, basic social services and justice are continuously being developed, resulting in a deteriorating and increasingly hostile political environment for both pastoralists and hunter-gatherers.

New government: are indigenous peoples getting any better?

A new government came to power in 2015 bringing great expectations among a majority of Tanzanians that there would be a new dawn for the poor people and the marginalized communities in Tanzania. The majority of Tanzanians (including indigenous peoples) were very optimistic and hoped that this new era



would put an end to atrocities, including evictions, corruption and marginalization of the poor.

However, only a few months after the new administration took office, indigenous peoples had turned to disbelief, finding themselves the victims of the government's actions. Since January 2016, indigenous peoples have seen no change in their situation and they have even experienced greater violations of their rights to their lands, including evictions in different parts of the country.

Ethnic attacks on indigenous pastoralists in Morogoro Region

Indigenous peoples in Tanzania continued to suffer from human rights violations. In 2016 such violations took place in Loliondo, Kilosa, Kilombero, Ulanga, Mbarali, Hanang and Meatu.

The human rights situation of pastoralists in Morogoro Region turned from bad to worse at the end of December 2016 and the beginning of 2017 when indigenous peoples were evicted in Kilosa, Mvomero and Morogoro Vijijini districts. This was fuelled by a recent eviction operation declared in December 2016 by the Morogoro Regional Commissioner, Minister of Home Affairs, and District Commissioners in the region.

The attacks on pastoralists in Morogoro Region are taking different forms. Overall, the ongoing operation is intended to forcibly destock the region in order to reduce the number of livestock. This destocking started in 2016. In Kilosa and Mvomero districts, some village leaders and District Commissioners forced pastoralists to reduce livestock numbers allegedly in order to reduce conflicts between farmers and pastoralists. To justify this, the government used the Livestock Identification, Registration and Traceability Act No.13 of 2010, making specific use of very problematic sections in the Act such as Section 6, which requires livestock owners to keep records of all their livestock and to provide these records to various administrative bodies, located far distant from the pastoralist communities. Section 6 likewise subjects pastoralists to a sedentary life with their livestock, even during periods of drought, which seriously hampers the fundamental mobility and coping strategies of these people. The affected pastoralists mobilized a strong outcry against this, which reached the Ministry of Livestock Affairs. Through a letter bearing reference number QA 108/509/105 and dated 28 October 2016, said Ministry subsequently asked the two districts to stop the branding of cattle in order to allow stakeholders to discuss and identify better ways of addressing the conflicts. And yet despite this action by the Ministry, the authorities in the two districts are still violently attacking pastoralists under the same cover.

Other tensions and sporadic clashes between pastoralists and farmers in the region are increasing, and this is certainly being fuelled by the stigma that has existed against pastoralists for a very long time. On 31 December 2016, the Morogoro Regional Commissioner and the Kilosa District Commissioner went to

Parakuyo village (a pastoralist village in Kilosa District) and declared that Maasai pastoralists were criminals and that they had to be pacified through eviction.

Maasai pastoralists were also attacked by irate mobs, incited mainly by motorcycle riders who accused them of killing one of their colleagues. The police later stated that the man was killed by three people and that not one of them was a pastoralist.

Identification and registration of livestock in Morogoro and Coastal Regions

As described above, the government implemented an identification and registration of livestock exercise in Morogoro Rural, Kilosa, Mvomero, Kilombero and Ulanga districts in 2016, based on the Livestock Identification, Registration and Traceability Act No. 12 of 2010. According to the Ministry of Agriculture, Livestock and Fisheries, the aim was to obtain reliable statistical information on livestock in terms of registration, births, deaths and vaccinations; improve control of major animal diseases; reduce incidents of cattle theft; increase export of cattle products such as meats, hide, skins; improve breeding programmes; promote tagging of cattle and provide the unique identification required of modern day-to-day stock management. This exercise was undertaken with the support of the FAO, which is providing both financial assistance and technical support to facilitate the development, customization and operationalization of the Tanzania Livestock Identification and Traceability System's (TANLITS) computerized central database, in line with international standards. So far, the FAO has issued an amount of USD 475,000 for a project entitled: TCP/URT/3303- "Support for development of the Tanzania Livestock Identification and Traceability System".

The pastoralists opposed this exercise from the start. They stated that there had been a lack of involvement and participation on their part. The pastoralists' major complaints were that, if implemented, the Act would seriously limit their possibilities of selling and exporting their livestock. Importantly, the pastoralists perceive the exercise as an attempt to evict them, limit their livestock numbers and thereby undermine their entire livelihood as each pastoralist is only allowed to register 50 cattle and is required to dispose of the rest. With a serious campaign and complaints made by the pastoralists, the exercise was halted (as described above) although no permanent solution has yet been found.

Drought and conflicts

Severe and prolonged drought hit Tanzania hard in 2016 and the beginning of 2017 and, in the drylands in particular, the situation is calamitous. It is so dry that animals are dying. Unlike other parts of the continent, however, only domestic animals are dying. So far the wildlife is safe. News reports of domestic animals dying through hunger and starvation have become the order of the day. The exact number of livestock deaths in the whole country may never be known. The death of livestock and the resulting losses suffered by pastoralists will, however remain a dreaded nightmare for them for a long time to come. Lack of access to pasture, especially in ownership-contested lands bordering protected areas, has increased the negative effects of the drought, with the state machinery using force to evict people from such areas, which are normally used as “fall back” areas in times of drought.

It has thus been hard for indigenous peoples to practise their unique coping and adaptation strategies due to government restrictions on their mobility. And, as the drought bites harder, indigenous peoples find themselves in an increasingly desperate situation. Panicked pastoralists and farmers alike are at each other’s throats as they compete for fundamental natural resources such as land and water. In some districts, these conflicts have reportedly claimed lives. Unsurprisingly, accusing fingers are levelled at innocent pastoralists.

Eviction in the name of Kilimanjaro Airport

Plans to enlarge Kilimanjaro Airport from the present 460 hectares to nearly 12,000 hectares will lead to the forcible eviction of over 20,000 villagers, mainly Maasai pastoralists and their nearly 100,000 livestock, from seven villages bordering the airport. The land, including the property on which the airport stands today, has been Maasai land for as long as anyone can remember. When the airport construction began in the late 1960s, the community lost the 460 hectares of land, which is now fenced off. The government did not seek, and far less obtained, *free, prior, informed consent*³ from the Maasai pastoralists before constructing the airport on their ancestral land. As expected, the Maasai resisted. President Julius Nyerere appealed to a Maasai healer who was highly respected

by the community and, subsequently, the community vacated the 460 hectares of land to make room for the airport.⁴ The Land Acquisition Act No. 47 of 1967 clearly lays down procedures for land acquisition. Article 11 (1) stipulates that adequate compensation must be paid. *No compensation was paid.* Article 11 (2) insists that alternative land of the same value and size must be allotted. *No such land was given to the Maasai.* And yet today, to justify the eviction of pastoralists from the 12,000 hectares of land for the enlargement of the airport, the government is resorting to all sorts of propaganda, including the allegation that the Maasai have trespassed into the area. The Maasai have been in this area since well before recorded history. Endoinyo oo Ilmoruak, “Hill of Elders,” is around 30 minutes’ drive from Kilimanjaro Airport. To the Maasai, this place is a very important holy place, and Professor Issa Shivji describes it thus:

*This area is considered by the Tanzanian and Kenyan Maasai communities a sacred area where at intervals of every 6-7 years hundreds of Maasai representatives from different groups meet for a series of religious and cultural ceremonies around the initiation of Maasai youth (or morani) into elders. The ceremonies last for between one to two months.*⁵

Prof. Shivji adds:

Maasai believe that this is the area where ‘Naiterokop’, the Lady (Mother) from whom the whole Maasai community derives its existence and ancestry, originated.

The highest free-standing mountain on earth, Kilimanjaro, is called *Oldoinyo Oibor* in Maa language, which means “White Mountain”. Mount Meru is called *Oldoinyo Orok*, meaning “Black Mountain”. There are countless other surviving Maasai indigenous place names in the area.

Legally-speaking, the land in question is village land. The seven villages on the contested land were registered under the Villages and Ujamaa Village (Registration Designation and Administration) Act No. 21 of 1975. The Act made each village into a single corporation responsible both for the administrative functions of local government and the commercial functions hitherto carried out by cooperatives. Everybody in the village was automatically a member. The Registrar of Villages⁶ later registered these villages as corporate bodies under Local Govern-

ment Act No. 7 (District Authorities) of 1982. Registration gives the “village council jurisdiction to exercise powers within boundaries of the registered area”.⁷ Section 7 of Village Land Act No. 5 of 1999 unambiguously defines the land of the villages in question. According to this section, a land certificate is immaterial. This section further states that village land includes:

7) (c) land, the boundaries of which have been demarcated as village land under any law or administrative procedure in force at any time before this Act comes into force, whether that administrative procedure based on or conducted in accordance with any statute law or general principles of either received or customary law applying in Tanzania and whether that demarcation has been formally approved or gazetted or not;

Loliondo in a dilemma again

There were different media reports of the eviction of Maasai people from legally registered villages in Loliondo in northern Tanzania in 2016. Evictions have reportedly taken place in villages situated in an area covering 1,500 square kilometres to allow the government to establish a Game Controlled Area (GCA). These village lands are seasonally used by the Ortello Business Cooperation (OBC) for hunting and they are demanding exclusive occupancy. OBC has been trying to persuade the government to allocate the 1,500 square kilometres of village land to them for over 20 years but, in the end, they failed following the comprehensive advocacy campaign conducted nationally and internationally. The conflict is globally known for its human rights violations in 2008 whereby homes were reportedly burned and community members tortured and treated in inhuman and degrading ways.

The plan to grab the 1,500 square kilometres of land has thus been widely opposed by the community and their representatives and by human right organizations internationally for years. The advocacy led the Prime Minister, then the Hon. Mizengo Kayanda Peter Pinda, to pay a visit to Loliondo in 2013 where he assured the people that the land belonged to the people as villages, and that the government was finding a way of balancing the interests of both the pastoralists and investors. This calmed the conflict down until 2016 when the demand for evictions emerged again through the Ministry of Natural Resources and Tourism. People rose up again to oppose the announcement and call for national and in-

ternational support. Given that the land belongs to the people, the government subsequently came up with a new approach whereby they said that they needed to involve the people in a discussion on ways of using the 1,500 square kilometres of land. The Prime Minister, Hon. Kasim Majaliwa, visited Loliondo in early December 2016 when he asked the Arusha Regional Commissioner, Mrisho Gambo to lead the discussion.

The whole situation is surrounded by fear since the pastoralists are afraid of losing their land because the government is demanding that the area should be turned into a Game Controlled Area (GCA). This will, according to the current legislation, prohibit human activities in the area and would thus mean that the pastoralists can no longer stay on and use the land.

While the government is insisting on establishing a GCA, the community representatives are finding that it would be a better option to establish a Wildlife Management Area (WMA), which is seen as a lesser evil, as the community would at least be able to demand some control over the area - although there are in fact also incidents of violations of the rights of pastoralists in a number of WMAs.

Vilima Vitatu land conflict

The Vilima Vitatu land conflict involves the Barabaig indigenous community living in the Maramboi area of Vilima Vitatu village in Babati District, Manyara Region. In 2003, Vilima Vitatu village became a part of a Wildlife Management Area (WMA) called the Burunge WMA. The Barabaig indigenous people in the village found that the acquisition of the village land for the establishment of the WMA was illegal as it did not follow the procedures required by the Village Land Act, and they therefore launched a court case in 2007 against the Vilima Vitatu Village Council and the leadership of Burunge WMA. The contested land was used by the pastoralists primarily for grazing and settlements. Several courts ruled in favour of the Vilima Vitatu government and the Burunge WMA. The Barabaig pastoralists finally took the case to the Court of Appeal of Tanzania, however, and, in 2016, the Court of Appeal ruled in favour of the Barabaig pastoralists. The Court of Appeal based its decision on the reasoning that the Village Council had failed to prove in court that the people were consulted and had consented to their land becoming part of the WMA. The court had asked for the original minutes of meetings where the Barabaig had apparently given approval for their land to be in-

cluded in the WMA but the village council had failed to provide such documents. The court therefore ruled that there was no consent from the people to allow their land to become a WMA. In summary, the decision of the Court of Appeal in 2016 states as quoted below:

“... In absence of any records of the meetings of 11.12.1999 and 14.12.1999 it will be fair to say that there is no material upon which we could safely say that the allocation of land in question was made in compliance with the dictate of the law stipulated above. In other words, there is nothing to show that the Village Council and the Village Assembly were involved in allocating the land in issue.”

Conclusion

In conclusion, after one year of changed leadership in Tanzania, there are few promising signs for indigenous peoples. We are still witnessing an excessive misuse of power by the districts and regional commissioners, very little involvement of indigenous peoples in decision-making as well as reported human rights violations, including negative perceptions of the livelihood of indigenous peoples. A constantly increasing urge for conservation and investment on the part of the government continues to override the interests of the people. We continue to see indigenous peoples' issues waved aside by political leaders who believe they know what indigenous peoples want - despite indigenous peoples' attempts to tell those leaders what their issues, demands and visions are. Over the past year, we have also seen a less than vibrant media that seems to shy away from human right issues and has less guts to confront and correct irregularities, especially when the perpetrator originates from the government. ○

Notes and references

- 1 www.answers.com/Maasai; www.answers.com/Datoga; www.answers.com/Hadza.
- 2 Other sources estimate the Hadzabe at between 1,000 – 1,500 people. See, for instance, Madson, Andrew, 2000: *The Hadzabe of Tanzania. Land and Human Rights for a Hunter-Gatherer Community*. Copenhagen: IWGIA.
- 3 Article 19 of the UNDRIP requires States “to consult and cooperate in good faith with the indigenous people concerned through their own representatives institutions in order to obtain their

free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”

4 The size of the fenced area was supplied by Mattijs Smith, pers.comm. 27 November 2014.

5 Issa Shivji, “Legal Opinion on the Right of Maasai Community to En’doinyo Ormoruak and its Environs” (unpublished report for PINGO’s Forum, 1998).

6 At the Office of the Prime Minister (Regional Administration and Local Governments).

7 Professor Issa G. Shivji, pers.comm. 11 December 2014.

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SOUTHERN AFRICA

ANGOLA

The indigenous peoples of Angola include the San and Himba, potentially other Khoe-san descendent groups (including Kwisi and Kwepe), and those with similarities to the Himba (including Kuvale and Zemba). Situated in Angola's southern provinces, together they represent approximately 0.1% of Angola's estimated population of 25 million.

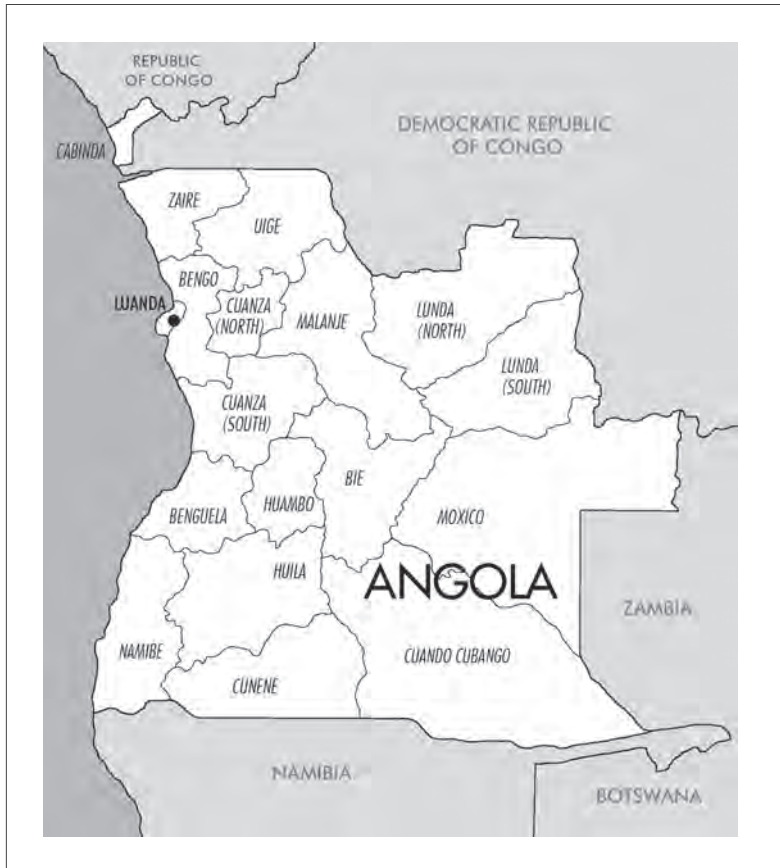
The San of southern Angola number between 9,000 and 14,000, potentially the third largest San population in southern Africa after Botswana and Namibia, although estimates vary and little extensive data collection has taken place. Scant population data exists for other groups.

While in the past the San, and possibly Kwepe and Kwisi, were hunter-gatherers, most now live from a combination of subsistence agriculture, informal manual work and food aid, although a number of significant traditional livelihood practices remain. These include gathering of bush foods and, in some cases, hunting and crafts. Herero-speaking minority groups, including the Himba, Kuvale (often referred to as "Mucubais") and Zemba, are traditionally semi-nomadic pastoralists.

There are no specific references to indigenous peoples or minorities in the Constitution, nor in other domestic law. As with many African states, the Government of Angola does not recognise the concept of indigenous peoples as affirmed in international law.

Despite this, the Government of Angola is still a signatory to ILO107, the Indigenous and Tribal Populations Convention of 1957, which it ratified in 1976, albeit with limited reporting. The last information presented to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) was in 2010. The CEACR has made annual requests for information from 2013, as well as for consultations on the possible ratification of ILO169, the Indigenous and Tribal Peoples Convention, which to all intents and purposes superseded C107 in 1989. Angola became a signatory to ICERD in 2013, and has ratified CEDAW-OP, CRC, ICCPR and CESC. Despite these latter treaties, a number of core human rights remain unrealised in Angola.

Angola has a diverse national media, although direct criticism of the government is limited. There are a variety of government projects and civil society organisations working with indigenous peoples in Angola, both independently and in cooperation with local and national government, although it appears that minorities do not have formal representative structures.



General overview

Detailed information on minority groups in Angola is inadequate, especially for those in the south-west of the country, due to restricted local resources and capacity as well as a number of other factors including: limited state and civil society engagement with indigenous peoples on the local and international level; the relative lack of availability of relevant government and civil society reports outside the country; vast provinces, with Moxico and Kuando Kubango each covering roughly 200,000km²; and the difficulties of working in remote areas with limited infrastructure, including the occasional risk of unexploded ordnance remaining from the civil war.

The San in Angola, often referred to as “Khoisan”, “vassequele” or “kamussequele”, among other terms, are found mainly in the southern provinces of Huila, Cunene, Kuando Kubango and Moxico. San groups in Angola include the Khwe and !Kung, who are also found in areas of Namibia and Botswana, with the majority being “Vasekele” !Kung. In general, the San appear to have subordinate socio-economic standing in relation to neighbouring non-San groups,¹ which can result in discriminatory labour and law practices as well as social issues.

Angola’s San have a turbulent history, sharing similar social and economic challenges and deprivation to San in neighbouring countries, as well as experiencing over 25 years of civil and cross-border conflict since 1966. Many San fled the wars in Angola between the mid-1970s and early 1990s, with a significant number being killed in the violence. Most San who successfully crossed the border eventually ended up in Namibia or South Africa, many having joined or been co-opted into service with the South African Defence Force (SADF).²

The San have some public recognition on a national level and, in 2016, the national broadcaster TPA showed at least 13 short news segments related to government projects with San communities.³ A TPA broadcast journalist⁴ wrote a short book on the San in Angola in late 2015, although it is not available outside the country, nor in English translation.

Other Khoe-san or Khoe-san descendent groups are found in small numbers in south-west Angola, for whom most available anthropological and linguistic data is limited or outdated, including the Kwepe and Kwisi. It should be noted that although the term “Kwisi” is frequently used, it is considered derogatory by the group, who would rather identify according to the areas in which they live, includ-

ing “Vátua”; however, it is used here due to the lack of other accurate terminology available. These groups reportedly speak dialects of the Herero language, although the Kwepe previously spoke a “click” language identified as “Kwadi”, which now appears to be extinct.

Current challenges

Angola’s economic downturn continued to severely affect the country in 2016, with many negative effects, including a lack of basic goods in shops, severe disruption of national health services and a reduction in funding of smaller NGOs, including those working with indigenous peoples. Some of these have closed as a result.⁵

After 37 years in office, President Dos Santos announced in March 2016 that he would step down in 2018. While some doubts originally existed as to whether this would happen, it now seems that the Minister of Defence, João Manuel Gonçalves Lourenço, will stand as the presidential candidate in 2017, with José Eduardo dos Santos remaining President of the governing People’s Movement for the Liberation of Angola (MPLA) party. Despite this likely political change, Angola continued and increased its restrictions on civil society activists throughout the year, especially those taking part in political protests, and freedom of the press was limited through legal actions, detentions and reported intimidation and violence.

Local organisations in Angola continue to highlight the lack of social and economic inclusion of the San in Angola, the expropriation of their land, and their discriminatory labour and social relationships with neighbouring Bantu groups. In May 2016, allegations of forced evictions and violence towards indigenous peoples in Namibe, Cunene and Huila provinces were made by the Catholic Bishop of Namibe province.⁶

During 2016, land expropriations that affected 39 indigenous peoples’ settlements were noted in Kuando Kubango province, in the areas of Savate, Mucundi and bordering Namibia, primarily for tourism development and commercial logging. In addition, state entities in Curoca, Cunene province, reportedly expropriated land from San communities for national projects. A group of 18 NGOs that form a human rights monitoring platform in Angola, GTMDH (*Grupo de Trabalho*

de Monitoria de Direitos Humanos em Angola), sent a petition to the President, National Assembly and Attorney General denouncing these expropriations.

A report was also produced by the GTMDH over allegations made by San communities with regard to four separate incidents in which San were falsely implicated in elephant poaching activities, including incidents that led to the deaths of community members. This information is difficult to verify due to the remote areas in which the incidents occurred and a lack of communication, which would improve reporting.

Other issues included the ongoing drought during 2016, which has seriously affected all rural communities in southern Angola, and the continued need for monitoring of the development of the Kavango Zambezi Trans Frontier Conservation Area (KAZA TFCA), a planned transboundary conservation area spanning Angola, Botswana, Namibia, Zambia and Zimbabwe and including areas in which indigenous peoples are found.

Information on the challenges facing Angolan Himba, Kuvale and Zemba is scarce, although relevant issues will undoubtedly include land tenure and access to services and natural resources, as also seen in Namibia with these cross-border groups. The development of the Baynes dam on the Cunene River bordering Angola and Namibia is scheduled to begin in 2017. Many questions remain over the Himba and Zemba communities' loss of territory, and these peoples have protested against this development in previous years, including with regard to issues of ancestral graves, loss of livelihoods and compensation.

Civil society support

A number of civil society organisations continue to provide support to Angola's indigenous peoples. MBAKITA (Mission of Beneficence Agriculture of Kubango, Inclusive, Technology and Environment; a member of the above mentioned GTMDH human rights monitoring group), OCADEC (Christian Community Development Support Organisation) and ACC (*Associação Construindo Comunidades*) all have programmes targeting San communities in southern Angola.

In 2016 MBAKITA, working in the provinces of Kuando Kubango, Cunene, Huila, Moxico, Bié, Huambo and Namibe, implemented various programmes targeting San groups, including civil registration, agricultural training and promotion

of cultural, social and economic rights, alongside workshops and meetings with local authorities and civil society networks.

OCADEC has focused on agricultural training in partnership with the government, and NNC on community empowerment, democracy and human rights.

Additionally, OSISA (Open Society Initiative for Southern Africa), with co-financing from the German Embassy, funded a study on San sociocultural heritage, which will be published in 2017.

Government engagement and national inclusion

A range of government projects with indigenous peoples in Angola were reported in the press during 2016. The Ministry of Assistance and Social Reintegration (MINARS) carried out various projects with San communities, mostly focused on agricultural training but also on aspects of education, housing and policy development. MINARS registered over 8,000 San with a view to potentially providing social assistance in southern Angola's Kuando Kubango province during 2016 alone.

In Huila province, the local government promoted electoral registration and agricultural training, while food donations were made to some San families. In Kuando Kubango, San communities highlighted the lack of agricultural tools, schools and clinics to local government officials, and also received food donations.⁷ ○

Notes and references

- 1 Personal communications; also see sources in footnote 3.
- 2 Brenzinger, M. "Classifying the non-Bantu click languages" in *Papers from the Pre-Colonial Catalytic Project, Volume 1*, ed. Ntsebeza, L. & C. Saunders (Cape Town: University of Cape Town, 2014.)
- 3 <http://videos.sapo.pt/search.html?username=tpa1&word=khoisan>
- 4 Jose Jaime, "Os Khoisan - A comunicação e o processo de socialização". http://jornaldeangola.sapo.ao/gente/a_estreia_de_jose_jaime_na_literatura
- 5 Personal communications.
- 6 http://en.radiovaticana.va/news/2016/05/20/church_in_angola_condemns_forced_land_evictions/1231307
- 7 Various sources from <http://www.jornaldeangola.sapo.ao> and <http://www.angop.ao>

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NAMIBIA

The indigenous peoples of Namibia include the San, the Nama, the Ovahimba, Ovazemba, Ovatjimba and Ovatwa. Taken together, the indigenous peoples of Namibia represent some 8% of the total population of the country. The San (Bushmen) number between 27,000 and 34,000, and represent between 1.3% and 1.6% of the national population. They include the Khwe, the Hai||om, the Ju|'hoansi, the !Kung, the Kao||Aesi, the Naro, and the!Xóǀ. Each of the San groups speaks its own language and has distinct customs, traditions and histories. The San were mainly hunter-gatherers in the past but, today, many have diversified livelihoods. Over 80% of the San have been dispossessed of their ancestral lands and resources, and are now some of the poorest and most marginalised peoples in the country.

The Ovahimba number some 25,000. They are pastoral peoples, and reside mainly in the semi-arid north-west (Kunene Region). The Ovazemba, Ovatjimba, Ovazemba and Ovatwa communities live in close proximity to the Himba in the mountains of north-western Namibia. The Nama, a Khoe-speaking group, number some 100,000 and live mainly in central and southern Namibia.

The Constitution of Namibia prohibits discrimination on the grounds of ethnic or tribal affiliation but does not specifically recognise the rights of indigenous peoples or minorities. The Namibian government prefers to use the term “marginalised communities”. There is no national legislation dealing directly with indigenous peoples. Namibia sees all citizens as indigenous. Namibia voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) when it was adopted in 2007 but it has not ratified ILO Convention No. 169. Namibia is a signatory to several other binding international agreements that affirm the norms represented in UNDRIP, such as the African Charter on Human and Peoples' Rights), the Convention on the Rights of the Child (CRC), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the International Covenant on Civil and Political Rights (ICCPR).

In March 2015, the Division of San Development under the Office of the Prime Minister (established in 2009) was renamed the Division for Marginalised Communities and moved to the Office of the Vice President. The office is mandated to focus on the San, Himba, Tjimba, Zemba, and Twa with the main objective of “integrating marginalised communities into the mainstream of our economy and improving their livelihood”.

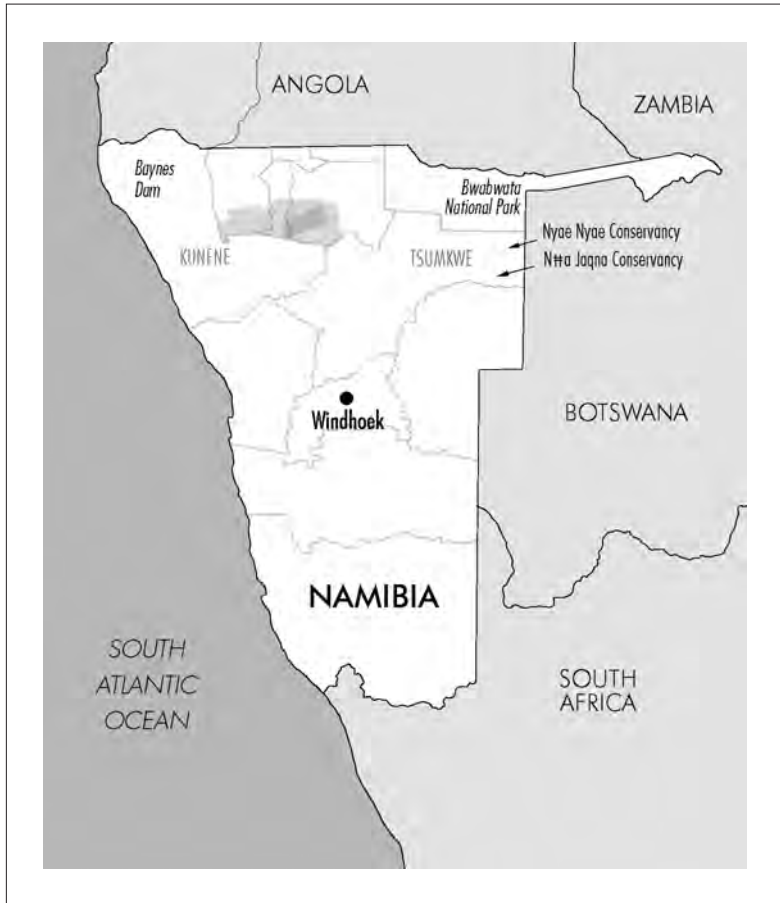
Participation and political representation

There were a number of important developments for Namibia’s indigenous peoples in 2016. Representatives of the Division of Marginalised Communities in the Office of the Vice President and the Deputy Minister for Marginalised Communities, Kxao Royal Uijoo (the only San in national government), met with many of the marginalised communities in Namibia in 2016. The Division took part in the 15th annual meetings of the Permanent Forum on Indigenous Issues (UNPFII) in New York from 9-20 May 2016.

In mid-2016, the Division of Marginalised Communities agreed to a programme of work with the UN Department of Economic and Social Affairs to promote the rights of indigenous peoples in Namibia and, specifically, to assist in the adoption of the White Paper on the Rights of Indigenous Peoples in Namibia, drafted by the Office of the Namibian Ombudsman in 2014. Government workshops are to follow in February 2017.

In 2016, there were 46 government-recognised Traditional Authorities (TAs) in Namibia, of whom 5 are San.¹ The Khwe remain without a recognised Chief, due to political disputes with a dominant neighbouring tribe and a lack of political organisation within the group.

In mid-2016, the German government resolved to recognise and formally apologise for the genocide of Herero, Nama and other groups between 1904 and 1908. Negotiations for reparations from Germany, led by Herero and Nama chiefs, were not resolved,² however, resulting in their decision to take legal action against the Government of Germany. This effort was still in process at the end of 2016.



The year was also marked by a significant slowdown in Namibia's economy, resulting in sizeable budget cuts to many line ministries, including those that support indigenous peoples. The effect of these cuts is expected to be felt in 2017, and may impact geographically remote communities to a greater extent due to reductions in operational scope. Namibia has also been hard hit by drought conditions in 2016, with strong negative impacts seen on rural livelihoods.

International treaty bodies

Namibia has continued its progressive approach to international treaty reporting processes in 2016, which raised a number of issues concerning indigenous peoples. The 2016 Namibia Draft Report of the Working Group on the Universal Periodic Review (UPR) of the Human Rights Council recommended: reducing discrimination against children; equal rights to water, sanitation, land, health and social services; improved access to education; implementation of the White Paper on the rights of indigenous peoples in Namibia, and improved access to land on the part of ethnic minority groups who have been deprived of their original lands.

The Committee on the Elimination of Racial Discrimination (CERD) made strong recommendations, including: monitoring the impact of measures taken to improve the realisation of rights for indigenous peoples, updating CERD on the measures and the work of the Division of Marginalised Communities; implementing a range of recommendations made by the Special Rapporteur on the rights of indigenous peoples following his 2012 visit to Namibia, including action on violence against San women; political participation of indigenous peoples; access to education; and land reform and resettlement.

The Committee on Economic, Social and Cultural Rights (CESCR) recommended that Namibia adopt legislation that recognises indigenous peoples, including land tenure, livelihoods and Free, Prior and Informed Consent (FPIC), and that it should ratify ILO Convention No. 169 on Indigenous and Tribal Peoples. It specifically mentioned FPIC in light of the Baynes dam project, which affects Ovahimba, Ovatjimba, Ovazemba and Ovatwa communities, and also recommended the implementation of the recommendations in the Special Rapporteur's report.

The Covenant on Civil and Political Rights (CCPR) highlighted the continuing discrimination against indigenous peoples, and recommended that Namibia ensure that indigenous peoples have "titles over lands and territories that they traditionally occupied or resources they owned". The recommendation also referred to FPIC practices, especially with regard to extractive industries.

Land and natural resources

In September 2016, a favourable judgment was passed by the High Court of the Nǀa Jaqna Conservancy (a predominantly Kung San area) after long-running proceedings whereby the Conservancy Committee alleged that 32 individuals had illegally fenced land in Nǀa Jaqna Conservancy and that some of them had obtained the land illegally. The judgment ordered the removal of fences and that a number of the accused vacate land and/or be restrained from occupying land in the Conservancy.³ Some of the defendants are currently appealing before the Supreme Court. Should the appeal be quashed, the judgment is likely to set a very positive precedent for other contested areas of communal land in Namibia but, if upheld, further erosion of indigenous peoples' land rights are likely.

Efforts have continued in the neighbouring Nyae Nyae Conservancy (predominantly Ju|'hoansi) to prosecute illegal grazers, although the cases have experienced extensive delays in their investigation and prosecution processes with the police and public prosecutor. It is hoped the cases will be heard in court during 2017.

As noted in *The Indigenous World 2016*, the Hai||om San filed a class action lawsuit on Hai||om land rights against the government of the Republic of Namibia and 13 others in 2015.⁴ This process has continued throughout 2016, with the Government of Namibia responding to the collective action lawsuit in January. The applicants were in the process of replying to the government's response as of the end of 2016.⁵ A hearing is expected in the High Court during 2017, focused in part on whether the Hai||om plaintiffs will be certified as a class – the first class action lawsuit on behalf of an ethnic group in independent Namibia.

The degree of severity of what has been described by government spokespersons as a "poaching crisis" increased in Namibia in 2016. As a result, Namibia intensified its efforts to counter illegal wildlife exploitation, expanding its anti-poaching unit (APU) in the Ministry of Environment and Tourism, seeking and obtaining funds from both local and outside sources, engaging in training of anti-poaching personnel, purchasing equipment such as unmanned aerial vehicles (UAVs), and investing more heavily in community-based approaches to wildlife conservation.⁶ This approach is leading to increased arrests and reduced incidences of poaching. However, a Khwe man was seriously injured in July 2016, mistakenly being shot twice by an anti-poaching unit patrol after they opened fire

without warning on a group legally harvesting traditional plants within the Bwabwata National Park.

Gender and youth

The Ministry of Gender Equality and Child Welfare was active in 2016 as were a number of organisations involved with women and youth, such as Women's Action for Development (WAD), the Women's Leadership Centre (WLC) and the Namibia UNICEF office. Discrimination, marginalisation, inequitable access to land and resources, high levels of food insecurity, low access to information technology, high rates of domestic violence, and mistreatment of indigenous women and children continued to be problems in 2016, despite some progress towards gender equality.⁷ WLC reported anecdotal evidence and preliminary field research showing incidences of prostitution of girls for "survival sex" in some San communities.

The Namibian San Council and the ||Ana-Jeh San Trust (the Namibia San youth organisation) each met several times during 2016 to discuss issues involving San men, women and youth. Some of the issues they highlighted included what they saw as the low levels of participation of San in the socioeconomic life of the country, high rates of unemployment, a lack of training and educational opportunities, and high rates of HIV/AIDS among women and youth. Representatives of both organisations attended a Women's Rights Conference sponsored by government on 11 October 2016. Sizeable numbers of San, Ovahimba, Ovatjimba and other rural Namibians continued to gain some benefits from the conservation and poverty-alleviation efforts of communal conservancies in 2016.⁸ ○

Notes and references

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ZIMBABWE

While the Government of Zimbabwe does not recognize any specific groups as indigenous to the country, two peoples self-identify as indigenous: the Tshwa (Tjwa, Tsoa, Cuaa) San found in western Zimbabwe, and the Doma (Vadema) of Mbire District in north-central Zimbabwe. Population estimates indicate there are 2,700 Tshwa and 1,250 Doma in Zimbabwe, approximately 0.027% of the country's population.

Many of the Tshwa and Doma live below the poverty line in Zimbabwe and together make up some of the poorest people in the country. Available socioeconomic data is limited for both groups although baseline data was collected for the Tshwa in late 2013. Both the Tshwa and Doma have histories of foraging and continue to rely to a limited extent on wild plant, animal and insect resources. Most Tshwa and Doma households have diversified economies, often working for members of other groups in agriculture, pastoralism, tourism, and small-scale business enterprises. Remittances from relatives and friends working in towns, commercial farms or mines, both inside and outside of the country, make up a small proportion of the total incomes of Tshwa and Doma. As is the case with other Zimbabweans, some Tshwa and Doma have emigrated to other countries, including Botswana, South Africa, Mozambique and Zambia, in search of income-generating opportunities and employment.

Though somewhat improved in recent years, realisation of core human rights in Zimbabwe continues to be challenging. Zimbabwe is party to the CERD, CRC, CEDAW, ICCPR and ICESCR. Reporting on these conventions is largely overdue but there have been efforts in 2016 to meet requirements. Zimbabwe also voted for the adoption of the UNDRIP. In recent years, Zimbabwe has also participated in the Universal Periodic Review (UPR) process of the UN Human Rights Council, the most recent meeting of which was held on 2 November 2016. Like many African states, Zimbabwe has not signed the only international human rights convention addressing indigenous peoples, ILO Convention 169 on Indigenous and Tribal Peoples of 1989.

There are no specific laws on indigenous peoples' rights in Zimbabwe. However the "Koisan" language is included in the Zimbabwe 2013 revised Constitution as one of the 16 languages recognized in the country, and there is some awareness within government of the need for more information and improved approaches to minorities in the country.



Summary

Sizable numbers of Tshwa, Doma and other Zimbabweans were seriously affected by drought, the economic downturn in the country and the fierce and

ongoing political maneuvering and crackdowns in Zimbabwe in 2016. Considerable work is necessary to ensure that the social, economic, cultural and political rights guaranteed in the 2013 revised Zimbabwe Constitution are protected for disadvantaged minorities and indigenous peoples, who remain at the lowest levels of the Zimbabwean socioeconomic system.¹

The Doma (Vadema) of the mid-Zambezi Valley, like the Tshwa San of western Zimbabwe, continued to face discrimination, food insecurity, low employment levels, limited political participation, and lack of broad access to social services in 2016.

Policy and legislation

No new policies were initiated regarding indigenous peoples and minorities in Zimbabwe in 2016. Indigenous peoples and minorities were not mentioned in the Zimbabwe government's report to the Human Rights Council for the Second Universal Periodic Review (UPR) meeting held on 2 November 2016.²

The Zimbabwe Human Rights Commission (ZHRC) paid a visit to San communities in Tsholotsho District from 13-17 June 2016. The Commission met with district officials, local authorities and San communities and with the Tsoto-o-Tso San Development Trust, (TSDT).³ Recommendations arising from that visit included the need to pay greater attention to minority issues in the country, the need to expand education and health services, and the importance of poverty alleviation. This was especially important given the food insecurity situation in Tsholotsho and Zimbabwe as a whole.

On 25 September 2016, the Tsoro-o-tso San Development Trust and the San community were included in the Special Interest Thematic Work Group of the Zimbabwe Human Rights Commission, focusing on promoting, protecting and enforcing the rights of youths, the elderly, people with disabilities, and sexual and indigenous minority groups. Progress was made for indigenous people with disabilities with the application of Zimbabwe's *National Disability Act*. The Tsoro-o-tso San Development Trust director attended the 2016 AIDS Conference in Durban, South Africa, from 18-22 July 2016.

The Government of Zimbabwe declared a drought in February 2016 and, by the latter part of the year, some 5 million people were in need of food aid in the country. In September, the Zimbabwe Human Rights Commission and the BBC

reported on the withholding of drought relief food from opposition areas by the ruling party, the Zimbabwe African National Union-Patriotic Front (ZANU-PF).⁴ Agricultural production, the livelihoods and incomes of the Tshwa and Doma and their neighbors were affected negatively by both the drought and flooding that occurred in northern Zimbabwe in 2016.⁵ Of the few Tshwa households that had livestock, 90% of them had to sell their animals, and 80% were forced to consume the seeds they had stored for planting in late 2016. Among the Doma, there were reports of people falling sick because of poisonous plants they had consumed as a buffer against hunger, and water-related illnesses expanded considerably.

Land, conservation and livelihoods

Both Tshwa and Doma faced governmental pressure from the Zimbabwe Republic Police and the Department of National Parks and Wildlife Management for suspected poaching; some of the incidents involved elephants killed with cyanide.⁶ Arrests, detentions and shootings of suspected poachers occurred, and new recommendations were made by government officials that the Tshwa and others be relocated away from the boundaries of national parks, including Hwange, Zimbabwe's premier protected area.⁷ In Tsholotsho, where the majority of the Tshwa reside, livestock losses to lions were reported in late 2016.⁸ In the mid-Zambezi Valley, the Doma were also experiencing human-wildlife conflict (HWC) and were facing difficulties because their fields were being invaded by elephants and antelopes and their livestock was being killed by lions and other predators.⁹ Doma lands have already been restricted by the Chewore National Park and Dande Safari Area, as well as by rural in-migration and population growth.

Attention continued to focus on the Fast-Track Land Reform Programme in Zimbabwe, which has had negative impacts on land access for indigenous and other people.¹⁰ The availability of land for settlement by Tshwa and Doma was reduced by an estimated 10% due to the land reform efforts in 2016, even though the pace of land reform has slowed in Zimbabwe. Access to clean water, health services, and educational facilities continued to be a problem for the Tshwa and Doma, and poverty and food insecurity were on the increase in 2016.

Gender, youth and participation

Unlike Botswana, Namibia and South Africa, Zimbabwe does not have a San Youth Network, in part because of a lack of access of most San to the worldwide web. The National Gender Policy, which focuses on women's well-being, was presented to Tshwa in Tsholotsho in meetings held at the community level in 2016. In December, the Zimbabwe government approved the teaching of the Tjwao language in schools as from January 2017.¹¹

Tshwa and Doma men, women and children stated in community meetings that they continued to be concerned about issues of Tshwa and Doma children being exposed to physical abuse and discrimination in school.

At the end of 2016, the indigenous peoples of Zimbabwe were continuing to press the government for equitable and fair treatment before the law and full recognition of their social, political, economic and cultural rights, especially in the face of rising political and economic insecurity in the country. ○

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BOTSWANA

Botswana is a country of 2.2 million inhabitants which, in 2016, celebrated its 50th year of independence. Its government does not recognize any specific ethnic groups as indigenous to the country, maintaining instead that all citizens of the country are indigenous. However, 3.3% of the population identifies as belonging to indigenous groups, primarily residing in the Kalahari Desert region of Botswana. These include the San (known in Botswana as the Basarwa) who number about 64,000, the Balala (1,750), in the south of the country, and the Nama (2,200), a Khoekhoe-speaking people.¹ The San here were traditionally hunter-gatherers but today the vast majority consists of small-scale agro-pastoralists, cattle post workers, or people with mixed economies. They belong to a large number of sub-groups, most with their own languages, including the Ju/'hoansi, Bughwe, Khwe-!Ani, Ts'ixa, ǀX·ao-!|·aen, !Xóǀ, ǀHoan, ǀKhomani, Naro, G/ui, G//ana, Tsasi, Deti, Shua, Tshwa, Danisi and /Xaise. The San, Balala and Nama are among the most underprivileged people in Botswana, with a high percentage living below the poverty line.

Botswana is a signatory to the Conventions on the Elimination of all Forms of Discrimination against Women (CEDAW), on the Rights of the Child (CRC) and on the Elimination of all Forms of Racial Discrimination (CERD), and it voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples. However it has not signed the Indigenous and Tribal Peoples Convention N° 169 of 1989 of the International Labour Organization (ILO). There are no specific laws on indigenous peoples' rights in the country nor is the concept of indigenous peoples included in the Botswana Constitution.

Summary

During 2016, indigenous people in Botswana continued to struggle to remain on their land. The current and former residents of the Central Kalahari Game



Reserve (CKGR) and the village of Ranyane in Ghanzi District have been involved in court cases claiming the rights to remain on their land and to have services and water restored for many years. The people living in protected areas are under constant threat of being relocated by the central government or district councils.

Possible changes in the government's policies for the CKGR

In January 2016, it was announced that the government would restore essential services to the CKGR as a result of discussions between President Lt. Gen. Seretse Khama Ian Khama and the San activist, Roy Sesana. A delegation of

ministers from several ministries, including the Minister of Foreign Affairs, Pelenomi Venson-Moitoi, met with representatives of five communities within the CKGR in early 2016. The plan they outlined was to restore the full range of services that were terminated in 2002 when most San and Bakgalagadi were removed from the reserve. By the end of 2016, however, there was little evidence of progress, although in October 2016, Roy Sesana and five other residents of Molapo in the CKGR did win the right to compensation for the loss of their livestock due to government actions.²

Botswana and international human rights

In February 2016 Botswana participated in the 2nd cycle of the Universal Periodic Review (UPR) of the Human Rights Council in Geneva. The country's officials did not mention issues relating to indigenous and minority peoples during the Review, nor did it address questions regarding the CKGR. The same was true for the Botswana State of the Nation Address presented to Parliament on 5 December 2016 by President Khama.³

Several Botswana government officials and four San from Botswana attended the meetings of the 15th United Nations Permanent Forum on Indigenous Issues (UNPFII) in New York from 9-20 May 2016. A San representative, Keikabile Mogodu, director of the Botswana Khwedom Council, made an impassioned plea for the introduction of mother-tongue instruction for indigenous children, a policy that the Botswana government opposes.⁴ Spirited discussions also took place between Botswana government officials and San about Botswana's Affirmative Action Framework and how it applies to people in remote areas.⁵

Drought and fracking in Botswana

Botswana entered its fourth year of drought in 2016. In July, President Khama declared a national drought emergency, authorizing food deliveries and cash-for-work programs in many parts of the country although there were no food or pension deliveries to the people in the CKGR or in the village of Ranyane, nor were any cash-for-work programs implemented there. Water was provided to wild ani-

mals in some parts of Botswana suffering from drought but little water was given to the communities in the CKGR.⁶

In spite of the drought, fracking (hydraulic fracturing) was being carried out by oil and mining companies in what is known as the Nama Basin in Kgalagadi District. Residents of the San and Bakgalagadi community of the KD2 Wildlife Management Area complained in April 2016 that the fracking had resulted in a drop in the water table, lower access to borehole water in the village, and high levels of toxic chemicals and salts in the water, rendering it virtually undrinkable.⁷

The Ranyane resettlement case

The Naro San residents of Ranyane village, which lies in the southern part of Ghanzi District in western Botswana, were told by the Ghanzi District Council at a *kgotla* (government council) meeting in 2010 that they had to relocate to another place away from Ranyane. As reported in last year's *Indigenous World* (2016), in spite of winning a legal appeal in 2013 that should have allowed them to stay in their village, all services were terminated, including water, and many of the residents of Ranyane were relocated to Bere, a largely !Xóó community. After taking the government to court again in December 2014, Ranyane waited nearly a year for a decision from High Court Judge Terrence Rannowane, who denied their appeal on 21 November 2015. In January 2016, Ranyane appealed for a third time.⁸ As of the end of 2016, 11 months later, the Ranyane decision appeal had still not been heard in the Appeals Court.

Conservation, hunting and anti-poaching issues

Debates about the impacts of the no-hunting and anti-poaching policies in Botswana continued to intensify in 2016. Tshekedi Khama, the Minister of Environment, Wildlife and Tourism, made a number of statements to the media arguing for the importance of this controversial policy in order to cope with threats to the wildlife base in Botswana.⁹

San have been pressing the Botswana government for further explanation of its wildlife policies and seeking compensation for crop, livestock and human life losses to wild animals, which many of them had yet to receive in 2016. Arrests of indigenous and other people for violating hunting laws continued in Botswana in

2016.¹⁰ In September, Tshekedi Khama, the Minister of Environment, Wildlife and Tourism, announced that the ministry would review the hunting regulations as they apply to San and other remote area dwellers, perhaps allowing them to hunt animals for their own consumption.¹¹

Uncertainty continued for San and other groups in the Okavango Delta and Tsodilo Hills, both of which now have World Heritage Site status. Government and the North West District Council argued for the resettlement of San and other communities outside the Okavango Delta. Questions were also raised by government about the rights of communities to manage their own Community-based Natural Resource Management programs. Some community trusts were told that they were no longer in charge of their own finances and that benefits would no longer be provided to the community but rather to the private companies, some of them foreign-owned, that were operating in what used to be community-controlled areas.¹²

Political and cultural participation

A Nama cultural festival was held at Lokgwabe in Kgalagadi District on 31 August 2016.¹³ The Kuru Dance Festival was held at Dqae Qare on 19-20 August 2016. This festival brought together San, Bakgalagadi, Mbukushu, Herero, Tswana and many others from across the country, and was an expression of cultural pride on the part of the groups. Some San also participated in the 50th anniversary celebrations of Botswana's independence held in Gaborone on 30 September 2016. San organizations and other NGOs in Botswana struggled in part because of a lack of funds in 2016.¹⁴ The San Youth Network (SYNet) continued to publish papers written by young people about women's rights, children's rights, and climate change, on their website.¹⁵

At the end of 2016, the indigenous peoples of Botswana were continuing to press for equitable and fair treatment before the law and for recognition of their social, political and cultural rights.¹⁶ ○

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SOUTH AFRICA

South Africa's total population is around 50 million, of which indigenous groups are estimated to make up approximately 1%. Collectively, the various African indigenous communities in South Africa are known as the Khoe-San/Khoisan, comprising the San and the Khoekhoe. The main San groups include the Khomani San who reside mainly in the Kalahari region, and the Khwe and Xun, who reside mainly in Platfontein, Kimberley. The Khoekhoe consist of the Nama who reside mainly in the Northern Cape Province; the Koranna mainly in the Kimberley and Free State provinces; the Griqua in the Western Cape, Eastern Cape, Northern Cape, Free State and KwaZulu-Natal provinces; and the Cape Khoekhoe in the Western Cape and Eastern Cape, with growing pockets in the Gauteng and Free State provinces. In contemporary South Africa, Khoe-San communities exhibit a range of socio-economic and cultural lifestyles and practices.

The socio-political changes brought about by the current South African regime have created space for a deconstruction of the racially-determined apartheid social categories, such as "Coloureds". Many previously "Coloured" people are now exercising their right to self-identification and identify themselves as San and Khoekhoe or Khoe-San. African indigenous San and Khoekhoe peoples are not formally recognized in terms of national legislation as a customary community; however, this is shifting with the pending Traditional and Khoisan Leadership bill 2015 which is intended to be tabled before parliament in 2017. South Africa has voted in favour of adopting the UN Declaration on the Rights of Indigenous Peoples but has yet to ratify ILO Convention N° 169.

Second version of the Indigenous Knowledge Systems Bill 2014 re-opened for public consultation

The "Protection, Promotion, Development and Management of Indigenous Knowledge Systems Bill" of 2014 provides for the protection, promotion, de-

velopment and management of the indigenous knowledge systems of communities. It also provides for the establishment and functioning of a National Indigenous Knowledge Systems Office and the management of the rights of indigenous knowledge holders. It sets out how the indigenous knowledge of local communities should be accessed. Moreover, the bill also outlines the process for registering, accrediting and certifying indigenous knowledge practitioners. A second version of this bill has been developed based on the first round of inputs, and this new second version was opened for public consultation in December 2016.

The South African government has proposed a *sui generis* legislative approach in line with the position taken by the developing countries' at the World Intellectual Property Organisation (WIPO) intergovernmental committee meetings in Geneva. It sets out to address the concerns of how best to protect traditional knowledge of communities. Some of the Khoisan groupings have started to engage the second version of the bill as part of the public participation processes. Provincial pilot grassroots processes have started which include certain San and Khoi communities. These processes involve the Department of Science and Technology establishing a National Recordal System with the aim to capture, store and manage indigenous knowledge systems and Indigenous Knowledge Systems documentation centers in six provinces. Consultative processes to this Bill are still ongoing.¹

Traditional & Khoisan Leadership Bill 2015 update

The Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights has developed a seminal report² and policy approach articulating the human rights experiences of African indigenous communities. It gives a human rights-based meaning to the challenges these communities continue to experience in postcolonial Africa, and it gives a language to their particular socio-political context.³ It does not divorce indigenous communities from the rest of the African communities nor make one community's concern more important than the other. It makes a case for the collective rights violations of these indigenous continues to experience. It provides guidance on how the rights of these communities should be included on par with fellow African communities and equally respected when developmental initiatives are addressed. This is particularly evident in the South African context for the San and Khoi as it relates to their customary institutions, land restitution and now also, bio-



prospecting. The question the broader civil society activism needs to sit with is how to address the experiences of *all* African communities concerned, around issues of customary institutions, land and bioprospecting without negating the collective rights struggles of the San and Khoi. The San and Khoi seem to be left behind and in some cases marginalized by the broader civil society efforts in addressing concerns of other fellow African customary communities. This is the exact experience the African Commission's Working Group on Indigenous Populations hopes to address.

This problematique is of particular importance in relation to the Traditional and Khoisan Leadership Bill. The South African parliamentary committee on Co-operative Governance and Traditional Affairs finally introduced the Traditional and Khoisan Leadership Bill (formerly the National Traditional Affairs Bill) before parliament in 2016. This bill seeks to recognize the historical Khoi and San communities to be on par with the recognition already afforded to other African customary communities within South Africa. For the first time in the last 300 years, the

bill could potentially provide formal recognition and open opportunities for access to justice for the historical Khoi and San communities. Furthermore, the bill would allow the Khoi and San to be included in the governmental administrative processes within the various ministries and enable these ministries to make specific provisions for the Khoi and San communities' social, economic and cultural priorities.

However, the Bill seeks not only to recognize Khoi and San leadership, but also to revise the Traditional Leadership and Governance Framework Act (TLGFA), and its approach to this latter issue is contentious. Many in South Africa's civil society sector have voiced sharp criticism against the bill because of present day challenges within the already recognized traditional leadership structures of African customary communities. The advocacy attempts by civil society actors (as important as it is) poses a great risk to the 17 year long journey that the historical Khoi and San communities had to walk to ensure the bill could get to the current enactment stage in parliament. The Khoi and San's formal recognition through this bill finds itself muddled by the longstanding concerns around existing traditional leadership, and it could very well happen that the Khoi and San will experience a huge set back in their 17-year long struggle as an unintended consequence.

Court case on the Amendment to the Restitution of Land Rights Act

In 2014 President Zuma signed into law an Amendment to the existing Restitution of Land Rights Act of 1996. This amendment extended the land claims period from 2014-2018, thereby providing a further opportunity for communities who might have missed the first period which was from 1996-1998 to lodge their claims for land restitution. This was an opportunity for parts of the Khoi and San communities (and others) who had been left behind in the first land restitution process to institute land claims during the second round. However, during July 2016, civil society actors were successful in challenging the validity of this Amendment Act before the Constitutional Court by representing the interests of four communities who claimed they did not have a fair opportunity to participate in the public participation process for the Amendment to the Land Restitution Act at the time. The Constitutional Court declared the Amendment to the Restitution of Land Rights Act invalid, further stating that the first land claims are to be resolved prior to processing the second land claims. Thus, parts of the Khoi and San families and communities find their rights to land restitution further delayed.⁴

Khoisan local government political party

During the South African local municipal elections in 2016, the Khoisan Revolution, a new political party contested the South African local municipal elections in five provinces. They successfully won one seat in the Nama Khoi Local Municipality in the Namakwa District, Northern Cape Province. Within this municipality, they're now in a coalition with the governing party and jointly managing the municipality. A female member of the Khoisan Revolution party also holds the speaker of council position. The party was formed in January 2015 and is registered with the South African Electoral Commission. Its focus is on issues such as land, recognition and language affecting the Khoisan, San and Griqua.⁵ ○

Notes and references

- 1 Department of Science & Technology: *Protection, promotion, development and management of indigenous knowledge systems bill 2015*.
- 2 African Commission on Human and Peoples' Rights and IWGIA. *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities*, 2005, <http://www.achpr.org/mechanisms/indigenous-populations/report-working-group/>
- 3 African Commission on Human and Peoples' Rights and IWGIA. *African Commission on Human and Peoples Rights Report : Indigenous Peoples in Africa, The Forgotten People*, 2003,
- 4 City Press: <http://city-press.news24.com/News/restitution-uncertainty-amid-constitutional-court-ruling-20160729> .
- 5 Interview with Stanley Petersen, Chair of the Khoisan Revolution party.

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PART II

INTERNATIONAL
PROCESSES

ENHANCING INDIGENOUS PEOPLES' PARTICIPATION IN THE UN

Building on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and various studies and proposals from indigenous peoples, the 2014 high-level plenary meeting of the General Assembly, known as the World Conference on Indigenous Peoples, undertook to “consider ways to enable the participation of indigenous peoples’ representatives and institutions in meetings of relevant United Nations bodies on issues affecting them” (A/RES/69/2, paragraph 33). There have been several notable and important steps taken and documentation prepared between September 2014 and December 2016 to move forward the political processes necessary for the General Assembly to consider a resolution enhancing indigenous peoples’ participation in the United Nations.

Introduction

The United Nations General Assembly is currently considering how to enhance indigenous peoples’ participation in United Nations meetings on issues affecting them.¹ The initiative is ground-breaking in that it contemplates the opening up of the General Assembly to non-state actors that are not international organizations. This essay first outlines the normative background to this initiative before detailing the process, substantive issues and areas of agreement and divergence to date.

The UNDRIP and normative justifications

The justifications for indigenous peoples’ participation in matters affecting them at the international legal and political level are numerous and reflected today in the UNDRIP. During negotiation of the Declaration, indigenous peoples argued strongly and successfully for recognition of their right to participate in decision-making that affects them including, as mentioned, in the negotiations themselves.

The overlapping justifications ranged from the essential, associated with indigenous peoples' sovereign and self-determining character, to the instrumental, including the realization of democratic principles, to the pragmatic, that better decision-making results from inclusive processes, especially the inclusion of the potential rights holders when drafting a rights-based instrument. Indigenous participation is also consistent with growing practice in international institutions as well as jurisprudence, which supported indigenous arguments of a right to participate in decision-making in the Declaration negotiations.² Many of the articles in the Declaration express indigenous peoples' rights to participate in decision-making that affects them. The most fundamental of those articles is the right to self-determination in article 3. Other relevant articles include 5, 19, 20, 32, 33 and 42, with articles 18 and 41 providing clear support for indigenous peoples' participation in the United Nations. Article 18 states that:

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

and article 41:

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

The issue

Despite states' acceptance of indigenous peoples' right to participate in decision-making and the duty to establish ways and means of ensuring their participation on issues affecting them, indigenous peoples do not enjoy participatory rights on a par with the right to self-determination within the United Nations. Indigenous peoples do not have participatory rights equivalent to, or specific processes to enable their participation similar to, non-governmental organizations (NGOs) in

institutions especially relevant and important to them such as the General Assembly, the Human Rights Council and the Economic and Social Council. Moreover, as the Secretary General has explained, it is difficult for indigenous peoples to qualify as NGOs given that they are often, in fact, quite the contrary, and governing in nature and also typically organize themselves differently as peoples, as compared to issue-focused organizations.³

Building momentum

In its two-year study in 2010 and 2011 on indigenous peoples and the right to participate in decision-making, the Expert Mechanism on the Rights of Indigenous Peoples took the first steps to initiate the current process, recommending that the United Nations “establish a permanent mechanism or system for consultations with indigenous peoples’ governance bodies, including indigenous parliaments, assemblies, councils or other bodies representing the indigenous peoples concerned, to ensure effective participation at all levels of the United Nations”.⁴

In response to the Expert Mechanism’s study, the Human Rights Council requested that the Secretary General prepare the abovementioned paper on “the ways and means of promoting participation at the United Nations of recognized indigenous peoples’ representatives on issues affecting them.”⁵ In its request, the Human Rights Council explicitly recognized that indigenous peoples are not always organized as NGOs. After reviewing the Secretary General’s report, the Human Rights Council requested the General Assembly consider the issue in 2012.⁶ Around this same period, in 2013, indigenous peoples were preparing for the UN World Conference on Indigenous Peoples, drafting what is known as the Alta Outcome Document. In it, indigenous peoples recommended:⁷

that the UN recognize Indigenous Peoples and Nations based on our original free existence, inherent sovereignty and the right of self-determination in international law. We call for, at a minimum, permanent observer status within the UN system enabling our direct participation through our own governments and parliaments. Our own governments include inter alia our traditional councils and authorities.

In the Outcome Document to the World Conference, states then committed themselves to considering, at the 70th session of the General Assembly, “ways to enable the participation of indigenous peoples’ representatives and institutions in meetings of relevant United Nations bodies on issues affecting them” and requested that the Secretary General report to the General Assembly with “specific proposals to enable the participation of indigenous peoples’ representatives and institutions”.

Like the 2012 Secretary General’s report on indigenous peoples’ participation, the 2015 Secretary General’s report notes the difficulties indigenous peoples face in participating in UN bodies of importance to them and their rights, including the Human Rights Council, and the inappropriateness of classifying indigenous peoples as NGOs.⁹ Authorizing the current processes, the General Assembly subsequently resolved in December 2015 to ask the President of the General Assembly to conduct consultations with states, indigenous peoples and relevant mechanisms, such as the Permanent Forum, the Expert Mechanism and the Special Rapporteur, in order to enable the participation of indigenous peoples in UN meetings on issues affecting them and to prepare a compilation of views to form the basis of a text to be considered by the General Assembly.⁹

The General Assembly process during its 70th session

In February 2016, with the support of many states and indigenous peoples, the President of the 70th session of the General Assembly appointed four advisors to assist him in conducting consultations and preparing the compilation: the permanent representatives to the United Nations from Finland and Ghana, and Professor James Anaya and Dr. Claire Charters. After consultations were launched in New York, the advisors conducted an electronic consultation, requesting written inputs from states and indigenous peoples between March and April 2016, followed by face-to-face consultations in May and June. After each consultation, the advisors published a draft of the compilation to reflect progress and assist in further discussions.

The July 2016 compilation

The final compilation, presented during the July 2016 annual meeting of the Expert Mechanism on the Rights of Indigenous Peoples, is organized around four

principal issues: the location for enhanced indigenous participation; the modalities of such participation; the method of identifying indigenous peoples' organizations; and the possible criteria to assist in determining whether an indigenous peoples' organization should be accredited.

The compilation gives an overview of the views expressed but in a way that indicates which views have greater support and which are more isolated. It also includes an annex setting out some of the elements that might be included in any resulting General Assembly resolution. The compilation records the overall consensus that indigenous peoples have the right to participate in the UN in matters affecting them, consistent with the right to self-determination. It also expresses the clear agreement that the process does not and should not undermine states' membership of the United Nations or their territorial integrity as reflected in the Declaration and the UN Charter.

There was considerable, but not uniform, support expressed for a separate category of participation in the United Nations for Indigenous peoples, including in the General Assembly. This was based upon an appreciation that the current procedures and practices, such as those applicable to ECOSOC-accredited NGOs, do not naturally or sufficiently accommodate the participation of indigenous peoples as indigenous peoples in UN bodies. A minority of states suggested that only a strengthening of existing participation in existing mechanisms was required. Others relatively tentatively suggested that the focus should first be on enhancing indigenous peoples' participation in the Human Rights Council and/or the Economic and Social Council.

There is some agreement within the context of the General Assembly that this should include speaking and seating rights although there was room for more consideration of the exact modalities for indigenous participation. Some expressed concern at the potential practical implications of enlarging the General Assembly to include indigenous peoples' representative organizations' observers although others noted that this should not form an obstacle to enhancing indigenous peoples' participation and could be addressed practically.

There was considerable support for a recommendation by the General Assembly that indigenous participation be enhanced in the Economic and Social Council and subsidiary and associated bodies, and in the Human Rights Council and all subsidiary and associated bodies. There was also the suggestion that indigenous participation in these bodies might be different and possibly greater when compared to modalities for participation in the General Assembly. There

was also considerable support for a recommendation by the General Assembly that indigenous participation be enhanced in UN programmes, funds and specialized agencies as well as in conferences to the parties to UN treaties. The advisors have noted, however, that in practice the General Assembly does not usually regulate procedure in other institutions.

Some states were concerned at difficulties in determining who is indigenous, motivated in part by a perception that the process might incorrectly accredit some groups as such. The view was consequently expressed that the clearer and stricter the rules and procedures to identify an indigenous peoples' organization, the more likely there would be agreement on enhanced levels of indigenous institutions' participation in the higher-level UN bodies such as the General Assembly.

Most proposals recommended establishing a new body to identify Indigenous peoples' organizations, including that the new body consist of both indigenous peoples' representatives and states or, alternatively, indigenous and state-appointed independent experts. Some also suggested that the Permanent Forum on Indigenous Issues might fulfil the role of identification body. A minority of states argued that the General Assembly's final approval was necessary before an indigenous peoples' organization could be selected or that the selection body should be made up of states. A number of contributors recommended that membership of the identification body should be balanced by geographic area – including equal membership of individuals from the global North and global South - and gender representation.

There was a coalescence of opinion around the fact that selection should focus on indigenous peoples' organizations that represent indigenous peoples, albeit with an appreciation that indigenous peoples organize themselves in a myriad of ways globally. There was considerable agreement that indigenous peoples' representative organizations need to be distinguished from NGOs, organizations composed of indigenous voluntary members or non-indigenous peoples' organizations. On the other hand, questions remained at that point as to whether, for example, indigenous women's organizations or organizations representing indigenous individuals who are not resident on indigenous territories should qualify for a new category of participation as indigenous peoples' representative institutions.

With respect to determining whether an institution is genuinely representative of an indigenous people or not, a few called for a definition of indigenous peoples' representative institutions. Others rejected the need for a definition, although the-

re was some agreement as to criteria that might be relevant, albeit flexibly applied. These would include self-identification, possibly as an essential factor, as well as, possibly, state recognition. However, there was some consensus that state recognition should not be the determining factor. Other factors cited as relevant include that the institution should represent peoples who have ancestral connections with their lands, territories and resources, who share history, language and culture, who exercise the collective rights of the people and who have the authority to practise indigenous peoples' self-government and, where relevant, who have entered into treaties, agreements or other constructive arrangements with states.

The General Assembly process during the 71st session

At the beginning of his tenure, in September 2016, the new President of the General Assembly reappointed the state and indigenous co-advisors to continue the consultations. These consultations are ongoing, with the first held in December 2016 and the remaining scheduled throughout January to May 2017. The objective is to narrow down points of divergence on issues of substance so as to facilitate the adoption of the resolution by the General Assembly during its 71st session, which ends in September 2017.

There is some divergence of opinion as to how the process should progress. Some, albeit a minority, would like the process to move quickly into an exclusively inter-governmental negotiation. Other states and indigenous peoples would like the consultation process to continue in the interests of seeking as much agreement as possible between states and indigenous peoples before the resolution is finalized in an exclusively inter-governmental process. It is usual practice within the General Assembly that resolution negotiations are exclusively inter-governmental. Nonetheless, there is a precedent, including in the negotiations on the World Conference Outcome Document, for indigenous peoples to be included for as long as possible in so-called informal consultations, with the inter-governmental process approving any agreement reached. Currently, indigenous-friendly states and indigenous peoples are seeking to find agreement during the consultations in the hope that the resolution negotiation and adoption phase will simply approve agreements reached between indigenous peoples and states.

December 2016 consultation

The December 2016 consultation clarified the issues on which there is considerable agreement and highlighted, and narrowed down, the issues on which further discussion is needed to secure the passage of any resulting resolution through the General Assembly. To assist progress, the President of the General Assembly's advisors updated the annex to the compilation, referred to as the "Elements for Discussion" document. While it is not formally a draft of a resolution, the advisors have attempted to confine the document to those issues that will be included in the resolution, incorporate those elements that have the greatest level of consensus or agreement and set out potential options on those issues on which there is not yet uniform agreement. At the time of writing, it is hoped that bilateral meetings and plenary consultations will assist in finding further consensus, in the interests of expediting General Assembly approval of a resolution enhancing indigenous peoples' participation in the United Nations.

December 2016 Elements Paper (the Elements Paper)

There are a number of statements in the introductory parts of the Elements Paper that seek to assuage states' concerns that enhanced indigenous peoples' participation might undermine states' territorial integrity or the fundamentally state-centric nature of the United Nations. It also cites indigenous peoples' right to self-determination.

The Elements Paper reflects that there appears to be agreement that the issue in this process is focused on indigenous peoples' participation in the General Assembly and that the General Assembly will only encourage the Human Rights Council and the Economic and Social Council to enhance indigenous peoples' participation. It implicitly reflects the autonomy of the other institutions while also encouraging improved participation of indigenous peoples in those institutions.

With respect to the forms of indigenous peoples' participation, the Elements Paper reflects the growing agreement that it should generally include opportunities to speak and to provide written contributions, albeit with the flexibility to enable adaptations to accommodate different meetings. It also seeks to guaran-

tee that there is adequate scope to ensure equity between indigenous peoples from different regions in terms of opportunities to participate.

The Elements Paper contains some options for the selection mechanism to identify eligible indigenous peoples' organizations, including a new body made up of seven each of indigenous and state representatives or appointed experts. Reflecting some calls for an all-state body, it also includes that option, as well as the option for a small body made up only of the chairs of the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the Voluntary Fund for Indigenous Peoples. Options for the selection process are also presented, including that it should be open and transparent and that the General Assembly should potentially have the right to approve the choices of indigenous peoples' organizations.

The selection criteria identified in the Elements Paper emphasize that the objective is to identify indigenous peoples' organizations that are genuinely representative of indigenous peoples, albeit, also, that some flexibility is required in how that might be assessed given the myriad of ways in which indigenous peoples organize around the globe. On the question of who is indigenous, self-identification is included as a potentially essential factor and state recognition is cited as a relevant but non-essential factor. Representativeness is to be illustrated and some relevant factors suggested include authority under indigenous law and custom and democratic election as a representative body.

Conclusion

The process to enhance indigenous peoples' participation in the United Nations draws on almost a century of indigenous peoples' efforts to ensure that the international legal and political system is responsive to their concerns. More recently, it builds upon states' recognition of indigenous peoples' rights, international institutional practice and international and domestic jurisprudence supporting indigenous peoples' right to participate in decision-making that affects them. It reflects indigenous peoples' right to self-determination. ○

Notes and references

- 1 GA Resolution 70/232 23 December 2015.
- 2 For a description of both practice and jurisprudence, see Claire Charters “A Self-Determination Approach to Justifying Indigenous Peoples’ Participation in International Law and Policy Making” (2010) 17(2) *Int’l J Minority and Group Rights* 215.
- 3 United Nations Secretary-General *Ways and means of promoting participation at the United Nations of indigenous peoples’ representatives on issues affecting them* (A/HRC/21/24)
- 4 Expert Mechanism on the Rights of Indigenous Peoples *Progress report on the study on Indigenous peoples and the right to participate in decision making* A/HRC/15/35 (2010) and *Final report of the Study on indigenous peoples and the right to participate in decision-making, Expert Mechanism on the Rights of Indigenous Peoples*, A/HRC/18/42 (2011), Advice para 36.
- 5 Human Rights Council resolution 18/8 (2011).
- 6 Human Rights Council resolution 21/24 (2012).
- 7 *Alta Outcome Document* from Indigenous Preparatory Conference to the World Conference on Indigenous Peoples (2013).
- 8 Secretary-General report *Progress made in the implementation of the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples* (A/70/84–E/2015/76).
- 9 GA Resolution 70/232 23 December 2015.

Claire Charters, *Ngati Whakaue, Ngati Tuwharetoa, Nga Puhi, Tainui*, Associate Professor, University of Auckland and advisor to the President of the United Nations General Assembly on enhancing Indigenous peoples’ participation at the United Nations.

UN SPECIAL RAPPORTEUR ON THE RIGHTS OF INDIGENOUS PEOPLES

The Special Rapporteur on the rights of indigenous peoples is one of the 57 “special procedures” of the UN Human Rights Council. The special procedures are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. The Special Rapporteur on the rights of indigenous peoples has a mandate to gather information and communications from all relevant sources on violations of the human rights of indigenous peoples; to formulate recommendations and proposals on measures and activities to prevent and remedy violations of the rights of indigenous peoples; and to work in coordination with other special procedures and subsidiary organs of the Human Rights Council, relevant UN bodies and regional human rights organizations.

In accordance with this mandate, the Special Rapporteur can receive and investigate complaints from indigenous individuals, groups or communities, undertake country visits and make recommendations to governments on the steps needed to remedy possible violations or to prevent future violations. The work of the Special Rapporteur has tended to concentrate on four principal areas: promotion of good practices; responding to specific cases of alleged human rights violations; country assessments; and thematic studies. The Special Rapporteur also works in collaboration with other UN mechanisms dealing with indigenous peoples.

The first Special Rapporteur, Mr. Rodolfo Stavenhagen, was appointed by the then Commission on Human Rights in 2001, serving two three-year periods which ended in 2008. The second Special Rapporteur, Professor James Anaya, was appointed by the Human Rights Council in 2008, and 2014 marked the final year of his mandate as Special Rapporteur. Ms Victoria Tauli-Corpuz from the Philippines was appointed the new Special Rapporteur by the Human Rights Council and she assumed her position in June 2014. She is the first woman and the first person from the Asia region to assume the position.

The Special Rapporteur has established a website where, in addition to the mandate page of OHCHR, her reports, statements and other activities can be accessed.¹

The Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, continued to carry out work within her four principal work areas. These are the promotion of good practices; responding to specific cases of alleged human rights violations; country assessments; and thematic studies.

Thematic studies

Each year, the Special Rapporteur presents two thematic reports, one to the UN Human Rights Council (HRC) and one to the General Assembly (GA). The thematic report to the HRC in 2016 was a continuation of her analysis of the impacts of international investment agreements, bilateral investment treaties and investment chapters of free trade agreements on the rights of indigenous peoples, while her report to the GA focused on the issue of environmental conservation measures and indigenous peoples' rights.

Ms Tauli-Corpuz submitted her thematic report to the HRC in September 2016.² To inform the report, the Special Rapporteur organized a series of regional and multi-stakeholder dialogues, held in New York, Lima, Bangkok and Tanzania, throughout 2016. The report provides detailed conclusions and recommendations regarding investment law and practice to ensure they are coherent with human rights obligations, including the rights of indigenous peoples. The Special Rapporteur intends to devote a final report on this issue to investments related to climate change activities, which she will submit to the HRC in 2017.

In October 2016, the Special Rapporteur presented her report to the Third Committee of the GA on its seventy-first session.³ The thematic section of the report was dedicated to the issue of the impact of environmental conservation activities on the rights of indigenous peoples. The Special Rapporteur summarized past experiences of conservation initiatives, including the establishment of protected areas, without adequate respect for indigenous peoples' rights and its

negative consequences. She argued that sustainable use and environmental conservation would only succeed when indigenous peoples' lands and resources rights, and their rights to full and effective participation, are guaranteed. The report concluded that, in spite of some progress, there is still a long way to go to ensure a human-rights based conservation which protects and respects the rights of indigenous peoples, and provided some recommendations in this direction. For the elaboration of the report, the Special Rapporteur distributed questionnaires to indigenous peoples and conservation organizations, and organized consultation meetings with them in New York during the session of the UNPFII.

Country visits

The Special Rapporteur submitted three country visit reports to the 32nd session of the HRC. Two of these visits had taken place in 2015, including the follow-up visit to assess the situation of the Sámi People in the Sápmi region of Norway, Sweden and Finland, and the mission to Honduras (see *Indigenous World 2016*).

In 2016, the Special Rapporteur conducted a visit to Brazil from 7 to 17 March 2016.⁴ The main objective of the visit was to identify and assess the main current issues affecting indigenous peoples in the country and to follow up on the recommendations of the 2009 country visit by her predecessor, James Anaya. In her report, the Special Rapporteur expressed her concern at the fact that, in the eight years following the visit of her predecessor, there had been insufficient progress in the resolution of long-standing issues of key concern to indigenous peoples, including recognition of their rights to their lands and territories. She also noted the convergence of worrying developments further endangering the rights of indigenous peoples in the present context. The report analysed the emblematic cases of the Belo Monte and Tapajós dam projects and made observations and recommendations regarding violence and discrimination, the duty to consult, land demarcation, access to justice and the recent developments in the country, among other issues. Some of the recommendations in her report have been implemented by the government since her visit, such as the suspension of the Tapajós dam project and the ratification of the demarcated land of the Cachoiera Seca.

The Special Rapporteur has also had the opportunity of meeting with government authorities, indigenous peoples and civil society organizations when visiting countries upon the invitation of different institutions to participate in seminars and

conferences. In February 2016, she was thus invited as a panellist to an *International Meeting on investigation techniques on indigenous issues* by invitation of the Office of the Attorney General of the Republic of Colombia. She presented her views on the need to increase dialogue and cooperation in order to advance in the harmonization of indigenous jurisdiction and the ordinary justice system with intercultural respect.⁵ She also took the opportunity to meet with some governmental institutions, the UN system in Colombia and indigenous peoples' representatives during her stay in the country, during which she received the support of the OHCHR in Colombia. She also met with the diplomatic community to exchange views about the last stages of the ongoing negotiation of the peace agreements and how indigenous peoples' rights were to be fully incorporated, an issue she was also able to discuss with members of the Office of the High Commissioner for Peace.

The Special Rapporteur has received official invitations to visit the USA, Australia, Cameroon, Guatemala, Mexico and Chile. Some of these country visits will take place during 2017. The Special Rapporteur is making special efforts to receive invitations to conduct country visits in the regions of Africa and Asia.

Communications

The Special Rapporteur continued to examine cases of alleged violations of the human rights of indigenous peoples and addressed the concerned countries through the communications procedure, either independently or jointly with other special procedures. Cases addressed are included in the special procedures' joint communications report, which is submitted to each HRC session.⁶

During 2016, the Special Rapporteur also issued over 20 press releases on topics such as: violence and discrimination against indigenous women in Canada; the sentencing of two ex-military officials in the Sapur Zarco case in Guatemala; the human rights impacts of lead contamination in the water supply in Flint, USA; the murder of Berta Cáceres and a call to end impunity in Honduras; the attacks against the Guarani Kiowa in Mato Grosso, Brazil; the court suspension of the agreement between the Government of Brazil and Samarco Mineração SA regarding the mining accident in Mariana, Minas Gerais; the abolition of the amnesty law in El Salvador; the need for prior consultation regarding construction of the Dakota Access Pipeline in the US; the call for an international commission to

help investigate systematic violence against protesters in Ethiopia; and concerns over the clampdown against human rights organizations in Ecuador.

The Special Rapporteur also delivered public messages, such as on the occasion of the celebration of UN Indigenous Peoples' Day, focusing on education, and on the occasion of World Environment Day, emphasizing the need to protect environmental human rights defenders, together with the Special Rapporteur on human rights and the environment, John Knox.

Collaboration with other specialized UN bodies and regional HR bodies

In line with her mandate, the Special Rapporteur collaborated with the UN Permanent Forum on Indigenous Peoples (UNPFII) and the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) over this period and participated in the annual sessions and coordination meetings of both bodies. At the session of the UNPFII, she took part in the annual interactive dialogue on the human rights of indigenous peoples, and addressed the panel discussion on conflict and peace negotiations and indigenous peoples.⁷ During the sessions of both bodies, the Special Rapporteur pursued the established practice of holding meetings with indigenous representatives and with interested governments attending the sessions in order to discuss issues within the scope of her mandate.

The Special Rapporteur considers it important to strengthen the collaboration and coordination with regional human rights bodies. She participated in joint meetings with the Special Rapporteur on indigenous peoples of the Inter-American Commission on Human Rights, Francisco José Eguiguren, including the regional seminar on investments held in Lima in April and the *International Colloquium on free, prior and informed consultation: international and regional standards and experiences*, held in Mexico City in November 2016.⁸ She also delivered a public joint statement with the Inter-American Commission on UN Indigenous Peoples' Day focused on their rights to effective participation and to self-determined development.

The Special Rapporteur was also engaged by the Asian Intergovernmental Commission on Human Rights (AICHR) in some of their discussions. She was invited by the African Commission on Human and Peoples' Rights to take part in the meeting held in December in Yaoundé, Cameroon to present her views on the

implementation of the Outcome Document of the 2014 UN World Conference on Indigenous Peoples.⁹

Other activities

The resolution establishing the mandate of the Special Rapporteur¹⁰ requests her to consider relevant recommendations from the world conferences and other UN meetings. In order to promote best practices and the implementation of UNDRIP, the Special Rapporteur has attended several international meetings on climate change and biological diversity. She thus participated in the COP 21 of the United Nations Framework Convention on Climate Change (UNFCCC) in Marrakech, Morocco, in November, and the COP13 of the Convention on Biological Diversity (CBD) in December 2016, in Cancún, Mexico. She also delivered the keynote address¹¹ at a panel during the 29th session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore in February 2016 in Geneva.

With a view to promoting good practices, and together with the other specialized UN bodies and other experts, she participated in a *high-level dialogue on the World Bank draft environmental and social standard on indigenous peoples and the requirement to obtain their free, prior and informed consent*, held in Addis Ababa in February 2016. The specialized bodies subsequently wrote a letter to the World Bank to express their concern at the weakening of safeguards. The Special Rapporteur has maintained an ongoing dialogue and meetings on this issue with the World Bank and other interested parties.

The Special Rapporteur is also mandated to pay attention to the rights of indigenous women in her work. In this sense, in January 2016 she was invited to the symposium *Planning for Change: Towards a National Inquiry and An Effective National Action Plan*, organized by the Canadian Feminist Alliance for International Action and the Native Women's Association of Canada on missing and murdered indigenous women in order to discuss the National Enquiry into the issue which the Government of Canada had launched in December 2015. In her intervention, she provided advice on how to develop an effective mechanism for the Enquiry. She also had the opportunity to meet the Ministers of Justice, Indian Affairs and Social Welfare, the three bodies in charge of its implementation.

She was also a panellist in the seminar *Experiences in Litigation of Cases of Violence against Women and Women's Access to Justice in Central America* organized by Canadian Lawyers without Borders and Women Transforming the World Association in Guatemala. In her intervention, the Special Rapporteur provided observations on strengthening indigenous women's access to justice and protection against violence; on the need to understand the cultural and collective dimensions of the violations of the rights of indigenous women; on the racialized, gendered and sexualized violence against them, and provided some recommendations on the reparations and reforms needed to address violence against indigenous women. During her stay in the country, she met with the General Prosecutor, Ms Thelma Aldama, and had the opportunity to attend the court proceedings of the Sepur Zarco case and meet with the victims. As mentioned, the Special Rapporteur issued a public statement when the decision condemning the military officials accused in the case of crimes against humanity was adopted.¹² The Special Rapporteur also received information about the general situation of the rights of indigenous peoples in the country in meetings organized by the OHCHR in Guatemala.

The Special Rapporteur also attended a seminar with members of the Committee on Persons with Disabilities to discuss the specific needs of indigenous persons with disabilities, and was a speaker in a Roundtable on the promotion and protection of the rights of indigenous persons with disabilities organized by the EMRIP in July.¹³

With a view to increasing the outreach and dissemination of her reports to all interested parties, the Special Rapporteur participated in the IUCN World Conservation Congress held in Hawaii in September. There, she was invited to participate in several panels and meetings to present her report on the issue and discuss its recommendations. The IUCN Congress adopted several resolutions in line with such recommendations.¹⁴

The Special Rapporteur is also concerned about the situation of indigenous peoples in isolation and initial contact. She held several meetings with government authorities and indigenous organizations on this issue in Lima, during her mission to Brazil, and in New York and Geneva. She delivered a keynote video-recorded speech on this issue and the *UN Guidelines on isolated indigenous peoples and peoples in initial contact* at the *I Congress on isolated indigenous peoples in Ecuador* organized by several universities in the country in Novem-

ber.¹⁵ The Special Rapporteur intends to continue working on this issue during 2017.

The implementation of the State duty to consult and obtain the free, prior and informed consent of indigenous peoples before the adoption of measures that affect them is a principal concern of the Special Rapporteur and, in 2016, she participated in several seminars and meetings on this issue, and provided comments on different legal and administrative measures to this effect. The Special Rapporteur will continue engaging with all parties to support better operationalization of this State duty. ○

Notes and references

- 1 See <http://unsr.vtaulicorpuz.org/site/>
- 2 A/HRC/33/42 Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, 11 August 2016. The Special Rapporteur also submitted the report on her missions to Brazil (A/HRC/33/42/Add.1), Honduras (A/HRC/33/42/Add.2), and Sápmi (A/HRC/33/42/Add.3) to the Council.
- 3 A/70/301 Rights of indigenous peoples, 7 August 2015.
- 4 End-of-mission statement at <http://unsr.vtaulicorpuz.org/site/index.php/es/declaraciones-comunicados/123-end-mision-brazil>, Report: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/42/Add.1
- 5 <http://unsr.vtaulicorpuz.org/site/index.php/es/declaraciones-comunicados/116-indigenous-jurisdiction>
- 6 <http://unsr.vtaulicorpuz.org/site/index.php/en/casesexamined>
- 7 On this issue, the Special Rapporteur gave a keynote speech at an international seminar on Indigenous Peoples' Rights and Unreported Struggles: Conflict and Peace, organized by the Columbia University, New York in May. See <http://unsr.vtaulicorpuz.org/site/index.php/en/statements/134-conflict-peace-indigenous-rights>
- 8 <http://unsr.vtaulicorpuz.org/site/index.php/es/declaraciones-comunicados/166-consultation-and-consent>
- 9 Declaration of the meeting at <http://www.achpr.org/news/2015/12/d205>; Final report: http://www.achpr.org/files/news/2016/12/d268/report_of_the_regional_workshop_cameroon_eng.pdf
- 10 The mandate was extended by the HRC this year through resolution 33/23, <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G16/211/75/PDF/G1621175.pdf?OpenElement>
- 11 <http://unsr.vtaulicorpuz.org/site/index.php/es/declaraciones-comunicados/112-intellectual-property-wipo2016>
- 12 See <http://unsr.vtaulicorpuz.org/site/index.php/en/statements/118-welcomed-sepurzarco>
- 13 See <http://unsr.vtaulicorpuz.org/site/index.php/en/statements/140-emrip-2016>
- 14 See <http://www.iucnworldconservationcongress.org/es>
- 15 See <http://www.uasb.edu.ec/web/guest/contenido?i-congreso-sobre-pueblos-indigenas-aislados-en-la-amazonia-ecuatoriana-situacion-y-problematika>

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UN PERMANENT FORUM ON INDIGENOUS ISSUES

The United Nations Permanent Forum on Indigenous Issues (Permanent Forum) is an expert body of the United Nations Economic and Social Council (ECOSOC) with the mandate to provide expert advice on indigenous issues to the Council and the UN programmes, funds and agencies, raise awareness on indigenous peoples' issues and promote the integration and coordination of activities relating to indigenous peoples' issues within the UN system.

Established in 2000, the Permanent Forum is composed of 16 independent experts who serve for a term of three years, functioning in their personal capacity. They may be re-elected or re-appointed for one additional term. Eight of the members are nominated by governments and elected by the ECOSOC, based on the five regional groupings used by the UN, while eight are nominated directly by indigenous peoples' organizations and appointed by the ECOSOC President representing the seven socio-cultural regions that broadly represent the world's indigenous peoples, with one seat rotating among Asia, Africa, and Central and South America and the Caribbean. The Permanent Forum has a mandate to discuss indigenous peoples' issues relating to the following thematic areas; culture, economic and social development, education, environment, health and human rights. Furthermore, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) mandates the Permanent Forum to promote respect for and full application of the UNDRIP and to follow up on the effectiveness of this Declaration.

The Permanent Forum meets for a two-week session each year. The session provides an opportunity for indigenous peoples from around the world to have direct dialogue with members of the Forum, Member States, the UN system including human rights and other expert bodies, as well as academics and NGOs. The Permanent Forum prepares a report of the session containing recommendations and draft decisions that are submitted to the ECOSOC.

International expert group meeting on indigenous languages

At its 14th session in April-May 2015, the Permanent Forum recommended a three-day international expert group meeting on the theme “Indigenous languages: preservation and revitalization (articles 13, 14 and 16 of the United Nations Declaration on the Rights of Indigenous Peoples)”. The meeting was approved by the Economic and Social Council and organized at UN Headquarters in New York from 19 to 21 January 2016 by the UN Department of Economic and Social Affairs. This was the second international expert group meeting on indigenous languages and it built upon the findings and recommendations of the first meeting in 2008, which had underscored the principles of cultural diversity and indigenous languages as a way of promoting intercultural dialogue and affirming indigenous peoples’ identity.

It is estimated that there are between 6,000 to 7,000 oral languages in the world today but that one dies every two weeks. Many of these languages are indigenous languages. Since its inception, the Permanent Forum on Indigenous Issues has expressed concern for threatened indigenous languages and has advocated an urgent response to address this critical situation.

The expert group meeting was organized around the following themes: 1) the context and characteristics of indigenous languages; 2) initiatives and strategies undertaken for, with and by indigenous peoples to recover, use, revitalize and disseminate indigenous languages; 3) lessons learned from State educational systems to strengthen or accommodate indigenous languages; and 4) suggestions for what can be done to support the survival, revitalization, use and promotion of indigenous languages.

During the meeting, indigenous peoples demonstrated various initiatives to strengthen, revitalize, and save indigenous languages such as language nests, immersion programmes, advocacy for mother-tongue education, support for interpretation in legal proceedings and creative social media initiatives to raise the profile of indigenous languages. The meeting highlighted the important role of indigenous women as the primary transmitters of indigenous languages to future generations and emphasized the use and management of information and communication technologies by indigenous peoples to support and promote indigenous languages, distinct identities and traditional knowledge. The meeting called upon Member States to proclaim an international day and a United Nations dec-

ade for indigenous languages in order to raise awareness of the urgent need to keep those languages vibrant and alive. The meeting also called upon States to implement the United Nations Declaration on the Rights of Indigenous Peoples, in particular the right to revitalize, use, develop and transmit to future generations the languages, histories, philosophies, cultures and oral traditions of indigenous peoples. Experts from the seven indigenous socio-cultural regions made presentations during the meeting, and the report from the meeting was presented to the 15th session of the Permanent Forum.

Pre-sessional meeting (Guatemala)

At the invitation of the Government of Guatemala, the expert members of the Permanent Forum met from 11 to 15 February 2016 in Guatemala City for their pre-sessional meeting. At this meeting, the Permanent Forum made preparations for its 15th session and also met with representatives from indigenous peoples' organizations, the government and the UN system to discuss advances and remaining barriers for the achievements of indigenous peoples' rights in the context of Guatemala.

15th session of the Permanent Forum on Indigenous Issues

The Permanent Forum held its 15th session from 9 to 20 May 2015 at the UN Headquarters in New York. The Forum heard statements from indigenous peoples, UN Member States, UN agencies and other stakeholders. The discussions covered the main theme of "Indigenous peoples: conflict, peace and resolution" as well as other pertinent topics for indigenous peoples, including their participation in the implementation of the 2030 Agenda and the upcoming ten-year anniversary of the adoption of the UN Declaration on the Rights of Indigenous Peoples in 2017. The discussions also related to the follow-up on the commitments made during the World Conference on Indigenous Peoples in 2014, including next steps for implementation of the UN Declaration at national level - and the implementation of the United Nations system-wide action plan on the rights of indigenous peoples. The Permanent Forum also considered how to ensure indigenous peoples' rights and priorities in the framework of the 2030 Agenda, includ-

ing ensuring indigenous peoples' participation in follow-up and review and developing key indicators to measure progress for indigenous peoples in reaching the Sustainable Development Goals. The Permanent Forum furthermore initiated some changes in their working methods and programme of work at the session, including conducting closed meetings with Member States, UN agencies and indigenous peoples' organizations.

More than 1,000 indigenous peoples' representatives attended the session as well as representatives from States, the UN system, National Human Rights Institutions and other stakeholders. Over 70 side events were organized during the annual session on a wide range of topics. Throughout the session, participants took the floor to make statements on their issues of concern. The report of the 15th session of the Permanent Forum was presented to the Economic and Social Council in July 2016 and its draft decisions were adopted by the Council. Several of the Permanent Forum's recommendations from the 15th session have been taken forward. The 2016 General Assembly Resolution on the Rights of Indigenous Peoples (A/RES/71/178), for example, includes the decision to proclaim 2019 the International Year of Indigenous Languages, which follows on from the discussions of the expert group meeting on indigenous languages in January 2016, and the dedicated recommendations of the Permanent Forum in the 15th session report.

Indigenous women and the Commission on the Status of Women

The Permanent Forum has adopted more than 150 recommendations that are specifically related to indigenous women. These recommendations address a wide range of issues, including education, culture, health, human rights, environment and development, conflict and political participation, with several related to the Commission on the Status of Women. In follow-up to paragraph 19ⁱ of the Outcome Document of the 2014 World Conference on Indigenous Peoples (A/RES/69/2), the Permanent Forum, at its 14th session (2015) recommended that "empowerment of indigenous women" should be considered by the CSW in 2017, on the occasion of the 10th anniversary of the adoption of the United Nations Declaration (paragraph 43 in E/2015/43). In 2016, the CSW adopted a resolution on a multiyear programme of work 2017-2019, which includes the empowerment of indigenous women as a focus area in the 61st CSW (2017). Furthermore, the

agreed conclusions of the 60th Commission on the Status of Women include a paragraph on the contribution of indigenous women to sustainable development and the need for policies to prevent violence and further their leadership. The 61st session of the Commission on the Status of Women will take place from 13 to 24 March and will discuss “Empowerment of Indigenous Women” as a focus area/emerging theme under a high-level interactive dialogue on 15 March 2017.

Indigenous peoples and the 2030 Agenda

2016 was the first year of implementation of the 2030 Agenda for Sustainable Development, which has thus been a major priority for the Permanent Forum throughout the year. In its capacity as an expert body to the Economic and Social Council, the Permanent Forum plays a key role in raising awareness and providing expert advice on how to ensure the rights and priorities of indigenous peoples in the framework of the 2030 Agenda. In its report on the 15th session in 2016, the Permanent Forum highlighted three main priorities for indigenous peoples in the implementation of the 2030 Agenda: a) data disaggregation according to indigenous or ethnic identifiers; b) participation of indigenous peoples in developing national action plans; and c) participation of indigenous peoples in follow-up and review at all levels. Several of these issues have been taken up in the General Assembly Resolution on the Rights of Indigenous Peoples, adopted in December 2016 (A/RES/71/178). The Permanent Forum also issued a report with substantive inputs to the thematic discussions of the High-Level Political Forum on Sustainable Development, the main UN platform for overseeing follow-up and review to the 2030 Agenda. The substantive inputs in particular highlighted the need for disaggregated data, participation of indigenous peoples in developing and reviewing national action plans as well as full respect for and promotion of indigenous peoples’ rights as reflected in the United Nations Declaration on the Rights of Indigenous Peoples.² Experts from the Permanent Forum were also present at the High-Level Political Forum, which took place from 11-20 July 2016. The UNPFII Chair, Alvaro Pop Ac, was invited to give a statement as lead discussant on the panel “Ensuring that no one is left behind – envisioning an inclusive world in 2030” on the opening day of the High-Level Political Forum. Further, a side event and various media outreach, including a press conference, took place during the HLPF.

System-wide action plan on the rights of indigenous peoples

The Permanent Forum plays a central role in providing guidance and inputs to the implementation of the UN system-wide action plan on the rights of indigenous peoples. The system-wide action plan was requested by the General Assembly in the Outcome Document of the World Conference on Indigenous Peoples in 2014. The plan was developed over 10 months by the United Nations Inter Agency Support Group on Indigenous Issues (IASG), under the leadership of the Under-Secretary-General for Economic and Social Affairs. It is based on inputs and consultations with indigenous peoples' organizations, governments, UN agencies and other stakeholders. The system-wide action plan was officially launched by the UN Secretary-General, Ban Ki-moon, at the 15th session of the UNPFII on 9 May 2016. The SWAP has six action areas:

1. Raise awareness of the Declaration on the Rights of Indigenous Peoples and indigenous issues;
2. Support the implementation of the Declaration, particularly at the country level;
3. Support the attainment of indigenous peoples' rights in the implementation and review of the 2030 Agenda for Sustainable Development;
4. Map existing policies, standards, guidelines, activities, resources and capacities within the United Nations and the multilateral system to identify opportunities and gaps;
5. Develop the capacities of States, indigenous peoples, civil society and UN personnel at all levels; and
6. Support the participation of indigenous peoples in processes that affect them.

The annual sessions of the Permanent Forum provide an ideal venue for UN system bodies to report to indigenous peoples and Member States on the implementation of the system-wide action plan.

Awareness raising on the rights of indigenous peoples

In line with its mandate, the Permanent Forum continued to raise awareness and prepare and disseminate information on indigenous issues in 2016. Lack of awareness about indigenous peoples and their rights has repeatedly been identified as a major challenge in ensuring indigenous peoples' full access to their rights. To draw attention to the situation of indigenous peoples across the world, in 2016 the UN Permanent Forum engaged in outreach initiatives through public speeches, statements at conferences and meetings, and media engagements relevant to the Forum's mandate, including among others: on the International Day of the World's Indigenous Peoples (9 August); the anniversary of the adoption of the UN Declaration (13 September); and related to current issues. The Permanent Forum or the Chair on behalf of the Forum issued frequent press releases in 2016; press conferences were regularly hosted at the United Nations Headquarters with expert members of the UN Permanent Forum;³ in-depth interviews with expert members were produced and disseminated through the UN Radio⁴ and information was disseminated through social media (#WeAreIndigenous, @UN4Indigenous) and the Facebook Page of the United Nations Permanent Forum on Indigenous Issues.

These are in addition to the numerous activities carried out by individual members of the Permanent Forum, especially at the regional and national levels. ○

Notes and references

- 1 "We also invite the Commission on the Status of Women to consider the issue of the empowerment of indigenous women at a future session." (paragraph 19, A/RES/69/2)
- 2 The inputs were included and are available in the online review platform with inputs for the HLPF, www.sustainabledevelopment.un.org.
- 3 See www.unwebtv.un.org
- 4 For a list of UN radio interviews with indigenous peoples, please see here: <https://www.un.org/development/desa/indigenouspeoples/news/un-radio-interviews.html>

The Secretariat of the Permanent Forum has contributed this article.

UN EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) was established in 2007 by Human Rights Council Resolution 6/36. Also in 2007, the General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which took over 20 years of negotiations, mostly between Member States and indigenous peoples' representatives.

EMRIP is rightly considered as a successor body to the Working Group on Indigenous Populations, established in 1982¹ and whose work focused on the elaboration of a draft Declaration on the Rights of Indigenous Peoples.

EMRIP was also expected to bring additional capacity to the United Nations and fill any gaps in the monitoring and support of the implementation of the UNDRIP. To that end, EMRIP's first session in 2008 served, among other things, to clarify the complementarity of its mandate with that of other UN mechanisms on indigenous peoples, notably the Special Rapporteur on the rights of indigenous peoples. Through its thematic studies on specific rights enshrined in the UNDRIP, EMRIP was expected to "contribute in a practical way to a better understanding of the relevant articles of the Declaration"² by providing extensive knowledge on the scope, weight and developing nature of each right guaranteed in the Declaration, including through identifying good practices, challenges and obstacles related to full enjoyment of those rights.³

Work of the EMRIP

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) is one of the subsidiary bodies of the Human Rights Council (HRC),⁴ the Geneva-based inter-governmental body of 47 Member States established by the UN General Assembly in 2006 as a substitute for the former United Nations Commission

on Human Rights and entrusted with the primary responsibility of promoting and protecting all human rights around the globe. The HRC has other various procedures and mechanisms as its means of action, including special procedures, an Advisory Committee and the Universal Periodic Review (UPR) process.

EMRIP is a body of seven independent experts whose selection by the Human Rights Council is based on their technical expertise in indigenous peoples' issues, taking into consideration gender representation and geographical balance. Its mandate is to provide the Human Rights Council with technical advice on indigenous peoples' rights, mostly through research and studies, which are always followed by an Advice. It has been argued that "the creation of the EMRIP may be considered as the principal means by which the Human Rights Council obtains proposals for implementing the Declaration".⁵

To date, the EMRIP has generated 10 thematic studies on the specific rights of indigenous peoples as enshrined in the Declaration, focusing on: (1) education; (2) the right to participate in decision-making; (3) participation in decision-making with a focus on extractive industries; (4) the languages, cultures and identity of indigenous peoples; (5 and 6) access to justice; (7) the rights of indigenous peoples in disaster risk reduction, prevention and preparedness initiatives; (8) cultural heritage; and (9) health.

Most of these studies are developed with the active participation and contribution of indigenous peoples, including through open written contributions, case studies and expert workshops that bring together dozens of experts, practitioners, indigenous peoples' representatives and EMRIP academic friends.⁶ The report writing methodology takes into account: (1) the regional distribution of cases and human rights situations; and (2) evolving good practices that could be emulated by other policy makers or indigenous communities. Each EMRIP report includes a corresponding "Advice" to Member States, indigenous peoples and other key stakeholders such as the United Nations and national human rights institutions. This "Advice" is framed as action-oriented policy guidance aimed at enabling various actors to transpose the concerned rights guaranteed in the Declaration into the domestic sphere and thereby contribute to the enhanced enjoyment of all rights by indigenous peoples in their respective national contexts.⁷

It is widely agreed, including by the UN General Assembly through the Outcome Document of the World Conference on Indigenous Peoples, that EMRIP will provide important assistance to Member States "to monitor, evaluate and improve the achievement of the ends of the Declaration". To this end, EMRIP's studies and

advice are considered as playing “a key role in providing guidance as to how State and corporate actors are to realize their duties and responsibilities in relation to indigenous peoples’ rights”.⁸

There are, however, considerable gaps in terms of implementation or follow-up to EMRIP’s studies and advice and their usefulness and influence in domestic policy-making processes, which affect the daily living conditions of indigenous peoples across the globe, is therefore questioned by some.⁹

In recent years, EMRIP has used its mandate in a dynamic way. It has, for instance, been holding panel discussions on key issues relating to the human rights situations of indigenous peoples, including on violence against indigenous women and girls, the situation of indigenous persons with disabilities, the impact of extractive industries and the Sustainable Development Agenda. It seems that, for most indigenous peoples, the interactive plenary sessions of EMRIP, which take place in the Human Rights Council chamber, are opportunities to: (1) voice their specific concerns; (2) engage in dialogue with Member States; and (3) bring to the attention of the Human Rights Council and Member States the particular human rights plights of certain sections of indigenous communities, such as indigenous persons with disabilities, youth and women.

EMRIP has also become more proactive in its engagement with specialised UN agencies, seizing opportunities as they arise. It has, for instance, started taking part in the Inter Agency Support Group (IASG), initially established to work with the UNPFII, including for the implementation of a System-wide Action Plan developed by the UN agencies in implementation of the Outcome Document.¹⁰ EMRIP is also in dialogue with UNESCO on its work on indigenous peoples, including the “Building of a New International Mechanism for Repatriation of Indigenous Peoples’ Cultural Heritage”.

EMRIP’s new mandate

The review of EMRIP’s mandate was grounded in the Outcome Document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples (General Assembly resolution 69/2), whose operative paragraph 28 called upon the Human Rights Council “to review the mandates of its existing mechanisms, in particular the Expert Mechanism on the Rights of Indigenous Peoples, with a view to modifying and improving the Expert Mecha-

nism so that it can more effectively promote respect for the United Nations Declaration on the Rights of Indigenous Peoples, including by better assisting Member States to monitor, evaluate and improve the achievement of the ends of the Declaration.”

The review process of EMRIP’s mandate has taken over a year, engaging multiple stakeholders in a participatory manner. Indigenous peoples held a number of expert meetings on the implementation of OP 28 of the Outcome Document, including in New York, the University of Arizona and Geneva. A multi-stakeholder expert workshop was then organised by OHCHR in April 2016, at which numerous options for and elements of a new mandate were discussed. Furthermore, 15 Member States and almost 20 indigenous peoples’ organisations made written submissions to the process.¹¹

Numerous direct consultation meetings were also held between indigenous peoples and Member States on a draft resolution for the review of EMRIP’s mandate, organised by Guatemala and Mexico in their capacity as main co-sponsors of this initiative at the Human Rights Council.

Major points of convergence that emerged from this consultation process included: keeping EMRIP as a subsidiary body of the Human Rights Council, country-level engagement, and enhanced operational capacity. To this end, EMRIP’s enhanced mandate, as per Resolution No. 33/25, is quite extensive, including the five following major new elements:

First, the number of experts has been increased from five to seven, “one from each of the seven indigenous socio-cultural regions.”¹² Previously, EMRIP was a body of five members representing the United Nations’ five regional groupings: Eastern Europe, Africa, Asia, Latin America and the Caribbean, and Western Europe and Others. This shift aligns EMRIP’s regional composition with that of the United Nations Permanent Forum on Indigenous Issues (UNPFII).

Second, in addition to its traditional annual thematic study, coupled with an Advice, EMRIP will from now on also produce a regular report on the overall human rights situations of indigenous peoples, distilling major trends, good practices and lessons learned “... regarding the efforts to achieve the ends of the Declaration ...”. The Expert Mechanism seeks not to duplicate existing annual global publications on indigenous peoples but to fill knowledge gaps and thereby contribute to Member States’ policy choices on indigenous peoples’ issues. The Mechanism is

expected to consult widely on the best way to implement this aspect of its new mandate.

Third, EMRIP has, for the first time in its mandate, a window for country-level engagement. Previously, EMRIP's mandate had been criticised for being Geneva-centred with little of its reports, advice or recommendations trickling down to the country level where they matter the most. One of the ways in which EMRIP's engagement at country level will be achieved is through enhanced collaboration with key actors such as National Human Rights Institutions (NHRIs), which are explicitly mentioned in Resolution No. 33/25. There are several provisions in the new mandate Resolution on EMRIP country-level engagement, including:

"2(c) Upon request, assist Member States and/or indigenous peoples in identifying the need for and providing technical advice regarding the development of domestic legislation and policies relating to the rights of indigenous peoples, as relevant, which may include establishing contacts with other United Nations agencies, funds and programmes;

2(d) Provide Member States, upon their request, with assistance and advice for the implementation of recommendations made at the universal periodic review and by treaty bodies, special procedures or other relevant mechanisms;

2(e) Upon the request of Member States, indigenous peoples and/or the private sector, engage and assist them by facilitating dialogue, when agreeable to all parties, in order to achieve the ends of the Declaration..."

Fourth, the new mandate also enables EMRIP to freely choose the theme of its annual reports. The Human Rights Council had previously determined EMRIP's annual thematic studies, through Resolutions negotiated among Member States. The EMRIP could make study theme suggestions, in consultation with indigenous peoples' representatives, but the Human Rights Council did not always follow these. A number of key relevant themes suggested by indigenous peoples have thus never been studied.

Fifth, under its new mandate, EMRIP is also provided with more resources, including for technical support, intersessional activities, to ensure the accessibility of its meetings to persons with disabilities and for closer collaboration with other UN mechanisms of indigenous peoples, notably the UNPFII, the SR and the Voluntary Fund.

Conclusion

As the world gears up for the 10th anniversary of the UNDRIP, the review of EMRIP seems not only timely but also of critical importance. The reinforcement of EMRIP's operational capacities and the extension of its mandate to country-level work have the potential to fill gaps that were continuing to hinder the full implementation of the Declaration which, in many national contexts, is yet to be fully understood, owned and translated into policies and development programmes that provide for indigenous peoples' rights.

However, having EMRIP's new and strong mandate is not enough by itself. This mandate will now have to be implemented, interpreted and operationalised, taking into account emerging opportunities, diverse national and regional contexts and resilient challenges such as a lack of capacity, strong competing interests and shifting or dynamic global agendas. EMRIP will therefore have to devise appropriate methods of work, in consultation with indigenous peoples. ○

Notes and references

- 1 Working Group on Indigenous Populations 1982-2006
- 2 Julian Burger, Making the Declaration Work for Human Rights in the UN system, in 2009, C. Charters and R. Stavenhagen, *Making the Declaration work: The United Nations Declaration on the Rights of Indigenous Peoples*, IWGIA Document No.127, Copenhagen, p.306
- 3 IWGIA's video on the mandate of EMRIP and its contribution to advancing the rights of indigenous peoples (2009): http://www.iwgia.org/publications/search-pubs?publication_id=7
- 4 For a full listing of the Council's subsidiary bodies, please visit: <http://www.ohchr.org/EN/HRBodies/HRC/Pages/OtherSubBodies.aspx>
- 5 Idem, p.307
- 6 EMRIP Academic Friends is a group of research centres and universities around the world that collaborate with the Expert Mechanism on its studies. The group is open to any willing and relevant institution and more information about it can be found at: <http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/AcademicFriends.aspx>

- 7 The full list and copies of EMRIP's advice can be found on the following website:
<http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/EMRIPIndex.aspx>
- 8 Cathal M. Doyle, 2015, Business and human rights, indigenous peoples' experiences with access to remedy: Case studies from Africa, Asia and Latin America, AIPP, ALMACIGA and IWGIA, Chiang Mai/Madrid/Copenhagen, 2015, see <http://www.enip.eu/web/wp-content/uploads/2015/03/Business-and-Human-Rights-Indigenous-Peoples-Experience-with-Access-to-Remedy.pdf>
- 9 Famark Hlawning, Expert Mechanism on the Rights of Indigenous Peoples, see http://www.fes-globalization.org/geneva/documents/Presentation_HRC%20Review_6-7Oct2011_Hlawning.pdf
- 10 The System-wide Action Plan (SWAP) has been developed under the UNDESA leadership with a view to achieving "a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples.". For more information on the SWAP see:
<https://www.un.org/development/desa/dspd/2016/05/20/system-wide-action-plan-on-the-rights-of-indigenous-peoples-swap/>
- 11 See OHCHR website:
<http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/Reviewofthemandate.aspx>
- 12 The regions are Africa, Asia, Central and South America and the Caribbean, the Arctic, Central and Eastern Europe, the Russian Federation, Central Asia and Transcaucasia, North America, and the Pacific

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THE WORK OF THE TREATY BODIES

The treaty bodies are the committees of independent experts in charge of monitoring the implementation by States Parties of the rights protected in international human rights treaties. There are nine core international human rights treaties that deal with civil and political rights, economic, social and cultural rights, racial discrimination, torture, discrimination against women, child rights, migrant workers, persons with disabilities and enforced disappearances.

The main functions of the treaty bodies are to examine periodic reports submitted by States Parties, adopt concluding observations and examine complaints submitted by individuals. Concluding observations contain a review of both positive and negative aspects of a State's implementation of the treaty and recommendations for improvement.

Treaty bodies also adopt general comments which are interpretations of the provisions of the treaties. So far, only the Committee on the Elimination of Racial Discrimination (CERD) and the Committee on the Rights of the Child (CRC) have adopted general comments specifically addressing indigenous rights.

This article contains a summary of the developments which took place in relation to the recognition and protection of indigenous rights in the concluding observations and general comments of five main treaty bodies during 2016.

The treaty bodies and indigenous peoples' rights

Over the years, the treaty bodies have contributed to the progressive development of a comprehensive and solid body of jurisprudence on indigenous rights. Unfortunately, they continue to be used by a very limited number of indigenous peoples and organisations.

The Committee on the Elimination of Racial Discrimination (CERD), the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Rights of the Child (CRC) continued to make extensive and comprehensive observations on indigenous peoples' rights during 2016. Compared to the previous year, the Human Rights Committee (CCPR) and the Committee on the Elimination of Discrimination against Women (CEDAW) increased their references to indigenous rights slightly. All five committees addressed indigenous-related issues generally under specific sections.

The CERD, CRC, CEDAW and CESCR continued to refer to the provisions of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP¹), in particular in relation to the rights to self-identification, consultation, participation, free and prior informed consent (FPIC), lands and territories. Some committees also called upon States Parties to ratify ILO Indigenous and Tribal Peoples Convention, 1989 (N° 169),² implement the recommendations of the Special Rapporteur on the rights of indigenous peoples³ or enforce the decisions of regional human rights mechanisms.⁴

While the recognition of indigenous rights is gaining prominence in the observations of most treaty bodies, the actual implementation of these recommendations on the ground remains a major challenge. A research project was undertaken at the Indigenous Peoples Law & Policy Program, University of Arizona to assess, for the first time, the state of implementation of some 400 treaty bodies' recommendations on indigenous rights. The findings report⁵ published in 2016 pointed to a very low rate of implementation.⁶

Committee on the Elimination of Racial Discrimination (CERD)

The Committee continued to underline the multiple violations and forms of discrimination faced by indigenous peoples (Argentina,⁷ Paraguay,⁸ Rwanda,⁹ South Africa,¹⁰ Uruguay¹¹) in relation to access to: education (Argentina, Rwanda, Paraguay, Namibia,¹² South Africa, Ukraine¹³), employment and decent working conditions (Argentina, Namibia, Paraguay, Rwanda, Ukraine), basic social services (Argentina, Rwanda, Ukraine, Rwanda), healthcare (Namibia, Paraguay, Rwanda), adequate housing (Namibia, Rwanda) and justice (Argentina, Namibia, Rwanda). The CERD also expressed concerns about violations related to participation in decision-making (Argentina, Paraguay, Namibia), representation (Argentina, South Africa), FPIC (Argentina, Paraguay), land ownership and property

rights (Argentina, Namibia, Paraguay), forced evictions (Argentina, Paraguay, Rwanda) and acts of violence (Argentina, Paraguay).

Drawing on its General Recommendation N° 23 on the rights of indigenous peoples,¹⁴ the CERD continued to make a large number of recommendations addressing indigenous rights. The Committee notably called upon Argentina, Paraguay and Uruguay to adopt a legal framework or policies to combat discrimination and protect indigenous rights, Namibia, Paraguay, South Africa to eliminate discrimination against indigenous peoples and Uruguay to recognize the right to self-identification. Argentina, Rwanda, South Africa and Paraguay were invited to reduce inequalities or poverty and Argentina, Namibia, Paraguay, Ukraine to ensure access to bilingual education. Argentina and Paraguay were recommended to guarantee access to justice and respect indigenous traditional justice systems. Drawing on Article 18 of the UNDRIP, the Committee recommended ensuring indigenous participation in public and political affairs or government bodies (Argentina, Burundi, Paraguay, Namibia) and prior consultation to secure their FPIC in relation to the adoption of legislative or administrative measures (Argentina, Paraguay).

With respect to land rights, the CERD called upon Argentina and Paraguay to protect indigenous peoples' rights to own their lands, territories and resources, Namibia to title indigenous lands and Paraguay to provide compensation for land loss or damage. Argentina, Namibia and Paraguay were advised to secure or seek the FPIC of indigenous groups prior to natural resource exploitation while Paraguay was recommended to draft a legislation on prior consultation, in compliance with the UNDRIP. The CERD finally invited Spain¹⁵ to take legislative measures to prevent transnational companies registered in Spain from carrying out activities that negatively affect the rights of indigenous peoples where they conduct their operations and hold such companies accountable. Under its Urgent Action Early Warning procedure,¹⁶ the CERD considered a number of indigenous rights-related cases including:

- Rapes and attempted forced evictions of indigenous women in Lote Ocho by personnel from a Canadian mining company, the land claims of the Lubikon Lake Nation, the threat of extinguishment of the land rights of the Secwepemc and the St'at'imc nations (Canada¹⁷),
- Rapes and attempted forced evictions of indigenous women in Lote Ocho (Guatemala¹⁸),

- Arrests, mass killings and enforced disappearances in Oromia and Amhara (Ethiopia¹⁹),
- Enforced disappearances, extrajudicial killings and tortures of Papuan people in West Papua and Papua (Indonesia²⁰),
- Destruction of Shor villages by mining activities (Russian Federation²¹),
- Violence, ill treatment and threat of forced evictions of Maasai in the Ngorongoro (Tanzania²²),
- Threats and forced eviction of the Karen people in the Kaeng Krachan National Park (Thailand²³),
- Alienation of indigenous lands through the issuance of “Special Agricultural and Business Leases” (West Papua²⁴).

Human Rights Committee (Convention on Civil and Political CPR)

The CCPR generally highlighted violations faced by indigenous peoples in relation to Articles 1, 2, 14, 25, 26 and 27 of the International Covenant on Civil and Political Rights. The Committee notably expressed concerns about discrimination (Colombia,²⁵ Costa Rica,²⁶ New Zealand,²⁷ Rwanda²⁸), denial of the right to self-identification (Rwanda, South Africa²⁹), low representation in government positions and participation in public affairs (New Zealand, Rwanda) and acts of violence (Argentina,³⁰ Burkina Faso,³¹ Costa Rica). In relation to land rights and FPIC, the CCPR underlined violations related to the lack of legal recognition and protection of indigenous lands (Argentina, Namibia,³⁹² Sweden,³⁹³ South Africa, Costa Rica), lack of consultation or FPIC (Colombia, Costa Rica, Ecuador,³⁴ Namibia) and absence of, or delay in, the adoption of laws on FPIC or consultation (Colombia, Ecuador, Costa Rica).

The Committee formulated a number of recommendations related to civil and political rights and notably called upon Costa Rica to adopt the draft legislation on the autonomous development of indigenous peoples, New Zealand to revise the Marine and Coastal Area Act to guarantee respect for indigenous customary rights and South Africa to revise the Traditional and Khoi-San Leadership Bill to take indigenous concerns into consideration. Argentina, Burkina Faso and Costa Rica were urged to provide protection to victims of violence and New Zealand to eliminate discrimination in the administration of justice.

The Committee also recommended ensuring that indigenous peoples enjoy rights to lands, territories and natural resources (Colombia, Costa Rica, Rwanda), including land titles (Namibia). Argentina and Costa Rica were advised to ensure land recovery or restitution while South Africa was urged to address land dispossession via legal measures. Colombia, Costa Rica and Ecuador were requested to consult indigenous peoples with a view to obtaining their FPIC before taking any measures affecting them and to adopt relevant laws while Namibia, Rwanda and New Zealand were advised to guarantee indigenous participation in decision-making or consultation processes. Namibia and Costa Rica were urged to secure the FPIC of indigenous communities prior to the development of extractive industry projects and Sweden to review existing legislation, policies and practices to guarantee consultation aimed at attempting to obtain FPIC.

Committee on Economic, Social and Cultural Rights (CESCR)

The CESCR continued to make extensive reference to indigenous rights violations, notably in relation to cultural and linguistic rights (France,³⁵ Tunisia³⁶), self-identification (Angola,³⁷ Namibia³⁸), use of indigenous language (Canada,³⁹ Costa Rica,⁴⁰ Sweden⁴¹), access to: education (Angola, Canada, Namibia, Philippines⁴²), food and adequate standard of living (Angola, Canada, Honduras⁴³) and basic services (Angola, Canada, Philippines). In relation to land rights, the CESCR underlined the lack of recognition and protection of indigenous lands (Kenya,⁴⁴ Namibia), issues related to access, demarcation and registration of indigenous lands (Angola, Philippines, Sweden) and forced evictions (Kenya, Philippines). The Committee also highlighted failures to respect the right to consultation and FPIC (Angola, Canada, Costa Rica, Honduras, Philippines).

The Committee formulated a number of recommendations covering indigenous rights and notably called for the adoption of legislation recognizing indigenous peoples on the basis of self-identification in Namibia and indigenous peoples' status in Angola. Burkina Faso⁴⁵ was invited to adopt a law against discrimination containing measures benefiting indigenous peoples and Canada to repeal the discriminatory provisions in the Indian Act. Drawing on its General Comment N° 21 on the right of everyone to take part in cultural life,⁴⁶ the CESCR called upon France and Tunisia to recognize and promote indigenous cultures and languages and Canada, Costa Rica, Sweden and Tunisia to ensure bilingual educa-

tion or the teaching of indigenous language at schools. The CESCR further recommended taking measures to reduce inequality and poverty (Canada, Costa Rica, Honduras), ensure access to basic services (Angola, Philippines) and protect indigenous activists from acts of violence (Honduras, Philippines).

In relation to land rights, the CESCR recommended that Angola, Costa Rica, Honduras and Philippines protect and recognize indigenous peoples' rights to their lands, territories and natural resources, Namibia adopt a law protecting indigenous rights, including land ownership and Sweden review legislation, policies and practices that regulate development and extractive industry projects. The Philippines and Namibia were advised to register indigenous lands or improve land registration procedures while Costa Rica was invited to guarantee the return of indigenous lands. Angola and Honduras were both recommended to ensure compensation and access to benefit-sharing. France was invited to monitor mercury contamination in French Guiana and Honduras to draft guidelines for evaluating the social and environmental impact of natural resource exploitation projects.

The CESCR further recommended consulting indigenous peoples with a view to obtaining their FPIC in respect of: decision-making processes (Costa Rica, Honduras, Sweden), the adoption of legislation or policy (Canada, Philippines) and the development of projects (Angola, Namibia, Philippines). Angola and Canada were invited to establish mechanisms that enable meaningful participation, Canada to recognize the right to FPIC in its laws and policies and Honduras to involve indigenous peoples in the preparation of the draft framework law on consultation.

Committee on the Elimination of Discrimination against Women (CEDAW)

The CEDAW made a number of references to indigenous women's rights violations, including intersectional forms of discrimination (Argentina,⁴⁷ Bangladesh,⁴⁸ Burundi,⁴⁹ Canada,⁵⁰ Honduras,⁵¹ Japan,⁵² Philippines⁵³), particularly in relation to access to: employment and healthcare (Canada, Japan), education (Argentina, Burundi, Canada, France,⁵⁴ Honduras, Japan, Sweden⁵⁵), justice (Argentina, Philippines) and decision-making positions (Japan, Philippines, Sweden). The CEDAW also underlined the impact of: mercury poisoning in French Guiana, nuclear

testing in French Polynesia and the use of pesticides in Argentina on the health of indigenous women. The Committee expressed concerns about gender-based violence (Burundi, Bangladesh, Canada, Philippines), the lack of recognition and protection of indigenous lands and the absence of consultation or FPIC in Argentina and Honduras.

The CEDAW elaborated a number of recommendations aimed at promoting and protecting the rights of indigenous women, and notably called upon Honduras and Japan to address intersecting forms of discrimination, Canada to remove the discriminatory provisions of the Indian Act in relation to the transmission of Indian status and Burundi to enact a law on the social protection of Batwa women. Argentina, Burundi, Honduras and Japan were requested to ensure access to education. The CEDAW also recommended ensuring the representation of indigenous women in decision-making positions or political life (Japan, Sweden) as well as their participation in decision-making processes or policies (Argentina, Honduras). Canada, Bangladesh and the Philippines were urged to investigate and prosecute cases of gender-based violence. Argentina and Honduras were invited to recognize or facilitate indigenous women's access to land ownership, benefit-sharing and to seek their FPIC. The Philippines was invited to identify solutions to land management in line with the UNDRIP.

Committee on the Rights of the Child (CRC)

The CRC expressed concerns about discrimination against indigenous children (Gabon,⁵⁶ Kenya,⁵⁷ Peru,⁵⁸ South Africa,⁵⁹ New Zealand⁶⁰) with regard to access to: an adequate standard of living (New Zealand, Peru, South Africa), healthcare (Gabon, New Zealand, Peru), education and bilingual education (Gabon, Nepal,⁶¹ South Africa, New Zealand, Peru). The CRC also underlined the adverse impact of: climate change (New Zealand), logging, mining or hydroelectric projects (Peru, Suriname) and mono-cropping (Gabon) on indigenous children. The Committee further noted the lack of legal recognition of indigenous peoples and their rights in South Africa and the lack of consultation or denial of the right to FPIC in Nepal and Peru. The CRC also mentioned issues of child marriage (Peru), child abuse (New Zealand), violence in schools (Nepal) and sex trafficking (Suriname⁶²).

Drawing on its General Comment N° 11 on indigenous children,⁶³ the CRC made a number of recommendations addressing the rights of indigenous children and notably recommended that South Africa legally recognize the rights of indigenous peoples and Gabon adopt a law for the protection of indigenous people based on the UNDRIP. The Committee also recommended eliminating discrimination against indigenous children (Gabon, New Zealand, Suriname, South Africa) particularly with regard to child poverty (New Zealand, Peru, South Africa) and access to healthcare, basic services and education (Gabon, New Zealand, Peru, Suriname). In relation to land rights, Suriname was invited to adopt legislation on sustainable land management and Kenya to enact a law recognizing lands traditionally occupied by hunter-gatherers. The CRC further called upon Gabon to review policies regarding mono-cropping, and Kenya and Nepal to obtain the FPIC of indigenous peoples before adopting and implementing legislative or administrative measures.

General Comments

During the year 2016, the committees continued to draft and adopt a number of general comments or recommendations. A number of these documents contain explicit references to indigenous rights:

The CEDAW adopted General Recommendation N° 34 on the rights of rural women,⁶⁴ which notably calls upon States Parties to ensure that indigenous women are protected from intersecting forms of discrimination and have access to education, employment, water and sanitation, and healthcare. This recommendation also calls upon States Parties to ensure that indigenous women have equal access to ownership and possession of and control over land, water, forests or other resources and recognize and review indigenous women's laws, traditions, customs and land tenure systems, with the aim of eliminating discriminatory provisions.

CEDAW Draft update of General Recommendation N° 19 on gender-based violence against women⁶⁵ recommends repealing all legal provisions that discriminate against women and encourage or justify gender-based violence including in customary and indigenous laws. CEDAW Draft General Recommendation N° 35 on the Gender-related Dimensions of Disaster Risk Reduction in a Changing Climate⁶⁶ underlines the need to protect indigenous women from intersecting

forms of discrimination and promote accessibility of the Internet and mobile phones.

The CESCR adopted General Comment No. 23 on the right to just and favourable conditions of work,⁶⁷ which underlines the importance of consultation in formulating and implementing laws and policies related to the right to just and favourable conditions of work with indigenous representatives. CESCR General Comment N° 22 on the right to sexual and reproductive health⁶⁸ stresses that indigenous individuals are more likely to experience intersectional discrimination.

The current version of CESCR draft General Comment on State Obligations in the Context of Business Activities⁶⁹ merely mentions indigenous peoples among the categories of people who are often disproportionately affected by the adverse impact of business activities and subject to the risk of harassment.

CRC General Comment N° 20 on the implementation of the rights of the child during adolescence⁷⁰ stresses the vulnerability of indigenous adolescents to poverty, social injustice, mental health issues, poor educational outcomes and high levels of detention within the criminal justice system and calls for the introduction of measures to support indigenous adolescents so that they can enjoy their cultural identities. ○

Notes and references

- 1 The Outcome Document of the World Conference on Indigenous Peoples calls upon the treaty bodies to consider the UNDRIP in accordance with their respective mandates.
- 2 The CERD called upon the United Kingdom of Great Britain, Namibia, Uruguay, Ukraine, South Africa, Sri Lanka to consider ratifying the Convention; the CEDAW: Canada; the CESCR: Angola, Canada, Kenya Sweden, Philippines, Namibia; the CRC: Kenya and South Africa.
- 3 The CERD and CESCR recommended that Namibia implement the recommendations made by the SRIP; the CERD: Paraguay; the CESCR and CEDAW: Canada.
- 4 For instance, the CERD called upon Paraguay to enforce the following IACHR judgments (*Yakye Axa Indigenous Community v. Paraguay*, *Sawhoyamaya Indigenous Community v. Paraguay* and *Xákmok Kásek Indigenous Community v. Paraguay*) and precautionary measures in the support of the Ayoreo Totobiegosode people. The CESCR also called upon Kenya to implement the decision of the African Commission on Human and Peoples' Rights (276/2003).
- 5 Assessing the State of Implementation of Recommendations Made by the Treaty Bodies and the Special Rapporteur on the Rights of Indigenous Peoples (2016) Melanie Clerc and Ivan Ingram. Available online, https://hr.un.org/sites/hr.un.org/files/Sabbatical%202015%20-%20Melanie%20Clerc.%20pdf_0.pdf.
- 6 The state of implementation of some 496 recommendations (including 400 from four treaty bodies and 96 from the Special Rapporteur on the rights of indigenous peoples) addressing indigenous peoples' rights in 13 countries covering the period 1994-2014 were assessed. According to

the preliminary findings of the project, 5% of the overall total of the selected recommendations can be considered as not implemented, with no action taken; 30% of the overall total of the selected recommendations can be considered as partially implemented; and 5% of the overall total of the selected recommendations can be considered as fully implemented. (ibid, page 6).

- 7 CERD/C/ARG/CO/21-23
- 8 CERD/C/PRY/CO/4-6
- 9 CERD/C/RWA/CO/18-20
- 10 CERD/C/ZAF/CO/4-8
- 11 CERD/C/URY/CO/21-23
- 12 CERD /C/NAM/CO/13-15
- 13 CERD/C/UKR/CO/22-23
- 14 Contained in document A/52/18, annex V.
- 15 CERD/C/ESP/CO/21-23
- 16 In 1994, the CERD decided to establish early warning and urgent procedures as part of its regular agenda. Early warning measures are to be directed at preventing existing problems from escalating into conflicts and urgent procedures to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention.
- 17 http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_ALE_CAN_8030_E.pdf, http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_ALE_CAN_8131_E.pdf http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_ALE_CAN_8092_E.pdf
- 18 http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GTM/INT_CERD_ALE_GTM_8031_E.pdf, http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GTM/INT_CERD_ALE_GTM_8133_E.pdf
- 19 http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ETH/INT_CERD_ALE_ETH_8132_E.pdf
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- 21 http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/RUS/INT_CERD_ALE_RUS_7906_E.pdf
- 22 http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/TZA/INT_CERD_ALE_TZA_8095_E.pdf
- 23 http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/THA/INT_CERD_ALE_THA_8094_E.pdf
- 24 http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/PNG/INT_CERD_ALE_PNG_7926_E.pdf
- 25 CCPR/C/COL/CO/7
- 26 CCPR/C/CRI/CO/6
- 27 CCPR/C/NZL/CO/6
- 28 CCPR/C/RWA/CO/4
- 29 CCPR/C/ZAF/CO/1
- 30 CCPR/C/ARG/CO/5
- 31 CCPR/C/BFA/CO/1
- 32 CCPR/C/NAM/CO/2
- 33 CCPR/C/SWE/CO/7
- 34 CCPR/C/ECU/CO/6

- 35 CEDAW/C/FRA/CO/7-8
- 36 9E/C.12/TUN/CO/3
- 37 E/C.12/AGO/CO/4-5
- 38 3E/C.12/NAM/CO/1
- 39 E/C.12/CAN/CO/6
- 40 E/C.12/CRI/CO/5
- 41 3E/C.12/SWE/CO/6
- 42 3E/C.12/PHL/CO/5-6
- 43 E/C.12/HND/CO/2
- 44 E/C.12/KEN/CO/2-5
- 45 E/C.12/BFA/CO/1
- 46 E/C.12/GC/21
- 47 CEDAW/C/ARG/CO/7
- 48 CEDAW/C/BGD/CO/8
- 49 CEDAW/C/BDI/CO/5-6
- 50 CEDAW/C/CAN/CO/8-9
- 51 CEDAW/C/ARG/CO/7
- 52 CEDAW/C/JPN/CO/7-8
- 53 CEDAW/C/PHL/CO/7-8
- 54 CEDAW/C/FRA/CO/7-8
- 55 CEDAW/C/SWE/CO/8-9
- 56 CRC/C/GAB/CO/2
- 57 CRC/C/KEN/CO/3-5
- 58 CRC/C/PER/CO/4-5
- 59 CRC/C/ZAF/CO/2
- 60 CRC/C/NZL/CO/5
- 61 CRC/C/NPL/CO/3-5
- 62 CRC/C/SUR/CO/3-4
- 63 CRC/C/GC/11
- 64 CEDAW/C/GC/34
- 65 CEDAW/C/GC/19/Add.1
- 66 CEDAW/C/GC/35
- 67 E/C.12/GC/23
- 68 E/C.12/GC/22
- 69 E/C.12/60/R.1
- 70 CRC/C/GC/20

This report has been compiled by IWGIA's Secretariat on the basis of UN Documents and reports from various experts.

INDIGENOUS PEOPLES AND THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT

The world's indigenous peoples are at the heart of the 2030 Agenda with its promise to "leave no one behind".¹ Indigenous peoples make up 5% of the world's population but 15% of the poorest. They lag behind in terms of virtually all social and economic indicators, including those considered in the Millennium Development Goals (MDGs) as well as the Sustainable Development Goals (SDGs).

For indigenous peoples, the 2030 Agenda is regarded as an improvement on the Millennium Development Goals, in which indigenous peoples were largely invisible. Indigenous peoples participated from the start in the global consultation process towards the 2030 Agenda and their advocacy resulted in a framework which makes explicit reference to indigenous peoples' development concerns and is founded on principles of universality, human rights, equality and environmental sustainability - core priorities for indigenous peoples.

Nevertheless, major challenges to the rights of indigenous peoples remain in the implementation of the Sustainable Development Goals, in particular at the national level. Some of the main priorities for indigenous peoples are not reflected in the 2030 Agenda, such as the principle of free, prior and informed consent and the right to self-determined development, as well as continued challenges relating to a lack of legal recognition of indigenous peoples and their individual and collective rights. The absence of a culturally-sensitive approach to development has also been noted as a challenge in upholding indigenous peoples' rights and protecting their distinct cultures and ways of life.

In moving towards implementation, indigenous peoples have called for participation and implementation that is culturally sensitive and fully respects the UNDRIP. They have called for data disaggregation and statistics that measure progress for indigenous peoples across the 17 SDGs.

To ensure this, consistent participation of indigenous peoples in implementation and review, from national action plans through to the global level of the High-Level Political Forum, is essential.

The High-Level Political Forum

The High-Level Political Forum (HLPF)² was created at the Rio+20 Conference held in Rio de Janeiro, Brazil in 2012. State leaders at the Conference decided to replace the Commission on Sustainable Development with the Forum in order to elevate the consideration of sustainable development to the level of Heads of State and Government. It follows up and reviews the implementation of sustainable development commitments and the 2030 Agenda for Sustainable Development, including the Sustainable Development Goals (SDGs).

The HLPF is mandated to address new and emerging challenges; promote the science-policy interface and enhance the integration of economic, social and environmental dimensions of sustainable development. The HLPF aims to engage world leaders and Major Groups, non-governmental organizations (NGOs), civil society and relevant stakeholders, keeping sustainable development high on national, regional and global agendas. The HLPF meets every year under the auspices of the ECOSOC for eight days, including a three-day ministerial segment. Every four years the HLPF will meet at the level of Heads of State and Government under the auspices of the General Assembly.

The first session of the High-Level Political Forum

The first HLPF since the adoption of the 2030 Agenda and the SDGs took place in New York from 11 to 15 July 2016, followed by a three-day ministerial meeting on 18-20 July 2016. The 1st session of the HLPF focused on the theme of “Ensuring that no one is left behind”.

The three-day ministerial segment of the Forum had as its central feature voluntary national reviews (VNRs) by 22 countries on the steps they are taking towards implementing the 2030 Agenda for Sustainable Development, including the SDGs.

Indigenous peoples’ participation in the HLPF

Indigenous peoples were actively engaged throughout the HLPF to ensure that their priorities and rights are at the forefront of the discussions on implementing and monitoring the 2030 Development Agenda.

During the HLPF, indigenous peoples organized under the Indigenous Peoples' Major Group, one of the nine major groups established by the UN to ensure representation of key sectors of society and to help channel the engagement of citizens, economic and social actors, and expert practitioners in United Nations intergovernmental processes related to sustainable development.

Under the Indigenous Peoples' Major Group, indigenous representatives attending the HLPF were able to make statements both in the general thematic discussions as well as during the national voluntary reviews. In addition, they carried out advocacy initiatives aimed at increasing the visibility of indigenous peoples' views and positions regarding their participation and inclusion in the implementation and monitoring of the SDGs.

During the first week, a brief plenary session was followed by official moderated dialogues and side events. On the opening day of the High-Level Political Forum, the Chair of the UN Permanent Forum on Indigenous Issues (UNPFII), Mr. Alvaro Pop, was invited to give a statement as lead discussant in the panel "Ensuring that no one is left behind – envisioning an inclusive world in 2030". In his speech, Mr. Pop stressed that when indigenous peoples envisage an inclusive world in Agenda 2030 it is a world where indigenous peoples' rights as human beings and peoples are respected, where indigenous peoples are visible and there is disaggregation of data, where they participate as active partners at all levels of decision-making and where their ancestral knowledge contributes to a more sustainable world.

In its intervention during the session dedicated to considering "Ensuring that no one is left behind--lifting people out of poverty and addressing basic needs", the Indigenous Peoples' Major Group said that indigenous peoples were, more often than not, included among the world's most vulnerable, discriminated and disadvantaged populations. In order to not be left behind, the IPMG stressed the need to change the current mind-set from a focus on indigenous peoples as recipients of assistance to recognizing indigenous peoples as active right-holders and active partners and agents of the self-determined development of their lands, territories and resources. Furthermore, their crucial role as contributors to transformational change through their traditional knowledge systems and innovations developed over generations was also stressed.

During the first week of the session, Ms Joan Carling, Secretary General of the Asia Indigenous Peoples Pact (AIPP), representative of the IPMG and expert member of the UNPFII, was also invited as respondent in the official panel "From

Inspiration to action: Multi-stakeholders engagement for implementation” which took place on 15th July.

In her presentation, Ms Carling focused on actions needed to ensure the inclusion and visibility of indigenous peoples in the implementation of the SDGs. The required actions as presented were the following:

- **Inclusion of the legal recognition of indigenous peoples** and their rights in national action plans to achieve sustainable development.
- **Repeal of laws that are discriminatory against indigenous peoples** and other rights-holders, ensuring consistency and alignment with international human rights instruments.
- **Collaborative formulation and implementation of special measures, policies and programmes to address the specific conditions of indigenous peoples** and the root causes of their marginalization and discrimination.
- **Inclusion and participation of indigenous peoples through inclusive and transparent mechanisms for consultations and engagement**, especially at the local and national levels, and effective representation in all bodies.
- **Ensure data disaggregation** through the inclusion of ethnic and indigenous identifiers in data collection, analysis and reporting.
- **Support community-based and participatory monitoring, data collection**, analysis and reporting.
- **Establish and support transformational partnerships** that allow indigenous peoples, as rights-holders, to be the central actors of their own development, with the support of states and other development actors.
- **Capacity building of all development actors, including states, the private sector and indigenous peoples, on the links between human rights and the SDGs** to ensure accountability, non-discrimination and effective participation of rights-holders in the implementation of the SDGs.

Throughout the session, the IPMG presented several statements under the different agenda items and, in all these statements, indigenous peoples' central message was that respect, protection and fulfilment of indigenous peoples' rights, including their right to land, territories and natural resources and their empowerment, are imperative in the implementation of the SDGs if we are to ensure that

they will not be left behind. In this context, they stressed the need to recognize indigenous land tenure systems. Land demarcation and titling, protection from land grabbing and encroachment, as well as mechanisms of redress, are crucial to protect indigenous peoples and ensure that they are not left behind. They also highlighted that the imperative need for effective mechanisms for participatory and community-based monitoring, data collection and disaggregation, analysis and reporting in order to ensure the visibility of indigenous peoples and to guide participatory planning and implementation of the SDGs.³

Side Event on “Securing the Rights and Contributions of Indigenous Peoples in the 2030 Agenda”

During the HLPF, a side event organized by the Secretariat of the UNPFII and IFAD, in cooperation with the Permanent Mission of Australia to the United Nations, took place on 15 July. Key note speakers included representatives of indigenous peoples’ organizations, State delegations, UN agencies and National Human Rights Institutions. Their presentations focused on how to ensure that indigenous peoples are not left behind in the implementation of the 2030 Agenda and how to enhance their roles and contributions to sustainable development.

The voluntary national reviews (VNRs)

The 22 voluntary national reviews presented differed considerably in terms of size, quality and thematic depth, as well as in the degree of civil society participation and, only six months after the SDGs entered into force, the reports presented stated very little about the progress in their implementation.

Of the 22 national voluntary reviews discussed during the Ministerial Segment of the HLPF in 2016, seven mentioned indigenous peoples in their reports, either as a global priority or as a national concern. The main issues referred to in those reports included an acknowledgement of indigenous peoples as a group at risk of being left behind, the importance of obtaining data on indigenous peoples, mechanisms for consulting with indigenous peoples in the 2030 Agenda and the socioeconomic situation of indigenous peoples.

Among the national voluntary reports addressing indigenous peoples, some good practices were highlighted in terms of ensuring indigenous peoples' participation in national action plans and follow-up and review processes. For example, the report from Norway highlighted that the Sámediggi (Sami Parliament) would participate in implementation and follow-up to the Sustainable Development Goals and that indigenous peoples had been consulted when formulating the national voluntary review. Similarly, the report of Finland noted that the National Commission on Sustainable Development, which has a mandate to follow up on the 2030 Agenda, includes one indigenous representative, the President of the Finnish Sámi Parliament.

In terms of national indicators for the 2030 Agenda, the national voluntary reports from Mexico, Uganda and Venezuela noted the inclusion of some of the global indicators referring to indigenous peoples in their mapping of national targets and indicators.

In its statement commenting on the national review reports presented, the IPMG commended all the states that had volunteered to report to this first session of the HLPF on their implementation of Development Agenda 2030.

The IPMG noted some initial emerging good practices in line with the call to "leave no one behind". From the perspective of indigenous peoples, the following were mentioned:

- **Consultations and inclusion of indigenous peoples' representative institutions in SDG planning mechanisms at the national level**, such as the case of Norway and Finland, as this is a positive step in making the SDG process inclusive of those furthest left behind.
- **Commitments to undertake thorough data collection and data disaggregation to be used in policy review and planning for SDG implementation**. Indigenous peoples expressed their full cooperation on data disaggregation by ethnicity and on indigenous identifiers and data analysis to ensure that the specific conditions and perspectives of indigenous peoples are captured on the basis of their holistic approach to well-being and development.
- **Participation and Partnerships with stakeholders as a necessary element in the implementation of the SDGs**.

The IPMG agreed that states could not implement the SDGs alone and that an active and direct participation of all stakeholders and partnerships with key develop-

ment actors was required. Along this line, strong mechanisms for accountability and protection of human rights and the environment are needed to ensure that these partnerships are equitable and fully aligned with the sustainable use of resources, including the lands, territories and resources of indigenous peoples.

The IPMG concluded their statement by encouraging states to take on these emerging good practices and enhance them further through appropriate policies, measures and programmes to ensure that indigenous peoples are not left behind in the implementation of SDGS.

The Political Declaration

During the closing session, UN Member States adopted a Ministerial Declaration as the outcome document of the HLPF.⁴

The Ministerial Declaration included one reference to indigenous peoples, related to “leaving no one behind” and empowering the vulnerable. In the declaration, Member States committed:

“to focusing our efforts where the challenges are greatest, including by ensuring the inclusion and participation of those who are furthest behind. We deem it of critical importance, in this regard, to protect and empower people who are vulnerable. We recall that those whose needs are reflected in the 2030 Agenda include all children, adolescents, youth, persons with disabilities, people living with HIV/AIDS, older persons, indigenous peoples, refugees and internally displaced persons, migrants and peoples living in areas affected by complex humanitarian emergencies, and peoples in areas affected by terrorism and conflict”.

The UN General Assembly recommits⁵

In December 2016, the UN General Assembly (GA) adopted a resolution whereby Member States recommitted themselves to ensuring that the rights of indigenous peoples would be at the centre of implementation of the 2030 Agenda. In this resolution, the GA stressed “the need to ensure that no one is left behind, including indigenous peoples, who will benefit from and participate in the implementation of the 2030 Agenda”.

Furthermore, Member States were also encouraged to “give due consideration to all the rights of indigenous peoples in fulfilling the commitments undertaken in the 2030 Agenda for Sustainable Development and in the elaboration of national programmes”, to “consider including in their voluntary national reviews for the high-level political forum on sustainable development and their national and global reports information related to indigenous peoples on progress made and challenges in implementation of the 2030 Agenda”, and to “compile disaggregated data to measure progress and to ensure that no one is left behind”.

Indigenous Navigator - an empowering tool for sustainable human development that ‘leaves no-one behind’

The Indigenous Navigator⁶ is a community-based framework for monitoring indigenous peoples’ rights, developed with the support of the European Union through a collaborative partnership between the International Labour Organization, the Asia Indigenous Peoples Pact, the Danish Institute for Human Rights, Forest Peoples Programme, Tebtebba Foundation, and IWGIA.

The Indigenous Navigator is an enabling open source tool that can be used by indigenous peoples’ world-wide to gather data on their rights and human development against an integrated and unified framework grounded in international human rights instruments such as UNDRIP and ILO C169 and aligned with relevant SDG targets and indicators. While it is urgent to strengthen and increase official statistical data disaggregated by indigenous identity, the Indigenous Navigator is a platform for indigenous peoples to share their own perspectives and insights through gathering data illustrating how laws, policies and measures – or the absence thereof – impact on the lives and integrity of their communities. Hence, Indigenous Navigator seeks to reinforce the capacity of indigenous peoples to engage with policy and decision makers at the different levels and to reinforce their role and contributions to the design, implementation and monitoring of public policies affecting them, including national action plans for the implementation of the 2030 agenda for sustainable development. ○

Notes and references

- 1 Transforming Our World: the 2030 Agenda for Sustainable Development: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1
- 2 More information about the HLPF at <https://sustainabledevelopment.un.org/hlpf>
- 3 Discussion papers on the theme of the high-level political forum on sustainable development, submitted by major groups and other stakeholders: <http://undocs.org/E/HLPF/2016/2>
- 4 Ministerial declaration of the high-level segment of the 2016 session of the Economic and Social Council on the annual theme “Implementing the post-2015 development agenda: moving from commitments to results”: <http://undocs.org/E/HLS/2016/1>
- 5 Resolution adopted by the General Assembly on 19 December 2016 (A/RES/71/178): https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/178&referer=/english/&Lang=E
- 6 www.indigenousnavigator.org

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THE CONVENTION ON BIOLOGICAL DIVERSITY (CBD)

The Convention on Biological Diversity (CBD) is an international treaty under the United Nations. The CBD has three objectives: to conserve biodiversity, to promote its sustainable use and to ensure the equitable sharing of the benefits arising from its utilization.

The Convention has developed programs of work on thematic issues (such as marine, agricultural or forest biodiversity) and cross-cutting issues (such as traditional knowledge, access to genetic resources or protected areas). All these programs of work have a direct impact on indigenous peoples' rights and territories. The CBD recognizes the importance of indigenous knowledge and customary sustainable use for the achievement of its objectives (articles 8(j) and 10(c)) and emphasizes their vital role in biodiversity. In 2010, COP10 adopted the Nagoya Protocol on Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS),¹ the Aichi Targets and a new multi-year program of work.

The International Indigenous Forum on Biodiversity (IIFB) was established in 1996, during COP3, as the indigenous caucus in the CBD negotiations. Since then, it has worked as a coordination mechanism to facilitate indigenous participation in, and advocacy on, the work of the Convention through preparatory meetings, capacity-building activities and other initiatives. The IIFB has managed to get many of the CBD programs of work to consider traditional knowledge, customary use or the effective participation of indigenous peoples, and has been active in the negotiations regarding access to genetic resources in order to defend the fundamental rights of indigenous peoples that should be included therein.

The 13th Conference of the Parties to the Convention on Biological Diversity

The 13th meeting of the Conference of the Parties to the Convention on Biological Diversity (CBD COP 13) took place in Cancun, Mexico in December 2016 and included the two Protocols the eighth meeting of the Cartagena Protocol on Biosafety, and the second meeting on the Nagoya Protocol on Access to Genetic Resources and Benefit Sharing.

At the CBD COP13, governments agreed on actions that will accelerate implementation of global biodiversity targets, and enhance the linkage of the biodiversity agenda with other global agendas, including the Sustainable Development Goals (SDGs), and the Paris Climate Agreement.

Voluntary Guidelines for “[F]PIC”

At the CBD COP13, one of the most important and urgent issues for indigenous peoples and local communities (IPLC), was the discussions on the Item on Voluntary Guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure the [free,] prior, and informed consent [or approval and involvement] of indigenous peoples and local communities for accessing their knowledge, innovations and practices, the fair and equitable sharing of benefits arising from the use and application of such knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity, and for reporting and preventing unlawful appropriation of traditional knowledge.

The EU, Peru, Costa Rica, Bolivia, Mexico, Guatemala, Philippines, Ecuador, Switzerland and other Parties supported the inclusion of “Free” in Free Prior and Informed Consent, but the African Group, Timor Leste, India and Indonesia opposed the inclusion of “free”. Brazil suggested “free PIC and, where appropriate, in accordance with national legislation on approval and involvement.”

The International Indigenous Forum on Biodiversity (IIFB) and the UN Permanent Forum on Indigenous Issues (UNPFII) called for a clear reference to FPIC, opposing lower standards such as references to “approval and involvement,” noting that the language on FPIC is consistent with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

The IIFB emphasized that consent should be based on customary laws and objected to references to “in accordance with national legislation.” The UNPFII recalled that many indigenous peoples do not have legal and political recognition at the national level, which constitutes a violation of their human rights.

After days of negotiations on the Voluntary Guidelines, the indigenous peoples’ representatives walked out of the Working Group on the Item arguing that negotiations themselves did not apply free, prior and informed consent in the way they were conducted. On the same day, 16 December, indigenous peoples and local communities organized an action “No FPIC without FPIC”, supported by NGOs, and other international organizations.

Despite the disagreements in the official negotiations, a number of informal dialogues and meetings to support the positions of indigenous peoples and local communities took place, seeking to reach consensus. Delegates eventually agreed on making reference to “PIC” or ‘Free PIC’ or ‘approval and involvement,’ depending on national circumstances.”

Decisions on Indigenous peoples’ traditional knowledge and participation

A key decision related to indigenous peoples at COP13 was to recognize and integrate traditional knowledge, customary sustainable use, as well as IPLC diverse approaches in efforts to maintain genetic diversity, reduce habitat and biodiversity loss, and to promote an equitable and participatory approach to the management and restoration of critical ecosystems.

The CBD COP13 recognized the importance of traditional knowledge for the sustainability of agriculture aligned with IPLC’s world view (cosmovision) and the need to uphold diversification and ecological rotational farming and agroforestry, and promote community and family farming, alongside agro-ecology in order to promote sustainable production and improve nutrition.

Furthermore the need to strengthen IPLC participation as part of the strategy for forest protection, conservation and sustainable use of biodiversity was highlighted. Hereunder the recognition of rural community tourism as an activity that can contribute to conservation and sustainable use, ecosystem restoration and diversification of IPLC livelihoods. UNEP/CBD/COP/13/L.31

The overall results

The Parties agreed on an Action Plan (2017-2020) that will enhance and support capacity-building for the implementation of the Convention and its Protocols based on the needs of Parties with a focus on strengthening the implementation of the Strategic Plan for Biodiversity 2011-2020 and its Aichi Biodiversity Targets.

CBD COP 13 adopted a short term plan of action on ecosystem restoration, as a contribution to reversing the loss of biodiversity, recovering connectivity, improving ecosystem resilience, enhancing the provision of ecosystem services, mitigating and adapting to the effects of climate change, combating desertification and land degradation, and improving human well-being while reducing environmental risks and scarcities. The action plan will help Parties, as well as any relevant organizations and initiatives, to accelerate and upscale activities on ecosystem restoration and supports achievement of the Strategic Plan for Biodiversity 2011-2020.²

Summit on Indigenous Experiences “Muuchtanbal”

It is widely recognized that countries with the highest levels of biological diversity, particularly the “mega-biodiverse countries”, also rank among the most culturally diverse, and the loss of cultural diversity (including local languages) is linked to the loss of biological diversity.

In the Convention on Biological Diversity (CBD), the international community recognizes the close relationship between indigenous and local communities and biodiversity. In this context, the Summit “Múuch’tambal” on Indigenous Experience: Traditional Knowledge and Biological and Cultural Diversity,³ has been established as a space for meeting and dialogue between indigenous and local communities around the world to share their experiences of conservation and sustainable use of biodiversity. Furthermore, the Summit aims to place emphasis on the contribution of indigenous peoples and local communities’ knowledge, innovations and practices for achieving the Aichi and Sustainable Development Goals (SDGs).

The “Muuchtanbal” Summit took place during the CBD COP13, and gathered indigenous peoples, local communities, state parties and international organizations.

During the two-day summit, indigenous peoples and local communities’ representatives shared experiences and information related to the contribution of traditional knowledge and cultural diversity in innovations and practices within various sectors such as agriculture, fisheries, forestry and tourism to ensure conservation and sustainable use of biodiversity.

The two-day meeting resulted in specific recommendations on how to promote inclusion of traditional knowledge, innovations and practices in the field of biodiversity in all sectors, in particular agriculture, forestry, fisheries and tourism, in order to achieve the Aichi targets and SDGs.

Indigenous and Local Knowledge Centres of Distinction launched at IPBES

The Intergovernmental Platform for Biodiversity and Ecosystem Services (IPBES) is an independent body set up in 2012 under the auspices of four United Nations entities: UNEP, UNESCO, FAO and UNDP and administered by UNEP to assess the state of the planet’s biodiversity, its ecosystems and the essential services they provide. It has current membership of 124 Governments.

IPBES’ mission is to strengthen the science-policy interface for biodiversity and ecosystem services for the conservation and sustainable use of biodiversity, long-term human well-being and sustainable development. In carrying out its work IPBES is guided by a number of operating principles like collaborating with existing initiatives on biodiversity and ecosystem services, including multilateral environment agreements, recognizing and respecting the contribution of indigenous and local knowledge to the conservation and sustainable use of biodiversity and ecosystems and integrating capacity-building into all relevant aspects of its work according to priorities decided by the Plenary among others IPBES engages scientists and other knowledge holders around the world to review and assess the most recent scientific and technical information produced worldwide relevant to the understanding of biodiversity and ecosystem services.⁴

At the 4th Plenary Meeting of IPBES, IPLC formed a Network of Indigenous and Local Knowledge (ILK) Centres of Distinction. It is composed of organizations

implementing programmes of work on traditional knowledge in different regions of the world and that have a long history of engaging with the United Nations system to deliver policy recommendations, implement projects and provide assessments, such as for biodiversity indicators and community-based monitoring systems. Each Center has its own distinct activities and strengths which by working together will provide a more comprehensive set of inputs to assessments and support implementation of the decisions of the IPBES Platform. This network is a support mechanism for delivering inputs into IPBES by indigenous and local knowledge holders themselves, and can identify other relevant knowledge holders and experts in their regions and areas of expertise. The network is open-ended and will operate in a transparent manner to facilitate the participation and contribution of diverse knowledge views and evidence from all regions. ○

Notes and references

- 1 The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity was adopted by the 10th COP to the CBD on 29 October 2010 in Nagoya, Japan and entered into force 13 October 2014. The Nagoya Protocol is “an international agreement which aims at sharing the benefits arising from the utilization of genetic resources in a fair and equitable way, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components” (<http://www.cbd.int/abs/>).
- 2 <https://www.cbd.int/conferences/2016/cop-13/documents>
- 3 <http://cop13.mx/en/summit-muuchtambal-on-indigenous-experience/>
- 4 <http://www.ipbes.net/>

Polina Shulbaeva is head of the Information Law Center of Indigenous Peoples of the North of Tosmkaya Oblast, Russia. Polina has been following the CBD process since 2006, and is currently a regional coordinator on the CBD work for the indigenous peoples of Russia and Eastern Europe. Polina is Selkup herself, working in the Center for support of indigenous peoples of the North (CSIPN).

UN FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC)

The United Nations Framework Convention on Climate Change (UNFCCC) is an international treaty created at the Earth Summit in Rio in 1992 to tackle the growing problem of global warming and the related harmful effects of a changing climate, such as more frequent droughts, storms and hurricanes, melting ice, rising sea levels, flooding, forest fires, etc. The UNFCCC entered into force on 21 March 1994, and has near universal membership, with 195 countries as ratifying parties. In 1997, the Convention established its Kyoto Protocol, ratified by 184 parties, by which a number of industrialized countries have committed to reducing their greenhouse gas emissions in line with legally binding targets. In 2015, the UNFCCC adopted the Paris Agreement, a universal legally binding agreement to reduce GHG emissions.

The Convention has two permanent subsidiary bodies, namely the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI).

Indigenous peoples are organized in the International Indigenous Peoples' Forum on Climate Change (IIPFCC), which serves as a mechanism for developing the united positions/statements of indigenous peoples and continuing effective lobbying and advocacy work in the UNFCCC meetings/sessions. In 2012, the IIPFCC established the Global Steering Committee (GSC) with two representatives from each of the seven indigenous peoples' regions (Africa, Asia, Arctic, North America, Latin America and Caribbean, Pacific, Eastern Europe and Russia) and three co-chairs. The GSC has the mandate to facilitate better coordination of the indigenous peoples' major group between official meetings.

Indigenous peoples' rights and issues cut across almost all areas of negotiation but have been highlighted most significantly within the REDD+ (Reducing Emissions from Deforestation and Forest Degradation, Conservation, Enhancement of Carbon Stocks and Sustainable Management of Forests), one of the mitigation measures negotiated under the AWG-LCA and SBSTA.

The Paris Agreement and COP22

The 2016 negotiations under the UNFCCC were marked by a consensus to keep up the momentum created by the adoption of the Paris Agreement in 2015 and the entry into force of the Agreement on 4 November 2016.¹ The outcome of the COP21 ended with five references to indigenous peoples under the Paris Agreement and the COP21 Decision. Those references are about indigenous peoples' rights, indigenous peoples' knowledge and indigenous peoples' participation.

During several meetings in 2016, the indigenous peoples' Caucus analyzed the COP21 decisions and the Paris Agreement and how these reflect indigenous peoples' rights and indigenous peoples' knowledge. The main issues identified as central to indigenous peoples in terms of the Paris Agreement are:

1. Indigenous peoples' rights are included in the preamble to the Paris Agreement
2. Indigenous peoples' traditional knowledge is included in the operational part of the Paris Agreement on Adaptation (Article 7.5)
3. To hold the increase in global average temperature to well below 2 C above pre-industrial levels and pursue efforts to limit the temperature increase to 1.5 C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change (Article 2).
4. Recognition of non-carbon benefits (NCBs) in the Paris Agreement section on REDD+. (Article 5, para. 2)
5. Sustainable development is included as one of the core principles of the Paris Agreement.

At COP22 in Marrakech, the first steps were taken in the three-year process to determine the modalities and rules of the Paris Agreement and how it would be implemented. This process will be finalized in 2018 at COP24, and will include a revision of National Determined Contributions (NDCs), the national plans/pledges for reducing emissions. At COP22, indigenous peoples worked to keep up the momentum and to bring the results achieved in Paris on indigenous peoples' rights and knowledge into the negotiations.

Indigenous peoples' rights in the preamble to the Paris Agreement

One of the key focal areas of the indigenous peoples' Caucus during COP22 was to remind states and other relevant stakeholders that the human rights, including indigenous peoples' rights, language of the preamble has to guide the design of the modalities and instruments for operationalizing the agreement. One way of doing this is through the parties' NDCs. During the past years' negotiations, indigenous peoples have pushed for the inclusion and recognition of indigenous peoples' rights and indigenous peoples' knowledge into the implementation of NDCs. However, only 19 countries' NDCs refer to indigenous peoples and 24 countries' NDCs refer to human rights. At the opening of the COP22, indigenous peoples clearly stressed that:

The development and implementation of NDCs must be undertaken with full and effective participation of Indigenous Peoples and must be consistent with the recognition, respect, and promotion of Indigenous Peoples' rights. NDCs must not encourage states to violate domestic or international human rights commitments by, for example, displacing Indigenous Peoples from their territories, and must incorporate social and environmental safeguards.

At COP22, indigenous peoples urged the parties to develop modalities that required them to provide information in their NDCs on how the preamble's principles are taken into consideration in the countries' climate actions and plans.

Although most parties seemed open to the idea of operationalizing the principles from the preamble, it seemed that they did not consider the integration of the principles relevant to the negotiations. Progress was, however, made under the capacity-building item, whereby a COP22 decision invited the Paris Committee on Capacity Building to take human rights, gender equality and indigenous peoples' knowledge into consideration in its work. This is the first decision ever adopted in the UNFCCC that mandates one specific body to consider human rights, and will hopefully set a precedent for other UNFCCC bodies to consider human rights in their work.

The indigenous peoples' and local communities' knowledge-sharing platform

A key outcome for indigenous peoples from Paris was a COP decision to establish a knowledge-sharing platform for indigenous peoples and local communities. CP21 Paragraph 135 states:

Recognizes the need to strengthen knowledge, technologies, practices and efforts of local communities and Indigenous Peoples related to addressing and responding to climate change, and establishes a platform for the exchange of experiences and sharing of best practices on mitigation and adaptation in a holistic and integrated manner.

At COP22, the process of developing the institutional structure, purpose and content of the platform was initiated, strongly promoted by the COP Presidency of Morocco. A stocktaking meeting was organized by the Moroccan Presidency and UNFCCC secretariat with the indigenous peoples' constituency at which the presidency and the secretariat asked indigenous peoples to prepare and present a proposal for operationalization of Paragraph 135. For the first time in the history of the UNFCCC, two official negotiations took place whereby state parties and indigenous peoples negotiated at the same table. Traditionally, only state parties have had the right to negotiate. A multi-stakeholder dialogue will take place at SBSTA46 in May 2017 and SBSTA will make recommendations to COP23 for its consideration. The platform provides an important step towards more formal representation of indigenous peoples in the multilateral negotiations.

Adaptation

The decision to establish an indigenous peoples' knowledge platform is closely linked to Adaptation as referred to in Article 7.5 of the Paris Agreement, which provides: "*Parties acknowledge that adaptation action should ... be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of Indigenous Peoples and local knowledge systems.*"

The IIPFCC stressed that a determination of when the use of indigenous peoples' knowledge is appropriate can only be made with the full and effective participation of indigenous peoples and can only be done effectively if Paragraph 135, the establishment of the platform, is fully supported.

At the COP22, the IIPFCC also strongly recommended that states support its call for a Dedicated Window/Grant mechanism for Indigenous Peoples under the Adaptation Fund. This is intended to enhance and further develop the adaptation capacities of indigenous peoples in developing countries and to strengthen their traditional knowledge and livelihoods, which are low-cost, effective and sustainable. This funding support will thereby facilitate the greatest contributions of indigenous peoples to the overall implementation of the UNFCCC's targets on climate change adaptation.

Indigenous peoples and the Green Climate Fund

The Green Climate Fund (GCF) was established under the UNFCCC in 2010 and constitutes one of the main funding mechanisms for climate action globally in support of the implementation of the Paris Agreement. The GCF was created to support and promote a paradigm shift in climate change-related interventions, which should be both sustainable and transformative. The GCF became operational in 2015 but is still "under construction". Policies, standards, and its institutional framework are being built up while projects are already being approved and implementation has begun, which poses a great challenge both for the GCF but also for stakeholders involved or affected by the projects. The GCF has only adopted an interim safeguards policy based on the IFC performance standards which, according to indigenous peoples, are inadequate. A significant proportion of the projects approved by the GCF as well as the project proposals in the pipeline for the GCF potentially affect indigenous peoples and indigenous peoples' territories. It is important that indigenous peoples have the possibility of monitoring the projects approved, and participating in the formulation of policies within the GCF.

The GCF only recognizes two constituencies: private sector and civil society. In 2016, however, an indigenous peoples' representative was elected as alternate active observer for the Southern CSOs. It is an important achievement for indigenous peoples, since they are thus being given an opportunity to speak at the

Board meetings. Indigenous peoples have advocated strongly for the adoption of an indigenous peoples' policy, arguing that the GCF is not yet fully compliant with the emerging international good practice in terms of recognition, respect and promotion of IP rights. In 2016, indigenous peoples called on the GCF Board to develop and adopt a comprehensive IP policy that contains provisions and criteria aimed at implementing the highest international human rights standards and obligations, including ILO 169 and UNDRIP.

At the 15th Board meeting in Samoa in December 2016, it was decided that an indigenous peoples' policy should be developed and adopted in 2017. This is an important step towards ensuring that indigenous peoples' rights are not violated and that they are not marginalized at local, national or international level in the activities supported by the GCF. Other key demands from indigenous peoples are the need to develop adequate safeguards within the GCF, and a framework for results-based finance on REDD+ that takes into consideration the rights of indigenous peoples, including free, prior and informed consent. They are also calling for a direct access finance modality for indigenous peoples so that they are able to access funding directly under the GCF.

Several informal consultations with the Green Climate Fund Secretariat took place with indigenous peoples at the COP22. Here, indigenous peoples reiterated the importance of having an indigenous peoples' policy and indigenous peoples' focal point as staff member in the GCF responsible for indigenous peoples' issues.

Climate change and human rights

Climate change is explicitly integrated into the 2030 Agenda for Sustainable Development which, in turn, is founded on human rights. It is necessary to break down barriers between existing international human rights obligations and commitments to climate actions and promote policy coherence. In October 2016, OHCHR invited relevant stakeholders, including indigenous peoples' representatives, to participate in a meeting to discuss and initiate the process of creating synergies between human rights obligations and the UNFCCC.

Key recommendations made by the OHCHR were that states should take action to keep human rights on the agenda at the UNFCCC and establish guidelines for the integration of human rights considerations into relevant communica-

tions such as the NDCs, and adaptation communications,² and should establish and support strong social and environmental safeguards for climate financing mechanisms such as the GCF and the Sustainable Development Mechanism. ○

Notes and references

1 http://unfccc.int/paris_agreement/items/9444.php

2 <http://www.ohchr.org/EN/Issues/HRAAndClimateChange/Pages/ClimateChange.aspx>

Lakpa Nuri Sherpa belongs to Sherpa indigenous group of Nepal. Currently he is the coordinator of the Environment Programme of Asia Indigenous Peoples Pact (AIPP). He is also the focal point of Indigenous Peoples to the UN Framework Convention on Climate Change (UNFCCC).

Rodion Sulyandziga is a Udege (Forest people) from the Russian Far East and a former co-chair of GSC and IIPFCC (2013-2016).

Hindou Oumarou Ibrahim is an indigenous Peul Mbororo from Chad from the organization Association des Femmes Peules et Peuples Autochtones du Tchad (AFPAT). She is also executive committee member of the Indigenous Peoples of Africa Co-ordinating Committee (IPACC). Since 2014, she has been acting co-chair of the IIPFCC and GCF.

Kathrin Wessendorf is the Environment and Climate Change Coordinator at IWGIA where she has been working for the past 15 years. She is a social anthropologist from Switzerland.

Lærke Marie Lund Petersen is a Danish human geographer working for IWGIA as Environment and Climate Change project coordinator.

WORLD HERITAGE CONVENTION

The Convention concerning the Protection of the World Cultural and Natural Heritage (“World Heritage Convention”) was adopted by UNESCO’s General Conference in 1972. With 192 States Parties, it is today one of the most widely ratified multilateral treaties. Its main purpose is the identification and collective protection of cultural and natural heritage sites of “outstanding universal value” (OUV). The Convention embodies the idea that some places are so special and important that their protection is not only the responsibility of the states in which they are located but also a duty of the international community as a whole.

The implementation of the Convention is governed by the World Heritage Committee (WHC), an intergovernmental committee consisting of 21 States Parties. The WHC keeps a list of the sites it considers to be of OUV (“World Heritage List”) and monitors the conservation of these sites to ensure that they are adequately protected and safeguarded for future generations. Sites can only be listed following a formal nomination by the State Party in whose territory they are situated, and are classified as either “natural”, “cultural” or “mixed” World Heritage sites. Although a large number of World Heritage sites are fully or partially located in indigenous peoples’ territories, there is a lack of regulations and appropriate mechanisms to ensure the meaningful participation of indigenous peoples in Convention processes and decisions affecting them. While the WHC in 2015 inserted some references to indigenous peoples into the Convention’s Operational Guidelines, the Guidelines do not make the involvement of affected indigenous peoples obligatory for States.

The WHC is supported by a secretariat (the UNESCO World Heritage Centre) and three advisory bodies. The International Union for Conservation of Nature (IUCN) and the International Council on Monuments and Sites (ICOMOS) provide technical evaluations of World Heritage nominations and help in monitoring the state of conservation of World Heritage sites; the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) provides advice and training related to cultural sites. An indigenous proposal to establish a “World Herit-

age Indigenous Peoples Council of Experts” (WHIPCOE) as an additional advisory body was rejected by the WHC in 2001.

40th Session of the WHC, Istanbul, July 2016 & Paris, October 2016

The WHC welcomed the adoption of the World Heritage Sustainable Development Policy by the General Assembly of States Parties to the World Heritage Convention in November 2015 (see *The Indigenous World 2016*) and invited the World Heritage Centre to develop a strategy for the implementation of the policy.¹ The policy contains a specific section concerning indigenous peoples and local communities which notes that “Recognising rights and fully involving indigenous peoples and local communities, in line with international standards is at the heart of sustainable development”.²

The Association of Indigenous Village Leaders in Suriname (VIDS) and IW-GIA presented a joint oral statement at the WHC’s Istanbul session in which they encouraged the WHC to develop the necessary changes to the Convention’s Operational Guidelines in order to translate the principles of the sustainable development policy into actual operational procedures.³ The statement reiterated the view expressed by the Permanent Forum on Indigenous Issues in 2015 that the effectiveness of the policy in ensuring respect for indigenous peoples would depend on the adoption of specific procedures that not only encourage but actually require States Parties to comply with international standards regarding the rights of indigenous peoples.⁴

The World Heritage Centre is supposed to propose relevant changes to the Operational Guidelines in order to translate the principles of the sustainable development policy into operational procedures once the WHC has adopted the “Compendium of Policy of the World Heritage Convention” that is currently under preparation.⁵ An initial scoping study concerning this Policy Compendium, examined by the WHC during the 40th session, states that “in regard to rights-based approaches to conservation, and in particular gender equality, indigenous people, and community involvement, it will be necessary to determine if there is a need for one or more separate, new policy (or policies), or if the existing sustainable development policy is sufficient to meet the policy needs of the World Heritage

System in this area”.⁶ The WHC requested that the World Heritage Centre submit a first draft of the Policy Compendium to the WHC’s 42nd session in 2018.⁷

Noteworthy decisions on specific sites

The WHC again inscribed some new sites on the World Heritage List that overlap with indigenous peoples’ territories. Among these are the Ahwar of Southern Iraq, a mixed cultural/natural site in Iraq traditionally inhabited by Marsh Dwellers (also known as “Marsh Arabs” or “Ma’adan”), and Nan Madol in the Federated States of Micronesia, a ruined settlement and ceremonial centre off the island of Pohnpei that continues to be under the customary ownership and protection of the Paramount Chief of Madolenihmw.

Another newly inscribed indigenous site is Khangchendzonga National Park (KNP) in the Himalayan range in northern India, listed both for its natural values and for its cultural significance as a sacred landscape for the indigenous peoples of Sikkim and Tibetan Buddhists. The recognition of the cultural meaning of KNP “does not encompass resource use practices, traditional livelihood systems, local knowledge etc.”, as IUCN notes in its evaluation of the nomination.⁸ The KNP has traditionally and in the recent past been inhabited and used by indigenous Lepcha, Bhutia and Dokpa people; however, with its designation as a national park, permanent human presence and consumptive resource use, including livestock grazing, were prohibited and resident communities were resettled from the area. During the evaluation process of the World Heritage nomination, India advised, however, that the traditional system of rotational alpine grazing by the Dokpa would be integrated into the management plan for the site.⁹ The IUCN evaluation criticizes the fact that “the nomination has been conceptualized from a nature perspective with cultural aspects considered later and the history of site management, the legal and governance arrangements reflect this bias to nature”, and stresses that it is “important to redress the management emphasis to ensure an appropriate balance between the natural, cultural and spiritual aspects of the property”. Noting the top-down nature of the management of the KNP, IUCN also criticised the fact that there are no formal mechanisms enabling local communities to participate in decision-making. IUCN therefore observed that sustained efforts were needed to “empower more participatory approaches to the management of the property” and to “implement genuine reforms that facilitate local com-

munity access to the resources of KNP in such a way that is sustainable and does not damage core values”.

The WHC again considered the nomination of the Kaeng Krachan Forest Complex (KKFC) in Thailand, which it had referred back to the State Party at its 39th session in July 2015 in order to allow Thailand to address concerns raised by the Office of the UN High Commissioner for Human Rights (OHCHR) about human rights violations against the Karen communities in the KKFC (see *The Indigenous World 2016*). Thailand resubmitted the nomination in January 2016, informing the WHC of some preliminary steps it had taken to address the concerns and build support for the nomination among local communities and stakeholders, such as the holding of a number of public hearings.¹⁰

However, Karen representatives sent various communications to UNESCO and IUCN reiterating their position that the nomination should not be approved before the land and resource rights of the Karen communities in the KKFC were recognized and protected.¹¹ Key demands of the Karen include:

- that the traditional farming system of the Karen be recognized and rotational farming allowed to continue in the area with a 10-year cycle;
- that the Karen be allowed to choose their own settlement areas;
- that the Karen be allowed to manage their own settlement and farming areas through a committee constituted by the community itself;
- that the Karen’s traditional ways of life and rights be recognized by the government and national park authorities;
- that the Karen Network for Culture and Environment (KNCE) be included as a proponent with the Thai Government in the World Heritage nomination.¹²

In light of the continued concerns voiced by the Karen, IUCN wrote in its technical evaluation of the nomination that “to inscribe the KKFC on to the World Heritage List would be premature until more time is given to addressing community and rights issues”, recommending another referral.¹³ Moreover, shortly before the WHC’s decision on the nomination, the UN Committee on the Elimination of Racial Discrimination (CERD) considered the case of the KKFC under its early warning and urgent action procedure, requesting that the Government of Thailand “urgently halt the eviction of the Karen indigenous people from the Kaeng Krachan National Park and take steps to prevent any irreparable harm to the livelihood of

Karen as well as to ensure that they enjoy their rights”.¹⁴ CERD further requested that Thailand provide information on “measures taken to ensure the free, prior and informed consent of the Karen indigenous people or genuine consultation in decisions affecting them” and “steps taken to reconsider the nomination of the KKFC site from the World Heritage’s list until an agreement is found with the Karen people”.

Aware of the communication from CERD to the Government of Thailand,¹⁵ the WHC decided to follow the advice of IUCN and again referred the nomination back to the State Party, asking it to:

*more fully address the concerns that have been raised by the Office of the United Nations High Commissioner for Human Rights concerning Karen communities within the Kaeng Krachan National Park, including the implementation of a participatory process to resolve rights and livelihood concerns and to achieve a consensus of support for the nomination of the property that is fully consistent with the principle of free, prior and informed consent.*¹⁶

The WHC’s reference to the principle of free, prior and informed consent (FPIC) is noteworthy, as the Committee had voted against the inclusion of such a reference in its 2015 decision on the KKFC (see *The Indigenous World 2016*). This marks the first time that the WHC has called for the FPIC of indigenous peoples in a decision on a specific World Heritage nomination.

Another nomination discussed by the WHC was the indigenous-led nomination of Pimachiowin Aki in Canada, resubmitted to the WHC’s 40th session after a deferral in 2013 (see *The Indigenous World 2014*). The WHC commended the nomination as a “landmark for properties nominated through the commitment of Indigenous peoples”, noting that it demonstrated “how the indissoluble bonds that can exist between culture and nature might be recognized on the World Heritage List”.¹⁷ However, at the request of Canada, the WHC referred the nomination back to the State Party in order to allow it to address “recently identified issues regarding governance and relationships within the Pimachiowin Aki Corporation”.¹⁸ The reason for this was the fact that, shortly before the meeting, one of the First Nations involved in the nomination withdrew its support for the project because its leaders were concerned about errors in the Advisory Bodies’ evaluation reports, including misrepresentations of First Nation treaty rights by ICOMOS.¹⁹

Also noteworthy is a decision on the state of conservation of the Great Himalayan National Park Conservation Area (GHNPCA) in India, in which the WHC “requests the State Party to re-consider the possibility of notification of Tirthan Wildlife Sanctuary [included in the GHNPCA] as a national park”.²⁰ Although the decision encourages consultations with local communities and indigenous peoples in order to find “mutually acceptable ways to resolve any ongoing resource use conflicts, while respecting any rights of use”, conversion of the Tirthan Wildlife Sanctuary into a national park would imply the extinguishment of traditional resource use rights and was therefore strongly opposed by local communities during the nomination of the site. Due to this opposition, India announced at the time of listing in 2014 that it would “not now pursue this transfer of protection status” (see *The Indigenous World 2015*) and, in 2015, the responsible State authority decided that the wildlife sanctuary would not be notified as a national park “to allow local communities to continue sustainable activities in the area”.²¹ In requesting that India reconsider this decision, the WHC was following advice from the World Heritage Centre and IUCN.²²

UN Special Rapporteur on the rights of indigenous peoples

Focused on the impacts of conservation initiatives on indigenous peoples’ rights, the 2016 report of the UN Special Rapporteur, Victoria Tauli-Corpuz, to the UN General Assembly contains a number of observations related to the implementation of the World Heritage Convention and the management of specific World Heritage sites.²³ According to the report, the impact of World Heritage sites on indigenous peoples “is a recurring concern, notably because, on numerous occasions, these sites have been declared without consultation with indigenous peoples and have a serious negative impact upon their rights. Protected areas with heritage status”, it is added, “have in several instances resulted in forced removal of indigenous peoples or significant restrictions on their access to livelihood resources and sacred sites. Furthermore, heritage listings often lead to an unprecedented increase in tourism.” Noting that “the Operational Guidelines... which set out the procedure for the inscription of properties on the World Heritage list and the protection and conservation of sites, do not require participation by indigenous peoples”, the report recommends that the WHC “reform the Operational Guidelines... to align them with the United Nations Declaration on the Rights of

Indigenous Peoples [UNDRIP] and adopt procedures to ensure indigenous peoples' free, prior and informed consent".²⁴

Draft UNESCO Policy on Engaging with Indigenous Peoples

In November 2016, the UNESCO focal point unit for indigenous issues distributed the draft of a UNESCO Policy on Engaging with Indigenous Peoples, inviting interested organizations and individuals to provide inputs and comments to a UNESCO Task Team charged with preparing a final draft for consideration by UNESCO's Executive Board at its 201st session in April 2017. The (unpublished) draft document reaffirms UNESCO's commitment to promoting the human rights-based approach in its programming, with reference in particular to the rights of indigenous peoples as laid down in the UNDRIP and ILO Convention 169. The draft outlines eight overarching principles to guide UNESCO's engagement with indigenous peoples²⁵ and contains several sets of guidelines for applying these principles in UNESCO's various programme areas (education, natural sciences, culture, etc.). While the draft does not specifically reference the World Heritage Convention, it does provide that "Indigenous communities have the right to FPIC regarding activities that concern their cultural heritage and expressions and their future development." ○

Notes and references

- 1 WHC Decision 40 COM 5C.
- 2 Doc. WHC-15/20.GA/INF.13, para. 21.
- 3 See <http://whc.unesco.org/en/sessions/40COM/records/>, Session of Monday 11 July, 15h-18h30, at 0:33:55.
- 4 Oliver Loodes' statement on behalf of UNPFII at the 39th session of the World Heritage Committee, http://www.iwgia.org/iwgia_files_news_files/1234_Oliver_Loodes_Statement_on_Behalf_of_UNPFII_at_the_39th_session_of_orld_Heritage_Committee.docx
- 5 Formerly referred to as "Policy Guidelines". For details, see Doc. WHC/16/40.COM/5C, para. 6 and Doc. WHC/16/40.COM/12. Also see WHC Decision 39 COM 5D, para. 10 and General Assembly Resolution 20 GA 13, para. 8.
- 6 Doc. WHC/16/40.COM/12, p. 12.
- 7 WHC Decision 40 COM 12.
- 8 Doc. WHC/16/40.COM/INF.8B2, p. 128.
- 9 Ibid.

- 10 KKFC World Heritage nomination, Additional information / State Party response to WHC Decision 39 COM 8B.5, 26 January 2016.
- 11 See IUCN World Heritage Evaluations 2016, Addendum, Doc. WHC/16/40.COM/INF.8B2.ADD, p. 8.
- 12 Statement of the KNCE, Tanaosri region, 14 July 2016, <http://www.forestpeoples.org/sites/fpp/files/news/2016/09/2016%20KNCE%20statement%20english%20July.pdf>
- 13 See Doc. WHC/16/40.COM/INF.8B2.ADD, p. 8.
- 14 Early warning and urgent action letter, 3 October 2016, Doc. CERD/90th/EWUAP//GH/MJA/ks
- 15 The CERD communication was brought to the WHC's attention by IWGIA, Forest Peoples Programme and Asia Indigenous Peoples Pact. See <http://iphndefenders.net/thailand-indigenous-rights-organizations-request-world-heritage-committee-defer-inscription-kaeng-krachan-forest-complex-natural-world-heritage-site/>
- 16 WHC Decision 40 COM 8B.11, para. 4.
- 17 WHC Decision 40 COM 8B.18.
- 18 Ibid.
- 19 See <http://winnipeg.ctvnews.ca/unesco-bid-for-manitoba-ontario-boreal-forest-region-falters-1.2990-265> and Doc. WHC/16/40.COM/INF.8B4, pp. 36-39 (comments by Canada on factual errors in the Advisory Body evaluations).
- 20 Decision 40 COM 7B.88.
- 21 GHNP/PCA State of Conservation Report by the State Party, 2016, p. 3 and p. 21 (Annexure 2, p. 7). Available at <http://whc.unesco.org/en/list/1406/documents/>
- 22 See Doc. WHC/16/40.COM/7B, pp. 168-171.
- 23 Specific World Heritage sites discussed in the report include Lake Bogoria National Reserve (Kenya), Quebrada de Humahuaca (Argentina), Kaeng Krachan National Park (Thailand) and Kakadu National Park (Australia).
- 24 UN Doc. A/71/221, pp. 21,25.
- 25 Overarching principles outlined in the draft: non-discrimination, equity and equality; self-determination; development with culture and identity; participation and inclusion; free, prior and informed consent; rights to lands, territories, resources, knowledge and cultural heritage; empowerment and strengthening capacity; gender equality.

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AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights (African Commission) was officially inaugurated on 2 November 1987 and is the premier human rights body of the African Union (AU). In 2001, the African Commission established its Working Group on Indigenous Populations/Communities in Africa (the Working Group), which was a remarkable step forward in promoting and protecting the rights of indigenous peoples in Africa. In 2003, the Working Group produced a comprehensive report on indigenous peoples in Africa which, among other things, sets out common characteristics that can be used to identify indigenous communities in Africa. The report was adopted by the African Commission and later, in 2005, endorsed by the AU and hence represents the official position of both the African Commission and the AU on the concept and rights of indigenous peoples' in Africa.

Since 2001, the human rights situation of indigenous peoples has been on the agenda of the African Commission and the 2003 report serves as the bedrock of the constructive engagement between the African Commission and states, national human rights institutions, NGOs, indigenous communities and their organizations and other stakeholders. The continued participation of indigenous peoples' representatives in the sessions of the African Commission, as well as in the various activities of the Working Group, which include sensitization seminars, country visits, information activities and research, plays a crucial role in ensuring and maintaining this vital engagement and dialogue.

Dialogue between states and civil society at the African Commission sessions

The African Commission held its 58th and 59th ordinary sessions in 2016. At these sessions, five indigenous peoples' representatives from Kenya partici-

pated and informed the Commission about the state of indigenous peoples in Africa in general, and in Kenya in particular. During these sessions, through its Chairperson, the Working Group also presented its reports to the Commission on the activities that it had undertaken, its achievements and challenges, and also gave an update on the situation of indigenous peoples on the continent. The participation of indigenous peoples' representatives, as well as the intervention of the Working Group's Chairperson during sessions, greatly contributes to raising awareness of the rights and situation of indigenous peoples in the continent.

During each session, the African Commission also examines the periodic reports of African states. In 2016, the Commission examined, among others, the periodic reports of Namibia and South Africa. IWGIA, the Legal Assistance Centre (LAC) and Natural Justice contributed to the process by submitting shadow reports which provided an alternative source of information and assisted the African Commission in asking substantiated and well-informed questions on indigenous peoples during the consideration of the reports of the two countries.

African Year of Human Rights: zooming in on indigenous women's rights

2016 marked a critical juncture in the African continent's human rights trajectory. As indicated by the Chairperson of the African Commission, the Honourable Pansy Tlakula, in her opening statement¹ on 21 October 2016 at the 59th ordinary session, 2016 marked the 30th anniversary of the entry into force of the African Charter on Human and Peoples' Rights; the 10th anniversary of the operationalization of the African Court on Human and Peoples' Rights (the African Court) and the 13th anniversary of the Protocol to the African Charter on the Rights of Women in Africa (the Maputo Protocol). To celebrate these significant achievements, the African Union declared 2016 as "the African Year of Human Rights with particular Focus on the Rights of Women". Accordingly, the African Commission decided to mark this milestone by hosting a women's conference during its 59th ordinary session at which all special mechanisms of the African Commission organized panel discussions aimed at highlighting the various challenges women face in their respective thematic areas of operation.

In light of the above, the Working Group also organized a panel discussion on the rights of indigenous women in Africa. Panellists were drawn from, *inter alia*,

the UN human rights system, the African Commission and indigenous communities.² The panel discussion highlighted the instrumental role that African indigenous women play in their respective communities as caretakers and often providers of livelihood. It was, however, indicated that the challenges of accessing basic services such as healthcare and education disproportionately affect indigenous women. The panellists also addressed the crippling effect of deep-rooted and harmful traditional practices such as female genital mutilation and early marriage on the mental, psychological and physical development of indigenous women. Other challenges mentioned by the panellists included indigenous women's limited participation in the decision-making process at the community, local and national levels and women's lack of land and property rights in many indigenous communities.³

The participation of indigenous peoples' representatives in these sessions creates an opportunity for face-to-face dialogue with their respective government representatives. For instance, one of the Kenyan indigenous representatives that participated in the session had the opportunity to meet with the government delegation and discuss the situation of indigenous peoples in the country. They also seized the opportunity to do some lobbying with regard to implementation of the Endorois decision of the African Commission.

Adoption of the study on Extractive Industries, Land Rights and Indigenous Communities/Populations' Rights: East, Central and Southern Africa

After a long process of consultation and revision, the Working Group's study report on "Extractive Industries, Land Rights and the Rights of Indigenous Communities/Populations: East, Central and Southern Africa" was finally adopted by the African Commission at its 58th ordinary session in Banjul, The Gambia, in April 2016. The study, which was launched in September 2013, is informed by field studies conducted in four African countries, namely Kenya, Cameroon, Uganda and Namibia. A validation workshop bringing together all stakeholders was also held in March 2015 in Windhoek, Namibia. The report has now been finalized and will be officially launched at the 60th ordinary session of the African Commission in Niamey, Niger. Once it is launched, the electronic and hard copies of the report will be widely disseminated.

Monitoring the human rights situation of indigenous peoples in Africa

The Working Group also closely monitored the situation of indigenous populations/communities in Africa throughout 2016. For instance, in August 2016, the Working Group sent a letter to the World Bank concerning the waiver granted to the Government of Tanzania that allows it to receive considerable funding from the Bank without the application of Operational Policy 4.10 - the safeguard policy designed to ensure that the rights and interests of indigenous peoples are not violated in projects or programs funded by the Bank. The letter clearly stated that the area covered by the Bank-funded project, also known as the SAGCOT Corridor project, is inhabited by indigenous communities such as the Barabaig and the Maasai, and hence the waiver is tantamount to a clear violation of the Bank's own standards as well as international human rights norms and principles for the protection of indigenous communities.

In the same month, the Working Group also sent a letter of Urgent Appeal to the President of the United Republic of Tanzania regarding the alleged arbitrary arrest and detention without trial of pastoralist rights defenders and lawyers who had been actively lobbying against the land grab in the Loliondo region.

Ongoing sensitization of indigenous peoples' rights

In September 2016, and in close collaboration with the Working Group, the Centre for Human Rights of the University of Pretoria in South Africa delivered an Advanced Course on the Rights of Indigenous Peoples' in Africa for the sixth time. The course brought together 35 participants from across Africa, ranging from government officials, civil society representatives and academics to students, journalists and indigenous peoples' representatives. The lecturers were all well-known experts on the topic, including members of the Working Group. ○

Notes and references

- 1 Chairperson of the ACHPR, the Honourable Pansy Tlakula "Opening Statement of the Chairperson of the African Commission on Human and Peoples' Rights" (presented at the 59th ordinary

session of the ACHPR, Banjul, The Gambia, 21 October, 2016), see the statement at the ACHPR website:

http://www.achpr.org/sessions/59th/speeches/chair_opening-statement/

- 2 The Panel Discussion was chaired by Commissioner Soyata Maiga and the panellists were Dr. Mariam Aboubakrine, member of the UN Permanent Forum on Indigenous Issues, Ms Dubravka Simonovic, UN Special Rapporteur on Violence Against Women, Dr. Melakou Tegegn, expert member of the WGIP, Ms Jane Meriwas and Ms Ann Reisano, indigenous representatives from Samburu Women's Trust (Kenya), and Lisenga Bafalikiki, coordinator of the Coalition of Women Leaders for the Environment and Sustainable Development in the Democratic Republic of Congo (DRC).
- 3 See IWGIA article on the panel debate as well as a video about the event from Ms Jane Meriwas of the Samburu Women's Trust here: http://www.iwgia.org/news/search-news?news_id=1414

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ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN)

The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967 with the signing of the ASEAN Declaration (Bangkok Declaration) by Indonesia, Malaysia, Philippines, Singapore and Thailand. Brunei, Cambodia, Lao PDR, Vietnam and Myanmar later joined, making ASEAN a 10-member state organization. ASEAN's aim and purpose include the acceleration of economic growth, social progress, cultural development, and the promotion of regional peace and stability through respect for justice and the rule of law in the inter-relationships between countries in the region, as well as in adherence to the UN Charter's principles. The ASEAN Charter was adopted in November 2007 and came into force in December 2008, making it a legally binding agreement among the Member States and providing ASEAN with a legal status and institutional framework.

In 2009, the ASEAN Intergovernmental Commission on Human Rights (AICHR) was established and mandated to develop an ASEAN Human Rights Declaration to define a framework for human rights cooperation through various ASEAN conventions and other human rights instruments. The Declaration was adopted on 18 November 2012 in Phnom Penh, Cambodia. It does not make any reference to indigenous peoples, however, despite the estimated population of 100 million people identifying as indigenous in Southeast Asia.¹

ASEAN Community Vision 2025

The ASEAN Community Vision 2025² was adopted during the 27th ASEAN Summit in November 2015. The vision is a roadmap starting in 2016, and articulating ASEAN goals and aspirations to realize further consolidation, integration and a stronger community that is “politically cohesive, economically integrated, and socially responsible.” It reiterates ASEAN's position as a people-centered

association, ensuring fundamental freedoms, human rights and better lives for all ASEAN peoples. Indigenous peoples and civil society organizations (CSOs) are nonetheless skeptical as some key elements and targets of ASEAN 2025 have significant implications for indigenous peoples in relation to the protection of their collective rights, particularly to their lands, territories and resources. Some of the implications are linked to the visions of an integrated and connected economy within the global economic system; business-friendly, trade and market-driven economic growth and connected regions with transport linkages and infrastructure to facilitate business and movements across borders. ASEAN's ambitious investment plan includes resource extraction, mega-dams and energy projects; roads, bridges and ports; agribusiness expansion, and tourism, much of which will be implemented in indigenous territories. Effective mechanisms for meaningful consultations and the implementation of free prior and informed consent of indigenous peoples are not, however, in place including a clear regulatory framework for human rights due diligence.

Indigenous peoples and CSOs assert that the ASEAN 2025 should not focus solely on political and economic integration, as this will only exacerbate inequality within and between Member States. It must address issues such as internal conflict, territorial and maritime disputes, environmental degradation, excessive exploitation of natural resources, severe human rights violations such as torture, forced disappearances, human and drugs trafficking, land grabbing and forced evictions of indigenous peoples, labor rights violations, exploitation of migrant workers and low-paid workforce, and the use of draconian and new laws aimed at restricting the freedom of expression and information, movement and legitimate actions of CSOs.

ASEAN Intergovernmental Commission on Human Rights (AICHR)

The AICHR has eight new representative-members from the Philippines, Brunei, Cambodia, Indonesia, Singapore, Vietnam, Myanmar and Malaysia. The newly-formed Human Rights Division within the ASEAN secretariat, under the ASEAN Political-Security Community Department (APSC), provides dedicated support to the AICHR.

Adopted in June 2015, the AICHR started its second Five-Year Work Plan 2016-2020³ with the aim of “realizing the aspiration of the people of ASEAN on

human rights, strengthening AICHR, promoting and protecting human rights in ASEAN and enhancing cooperation with external partners, as well as to implement AICHR's overarching mandate on human rights, thereby contributing to the successful building of an ASEAN Community and beyond." This plan will regularize activities and employ a programmatic approach including the mainstreaming of the rights of persons with disabilities. However, the AICHR has no clear commitment or plan to promote and protect the rights of indigenous peoples as enshrined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), despite the consistent recommendations of indigenous peoples' organizations, CSOs and some national human rights institutions.

Shrinking democratic space

Despite the avowed commitment of ASEAN in general, and the AICHR in particular, to promote and protect human rights, the trend in ASEAN Member States has in fact been towards political repression and restrictions of the legitimate activities of CSOs, including of indigenous peoples. In particular, the AICHR has taken no action on the political killings of activists, including indigenous peoples (for example 17 political killings of indigenous peoples in the Philippines), nor on the arrest, detention and penalization of indigenous peoples for defending their land rights, and nor in relation to those who practice sustainable livelihoods such as gathering of non-timber forest products and rotational agriculture in Thailand, Lao PDR, Indonesia and Malaysia.

AICHR engagement with CSOs

In 2016, the AICHR approved the applications of 10 CSOs, including the Asia Indigenous Peoples' Pact (AIPP), to become accredited organizations with consultative status with the AICHR, based on its Guidelines on Relations with CSOs⁴ adopted in February 2015.

The Guidelines are "to establish an enabling environment for meaningful and constructive engagement and interaction between the AICHR and CSOs; to further strengthen ASEAN cooperation in the promotion and protection of human rights and fundamental freedoms in accordance with the ASEAN Charter; the

ASEAN Human Rights Declaration (AHRD), the Phnom Penh Statement on the Adoption of the AHRD and international human rights instruments to which ASEAN Member States are parties; and to contribute to the building of a people-oriented, people-centered ASEAN Community.” The Guidelines further provide a process for its engagement with CSOs, which includes sharing of the agenda prior to consultation meetings; submission of written statements relevant to the work of AICHR; conduct of seminars, workshops, regular reporting, briefing and implementation of specific activities; and project implementation of AICHR work plans and other formats for its engagement, to be defined by the AICHR. The consultative relations between the AIPP and the AICHR may hopefully facilitate the visibility of indigenous peoples in the AICHR’s work. The AIPP is an alliance of 50 Indigenous Peoples’ organizations in 13 countries in Asia, with 20 organizations in ASEAN. It has been engaging with ASEAN since the establishment of the AICHR. ○

Notes and references

- 1 This figure is not accurate since only a few states in the region recognize indigenous peoples and their rights and, as a result, indigenous peoples are not taken into account when conducting the national census.
- 2 ASEAN Community Vision 2025, <http://asean.org/asean-community-vision-2025-2/>
- 3 Five-Year Work Plan of the ASEAN Intergovernmental Commission on Human Rights (2016 – 2020) adopted in June 2015, <http://aichr.org/documents/>
- 4 Guidelines on the AICHR’s Relations with Civil Society Organisations, Adopted February 2015, <http://aichr.org/documents/>

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THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

The Inter-American system of human rights (IHRS) consists of the Commission (IAHRC/CIDH) and the Inter-American Court of Human Rights (I-A/Court). Respect for indigenous peoples' rights is of particular importance for the IHRS and activities related to these rights include the thematic reports, thematic hearings; system of petitions and cases; protection (precautionary and provisional measures); judgments by the I-A/Court, advisory opinions; and press releases. On this basis, the IHRS has developed relevant jurisprudence that—through decisions to Member States of the Organisation of American States (OAS)—has enabled individual and collective rights to be recognised, victims to be compensated and guidelines to be produced with the aim of preventing or resolving matters of domestic jurisdiction. The IACHR has, in particular, used its different mechanisms to protect indigenous peoples' rights, and this area of its work is being developed primarily through its Rapporteurship on the Rights of Indigenous Peoples, created in 1990.

The American Declaration on the Rights of Indigenous Peoples

After 17 years of negotiations, the IHRS was finally able to celebrate the approval of the American Declaration on the Rights of Indigenous Peoples, adopted on 22 June 2016, at the third plenary session of the General Assembly of the Organization of American States (OAS).¹ The text of the Declaration² recognizes the fundamental right of indigenous peoples to self-determination, to their ancestral territories, as well as to consultation and free, prior and informed consent. It also highlights their right to not be subjected to any form of genocide, and the right not to be subject to assimilation, racial discrimination, racism, intolerance and violence. The text, which bases itself on the recognition of the right to self-identification, fosters the respect, development and strengthening of indigenous cultures, traditions, ways of life and languages; emphasizing the right to establish

and control their educational systems and institutions, providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning, as well as the right to promote, develop and access all means of communication, broadcasting and information on equal terms as others. In addition, the Declaration protects the right to indigenous peoples to health, to a healthy environment, as well as to gender equality for indigenous women, among other fundamental rights. The Declaration also reflects the specific realities of the Americas, being the first one to recognize the rights of indigenous peoples in voluntary isolation and initial contact to remain in that condition and to live freely, in accordance with their cultures and cosmovision.³

The Declaration is an important contribution to the development of international standards adopted with the objective of protecting and guaranteeing indigenous people's rights, and must be read in conjunction with other international instruments such as the United Nations Declaration on the Rights of Indigenous Peoples, the International Labor Organization's Convention No. 169 on the Rights of Indigenous Peoples, as well as the American Convention of Human Rights, the American Declaration on the Rights and Duties of Man, and other specialized treaties and instruments in the Inter-American and Universal Human Rights systems. The IACHR has urged Member States of the OAS to implement measures at the national and regional levels to guarantee the full and appropriate fulfillment of the commitments contained in the Declaration.⁴

Thematic report

In 2016, the Commission published the report "Indigenous peoples, Afro-descendent communities, and natural resources: Human rights protection in the context of extraction, exploitation, and development activities".⁵

In this regional report, the Commission begins by referring to the international obligations of States under the Inter-American system with regard to the implementation of extractive and development activities. The Commission considers that State obligation in this context has six dimensions: (i) the duty to adopt an appropriate and effective regulatory framework, (ii) the duty to prevent human rights violations, (iii) the obligation to supervise and monitor the activities of companies and other non-state parties, (iv) the duty to ensure mechanisms for effective participation and access to information, (v) the duty to prevent illegal activities and forms of violence, and (vi) the

duty to guarantee access to justice through the investigation, punishment, and adequate reparation of human rights violations in these contexts. The Report analyses each of these dimensions from the point of view of the rights of indigenous peoples.

Subsequently, the IACHR looks at some of the major impacts that the implementation of extractive, exploitative and development projects has on the rights of indigenous peoples and Afro-descendent communities. The report thus highlights the various forms in which these activities affect the full exercise of the rights of indigenous peoples, and in particular the right to collective property, to cultural identity and religious freedom; the right to life and to health, personal integrity, and a healthy environment. It also affects indigenous peoples' economic and social rights including the right to food, to water, their labor rights, the right to personal freedom, to assembly and to be protected from forced displacement

Based on the information and the analysis made by the Commission throughout the report, the Commission formulates a series of recommendations to the States.

Thematic and country hearings before the IACHR

The following thematic hearings⁶ took place during the IACHR's 157th ordinary period of sessions (2-15 April 2016):

- The right of association of the indigenous peoples in Ecuador.
- Follow-up on the report "Missing and murdered indigenous women in British Columbia, Canada".⁷
- Human rights of indigenous peoples and peasant communities in Espinar, Cusco, Peru.

During the IACHR's 158th extraordinary period of sessions (6-10 July 2016),

- The Right to Free, Prior and Informed Consultation of indigenous peoples in Bolivia.

During the 159th ordinary period of sessions (29 November-7 December 2016)

- The situation of the indigenous peoples and the right to consultation in Honduras.

- Complaints on human rights violations suffered by women in the context of extractive activities in Peru.
- Human rights in the context of the Project 'Arco Minero del Orinoco' (the Mining belt of Orinoco) in Venezuela.
- The human rights situation of the indigenous peoples in Yucatan, Mexico.
- The human rights situation in the context of the implementation of the Trans-Pacific Partnership Agreement (TPP), in the Americas.

During the 160th ordinary period of sessions (9-10 December 2016),

- The human rights situation of indigenous peoples in the context of projects and extractive industries in the United States.
- The human rights situation of indigenous children in Canada; the situation of disappearance and murders of indigenous women and girls in Canada.

IACHR Reports on petitions and individual cases in 2016

The Commission approved the following admissibility reports on the rights of indigenous peoples:

- Report Admissibility No. 30/16, Petition 554-03, Communities of the Lower and Upper Atrato Valleys in Chocó and Antioquia Departments, Colombia July 22, 2016.⁸
- Report Admissibility No. 71/16, Petition 765-09. Q'eq'ob Community of the Municipality of Santa Maria Nebaj. Guatemala. December 6, 2016.⁹

The Commission also published a merits report on

- Case 11.564. Report Merits No. 51/16, *Gilberto Jiménez Hernández et al (La Grandeza) vs México*. November 30, 2016.¹⁰

The Commission furthermore organized two public audiences on cases at the merits stage related to the rights of indigenous peoples.

- Case 12.717 *Indigenous Ngobe Communities and others vs. Panama*—regarding the concession given by the State in 2007 to the AES-

Changuinola S.A. Company for a duration of 20 years of 6,225 ha of land claimed by the indigenous Ngobe people.¹¹

- Case 12.893 *Indigenous Community of Nam Qom of the Qom people (Toba) vs. Argentina*—regarding human rights violations as a consequence of the incursion into the community by State security forces.¹²

Precautionary measures issued by the IACHR

The Commission issued in 2016 precautionary measures in five cases related to indigenous peoples.¹³

- The IACHR extended twice (16 January and 8 August) the scope of Precautionary Measure 505/15, originally granted on October 14, 2015, in favor of four indigenous Miskitu communities of Wangki Twi-Tasba Raya, in the North Caribbean Coast Autonomous Region, Nicaragua. Provided information indicated that two more indigenous communities as well as human rights defendants belonging to the CEJUDHCAN organization were at risk due to acts of violence, kidnappings, death threats, killings and forced displacement related to the conflictive situation in the area. The Commission requested that Nicaragua adopt the necessary measures to safeguard the life and physical integrity of the members of the indigenous communities and the members of CEDJUDHCAN; and adopt the necessary measures for CEDJUDHCAN members to defend human rights without being targets of violence, threats and harassment.¹⁴
- Precautionary measures were issued on 3 February 2016, in favor of the rights of the Ayoreo Totobiegosode People, especially of the communities in voluntary isolation, known as the Jonoine-Urasade. The Commission required the State of Paraguay to adopt the necessary measures to protect the communities in voluntary isolation by protecting their ancestral lands and avoiding deforestation in these lands, as well as unwanted contacts and the entry of third parties.
- Precautionary measures were adopted on 11 May 2016, for the 595 members of the Otomí-Mexica indigenous community of San Francisco Xochicuautla, in Mexico. The information received by IACHR indicates that the construction of a highway section that cuts across their ancestral

lands was approved without prior consultation. An injunction (*amparo*) in their favor, ordering the construction to be suspended, had not been respected, and several members of the community had been arrested in the context of protests against the highway construction, on grounds that they had committed the alleged crime of “opposition to the execution of public works.” The IACHR asked the State of Mexico to adopt the necessary measures to protect the life and personal integrity of the identified members of the Otomí-Mexica indigenous community of San Francisco Xochicuautla

- The IACHR extended on 28 October 2016, the precautionary measures issued in 2013 in favor of the indigenous community of Choréachi in the municipality of Guadalupe and Calvo in the state of Chihuahua, Mexico. The extension was based on information according to which the indigenous community is the object of acts of violence, harassments, death threats and continuous intimidations. The IACHR particularly noted the presence and incursion of mestizo communities on the territory of the indigenous community within the frame of a territorial conflict and the alleged activities of organized criminal groups linked with drug trafficking.

Referral of cases to the Inter American Court of Human Rights

Two cases related to the rights of indigenous peoples were submitted by the Commission to the Court’s jurisdiction.

- **Case 12.728** *Xucuru indigenous people and its members vs. Brazil* was filed on 16 March 2016, because the Commission considered that the State of Brazil had not complied with the recommendations contained in the report on the merits of the case.¹⁵ The case relates to violations of the Xucuru indigenous people’s right to collective property resulting from, firstly, a delay of more than 16 years, between 1989 and 2005, in the administrative process of recognition, titling, demarcation and delimitation of their territory and ancestral lands and territories; and, secondly, a delay in the total regularization of this territory and lands, in a way which would allow the above mentioned indigenous people to peacefully exercise such right. The case is furthermore related to the violations against the right to

fair trial and judicial protection derived from a breach of the guarantee of reasonable timeframe in the mentioned administrative process, as well as a delay in resolving civil actions initiated by non-indigenous persons in relation to the territory and ancestral land of the Xucuru indigenous people.¹⁶

- **Case 11.550 *Maurilia Coc Max and others (Xaman Massacre) vs. Guatemala***, was submitted on 21 September 2016. The case is related to the massacre perpetrated by the Armed Forces of Guatemala on October 5, 1995, on the Xaman farm, against eleven persons, including three children, who belonged to the Q'eqchi', Mam, Q'anjob'al, Ixil and K'iche indigenous peoples. The Commission determined that there had been a series of irregularities in the investigations made. It also found that the events constituted an expression of the racial discrimination against the Mayan community during the armed conflict in Guatemala.¹⁷

Judgments passed by the Inter-American Court

On 30 November 2016, the Inter-American Court delivered its sentence in the case of the *Members of the village of Chichupac and neighboring communities of the Municipality of Rabinal vs Guatemala*. Considering that Guatemala recognized its contentious jurisdiction on 9 March 1987, the Court declared that it did not have the temporal competence to know about the massacre of 32 persons occurred on 8 January 1982, as well as of a series of atrocities committed between 1981 and 1986 against indigenous Maya Achi from the village of Chichupac and neighboring communities of the Municipality of Rabinal, facts that were not denied by the State. However, the Court determined the responsibility of the State for the facts on which it did have temporal competence, namely, the enforced disappearances and their continuous occurrence, as well as the omission by the State to implement after said date guarantees of return or voluntary resettlement to the persons who were still displaced. It furthermore declared Guatemala responsible for not having efficiently conducted an investigation of the facts with due diligence and within a reasonable period of time. In this judgment, the Inter-American Court took into account the systematic context of serious and massive violations of human rights in Guatemala during the internal armed conflict, which particularly affected the Maya population.¹⁸

Two of the reparations ordered by the Court in its judgment, are to be noted for their structural content that addresses the situation of ethnic discrimination suffered by the indigenous peoples of Guatemala. One reparation is to incorporate into the curriculum of the National Education System and at all levels an education program whose content reflects the pluricultural and multilinguistic nature of Guatemalan society, promoting the respect and the knowledge of the various indigenous cultures, including their cosmosvisions, histories, languages, know-how, values, practices and ways of life; the other reparation is to strengthen existing organisms or those to be created with the objective to eradicate racial and ethnic discrimination.¹⁹

Advisory opinions of the Inter-American Court

On 26 February 2016 the I-A/Court issued an Advisory Opinion following the petition made by the State of Panama regarding the Entitlement of legal entities to hold rights under the Inter-American human rights system. In its Advisory Opinion, the Court established that the American Convention does not entitle legal entities to hold rights established under this convention, without prejudice to the denomination these entities get in the States' national law such as cooperatives, societies or company. Nevertheless, the Court made some special considerations with respect to indigenous and tribal peoples and communities.²⁰

The Court recalled that, in 2012, in the case *Indigenous Kichwa people of Sarayaku vs. Ecuador* it recognized for the first time not only the members of an indigenous community but also the indigenous community itself as right holders of protected rights. The court showed in this case that there are some rights that members of indigenous communities enjoy for themselves while other rights are exercised collectively. The court highlighted that in later cases²¹ it has recognized the rights of the indigenous communities and peoples as a collective right.²²

After taking note of what is indicated in international instruments regarding indigenous peoples' rights, developments in comparative law and its own jurisprudence, the Court concluded in this Advisory Opinion that indigenous and tribal peoples and communities should be considered as entitled to certain human rights. This can be explained by the fact that since the exercise of certain rights of the members of indigenous and tribal communities is carried out collectively, the violation of these rights has a collective dimension and cannot be limited to an

individual impact. The impacts referred to will therefore entail consequences for all the members of the community and not only for certain determined persons in a specific situation. ○

Notes and references

- 1 "A 17-year wait pays off for indigenous peoples". OAS Web & Press release at http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-075/16
- 2 The Declaration, OAS Doc. AG/RES. 2888 (XLVI-O/16) available at <http://www.oas.org/consejo/GENERAL%20ASSEMBLY/Resoluciones-Declaraciones.asp>
- 3 For a detailed analysis of the Declaration see "OAS: Regressive elements in the American Declaration" – a document from the International Work Group on Indigenous Affairs and the Observatorio Ciudadano Chile. See http://www.iwgia.org/news/search-news?news_id=1377
- 4 See http://www.oas.org/en/iachr/media_center/PReleases/2016/082.asp
- 5 The report has been published with the support of IWGIA (the International Work Group of Indigenous Affairs). Available at: <http://www.oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.pdf>.
- 6 See <http://www.oas.org/en/iachr/activities/sessions.asp>
- 7 On 1 February 2016, in Ottawa, Geneva and Washington, D.C., six experts from the United Nations and the Inter-American human rights systems urged the Government of Canada to fully address the root causes of the extreme violence and discrimination against indigenous women and girls in the country. See. http://www.oas.org/en/iachr/media_center/PReleases/2016/press_releases_2016.asp
- 8 See <http://www.oas.org/en/iachr/decisions/2016/COAD554-03EN.pdf>
- 9 See <http://www.oas.org/en/iachr/decisions/2016/GTAD765-09EN.pdf>.
- 10 See <http://www.oas.org/en/iachr/decisions/2016/MXPU11564EN.pdf>.
- 11 See http://www.oas.org/en/iachr/media_center/PReleases/2016/049A.asp
- 12 See http://www.oas.org/en/iachr/media_center/PReleases/2016/183A.asp
- 13 All five cases of precautionary measures are accessible at <http://www.oas.org/en/iachr/decisions/precautionary.asp>
- 14 On 23 February 2016, the IACHR expressed its concern over the reported increase of violent incidents against the members of the Miskitu indigenous peoples, in the Autonomous Region of the North Caribbean Coast, in Nicaragua. See press release 23 February 2016 at http://www.oas.org/en/iachr/media_center/PReleases/2016/press_releases_2016.asp; on 1 September and 23 November 2016, the Inter-American Court issued provisional measures in the *Matter of Members of the Miskitu indigenous people of the North Caribbean Coast regarding Nicaragua*. These measures were based on the existence of a context of violence in the North Caribbean Coast Region of Nicaragua within the frame of a territorial conflict. The I-A/ Court took note of the worsening of the situation since 2015 and up to the date of the adoption of the measures. Most noted were in particular the allegations of kidnappings, murders, sexual aggressions, threats, burning of houses, looting, ambushes and attacks against villagers, and as a consequence the abandon of various communities by its residents. In the opinion of the Court, such acts clearly reflect a situation of extreme gravity and urgency and a reasonable chance that irreparable damages continue to happen.

- 15 IACHR, Report Merits No. 44/15, Case 12.728, *Xucuru Indigenous People vs. Brazil*. July 28, 2015. Available http://www.oas.org/en/iachr/media_center/PReleases/2016/053.asp
- 16 See <http://www.oas.org/en/iachr/decisions/cases.asp>
- 17 Ibid.
- 18 I/A Court H.R., Case of the *Members of the village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 328. . Available (only in Spanish) at http://www.corteidh.or.cr/docs/casos/articulos/resumen_328_esp.pdf.
- 19 Ibid.
- 20 I/A Court H.R., Entitlement of legal entities to hold rights under the Inter-American human rights system (Interpretation and scope of Article 1(2), in relation to Articles 1(2), 8, 11(2), 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62(3) of the American Convention on Human Rights, as well as of Article 8(1)(A) and (B) of the Protocol of San Salvador). Advisory Opinion OC-22/16 of February 26, 2016. Series A No. 22. Available (in Spanish only) at http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_opiniones_consultivas.cfm?lang=en
- 21 Case *Indigenous Kuna People of Madungandí and Emberá of Bayano and their Members vs. Panama*; Case *Garifuna Community Triunfo de La Cruz and its Members* and Case *Garifuna Community Punta Piedra and its Members*, both vs. *Honduras*; Case *Afro-descendent Communities displaced from the valley of the Cacarica River (Operation Genesis) vs Colombia*.
- 22 I/A Court H.R., Entitlement of legal entities to hold rights under the Inter-American human rights system (op.cit.).

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PART III

GENERAL INFORMATION

ABOUT IWGIA

About IWGIA

We are an international human rights organisation defending indigenous peoples' rights. For almost 50 years, we have documented the fight for indigenous peoples' rights. We are working through a global network of indigenous peoples' organisations and international mechanisms. We promote the recognition, respect and implementation of indigenous peoples' rights to land, cultural integrity and development on their own terms. We enhance change by empowering indigenous peoples to mobilise communities and by developing their capacity to access the UN system and decision-making processes at a local, regional and international level.

Our mission

We work for a world where indigenous peoples' voices are heard and their rights are implemented.

Our vision

A world where all indigenous peoples fully enjoy their rights, participate and are consulted on decisions that affect their lives. We exist to ensure a world where indigenous peoples can sustain and develop their societies based on their own practices, priorities and visions.

How to get involved

We are pleased to know that you are currently reading through this edition of the *Indigenous World*. We hope that you will share this book and our other publications. You can follow our work by signing up for our newsletter <http://bit.ly/IWGIANewsletter> and follow us on Facebook <https://www.facebook.com/IWGIA/> and twitter <https://twitter.com/IWGIA> for weekly updates.

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