

THE INDIGENOUS WORLD 2012



THE INDIGENOUS WORLD **2012**

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THE INDIGENOUS WORLD 2012

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EDITORIAL

EDITORIAL

In 2011, indigenous peoples' right to participate in decision-making processes was high up the national and international indigenous agenda. Special focus was on the states' duty to consult indigenous peoples in order to seek their free, prior and informed consent when issues that will affect their lives and future are planned.

In September, the final study on indigenous peoples and the right to participate in decision-making, elaborated by the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), was presented to the UN Human Rights Council. This important study gives an authoritative interpretation of indigenous peoples' rights to participate in internal as well as external decision-making processes in accordance with international human rights norms. The study makes it clear, for example, that the right of indigenous peoples to participate in decision-making processes is a substantive as well as a procedural right based on the right to self-determination, and that indigenous peoples' right to participation also includes their collective right as peoples to have decision-making authority and to affect the outcomes of consultations. EMRIP's study also gives advice on consultations and on the implementation of Free, Prior and Informed Consent (FPIC). In relation to FPIC, it makes the following precision:

The element of “free” implies no coercion, intimidation or manipulation; “prior” implies that consent is obtained in advance of the activity associated with the decision being made, and includes the time necessary to allow indigenous peoples to undertake their own decision-making processes; “informed” implies that indigenous peoples have been provided all information relating to the activity and that that information is objective, accurate and presented in a manner and form understandable to indigenous peoples; “consent” implies that indigenous peoples have agreed to the activity that is the subject of the relevant decision, which may also be subject to conditions.¹

As the articles in this volume demonstrate, such clarification is vitally needed, and should urgently be implemented, not least considering that the escalating momentum of the extractive industries is seriously threatening indigenous peoples' lives, livelihoods and cultures worldwide.

Positive steps forward

To start with some of the positive developments: *The Indigenous World 2012* gives a general impression that more governments are willing to establish dialogue with indigenous peoples and are developing some sorts of modalities for consultation. Cases in point are, for example, the preparation of a regulation governing the consultation of indigenous peoples in accordance with ILO Convention 169 in Guatemala; the initiative of the Suriname government to discuss the land rights of indigenous peoples and seek the advice of the UN Special Rapporteur on the rights of indigenous peoples (SR) in the matter; the promulgation of a law on consultation in Peru; and initiatives to establish dialogue between the government and indigenous representatives to improve the situation of the Batwa people in Burundi and Rwanda.

To this must be added the new constitution in Morocco, which officially recognises the Amazigh identity and language and, not least, the promulgation of *Law No. 5-2011 on the promotion and protection of the rights of indigenous peoples* in the Republic of Congo, which was the result of a year-long participatory process involving civil society and indigenous communities.

The inclusion of indigenous peoples in some government delegations at the Climate Change negotiations, e.g. Kenya and the Philippines, and the participation of indigenous representatives in national working groups on REDD+, e.g. in the Central African Republic, Tanzania, Nepal and Indonesia, must also be mentioned as positive achievements. Besides this, the active participation of indigenous peoples' in these processes seems to have been an engine for opening up new spaces for indigenous participation in other areas and a step forward in the recognition of indigenous peoples in some African and Asian countries. A good example is Indonesia, where the indigenous umbrella organisation, AMAN, has played a very important role in planning the national REDD+ strategy, which seems to be paving the way for an important improvement in indigenous peoples' legal status, especially with regard to land.

Implementation gaps

The above examples represent positive developments indeed. However, when it comes to their practical implementation, the pattern is less optimistic: all too often, governments renege on their commitments when they find the demands of indigenous peoples and the real implications of the standards they themselves have formally adopted too fundamental and far-reaching to implement. In Peru, for example, the law on Prior Consultation of Indigenous Peoples did not, as expected, specify when FPIC has to be obtained, leaving the final decision in this regard to the relevant state body; in Suriname, the government put a sudden end to its own national conference on land rights, organised to follow up on the SR's recommendations, when presented with indigenous and tribal peoples' clear demand for recognition of their land rights; and in Guatemala, the proposed consultation regulation was prepared without any participation on the part of indigenous authorities and submitted to a unilateral consultation process that gave indigenous peoples very limited opportunities to respond.

In Kenya, the government, which in 2011 accepted recommendations from both the African Commission on Human and Peoples' Rights (ACHPR) and the Universal Periodic Review (UPR) with regard to implementing the 2010 African Commission's decision on the land rights of the Endorois, totally ignored its duty to consult the Endorois in 2011 when nominating the Great Rift Valley Lake System for inclusion on the UNESCO World Heritage list. The World Heritage Committee, for its part, accepted the nomination without taking into consideration the lack of substantive consultation with the region's indigenous peoples. The inscription on the World Heritage list will undoubtedly put new and severe restrictions on the implementation of the territorial rights of the Endorois. It is particularly regrettable when such a decision is taken by a body of the UN system, such as UNESCO, which has an obligation to respect the international human rights instruments.

With regard to REDD+, it remains to be seen whether and how indigenous peoples will be consulted and whether they will also be allowed to participate in the benefit sharing when the process reaches the implementation phase.

The right to land and natural resources

The right to land and natural resources is a central aspect of indigenous peoples' struggle for self-determination. Some positive developments were recorded in 2011 in this regard, but the discrepancy between the amounts of land titled in favour of indigenous peoples and the enormous tracts handed out in concessions to large-scale enterprises - for agriculture, mining, drilling or even windmills - is enormous. In Cambodia, to give just one example, ten years on from promulgation of the land law entitling indigenous peoples to communal ownership of the land, three indigenous communities received collective land titles. Meanwhile, concessions totalling over two million hectares of land have been granted to agro-industrial companies, while mining concessions account for at least a further 1.9 million, according to the Cambodia country report. Many of these concessions are within indigenous territories, but have been issued without any meaningful consultation with indigenous peoples and without any respect for their right to free, prior and informed consent.

Given the enormous number of concessions granted to companies for extractive activities, it comes as no surprise that, in this year's country reports, the extractive industries figure as the main threat to indigenous peoples' economic, social and cultural rights and the cause of innumerable social conflicts.

Extractive industries and social conflicts

At the start of 2011, the Peruvian government was juggling 239 different social conflicts, half of which were socio-environmental and, during the year, several of these escalated into large-scale popular protests, resulting in strikes, road blockades, violent encounters and states of emergency. One example was the protest against the Conga mining project in Cajamarca region, which is likely to affect four headwater lakes, lead to the disappearance of various ecosystems and directly affect more than 100,000 people, whose lands will either be flooded or affected by drought.

In Malaysia, 1,100 cases of violent conflicts over indigenous lands were recorded between 2005 and 2010; in Indonesia, while positive legal instruments and procedures are being developed, the lands of indigenous communi-

ties are, at the same time, being grabbed on an unprecedented scale by armed companies to make way for economic development. There were more than a thousand reported cases of related human rights violations in 2011 alone.

In the Plurinational State of Bolivia, a country which has ratified ILO Convention 169, endorsed the UNDRIP as law and realised extensive land reforms to the benefit of indigenous peoples, the last few years have also seen an escalation in social conflict over land and lack of prior consultation. In the second part of 2011, the plan to construct a trans-oceanic highway through an indigenous territory and nature reserve (TIPNIS) triggered a great popular protest march. The proposed highway, which would open up TIPNIS to e.g. extractive industries, had been decided without seeking or obtaining FPIC from the title holders. The state's initial response was to embark on a smear campaign against the indigenous organisations, accusing them of standing in the way of national development and, later, to send in armed troops to break up the demonstration. A law was subsequently passed suspending the project. There is, however, a prevailing lack of respect for indigenous peoples' FPIC and a lack of appropriate consultation measures that would prevent similar social conflicts from erupting in the future.

Human rights and business

As noted by the UN Special Rapporteur on the rights of indigenous peoples in his annual statement to the United Nations General Assembly in 2011, there seems to be an increasing polarisation and radicalisation of positions around extractive activities. Many country reports contained in this yearbook confirm the tendency towards private companies defending their economic interests with back-up from the military, state police and/or armed private security forces, who are allowed to operate with impunity (see e.g. the articles on Indonesia, Guatemala and Ethiopia). In contrast, many indigenous and local peoples face arrest and heavy prison sentences when they stage social protests (e.g. Chile, Ecuador and Kenya).

In 2011, the legitimacy of such social protests was confirmed once more when an Ecuadorian court found the North American company, Chevron-Texaco, guilty of the environmental and social destruction of the Ecuadorian Amazon following its 26 years of operations there. Meanwhile, the Sarayaku com-

munity is awaiting the final verdict in its case against the Ecuadorian government for promoting oil exploitation on their territory without even informing them, far less consulting them, and, in contrast, sending in armed forces to crack down on any opposition. The verdict of the Inter-American Court of Human Rights is expected in 2012. It will be binding upon the Ecuadorian government and will set an important precedent with regard to a state's duty to consult and respect indigenous peoples' right to FPIC.

As reflected in the present volume, there is a clear need for change in the general conception of states and businesses corporations with regard to human rights standards if indigenous rights protection instruments are to have any meaningful effect on policies and actions related to the extraction of natural resources. Without a real political commitment on the part of governments with respect to indigenous peoples' human rights, and without a better understanding of the serious implications that extractive industries have on the lives and future of indigenous peoples, the application of indigenous rights standards will continue to be contested or ignored, and indigenous peoples will continue to be vulnerable to serious abuses of their individual and collective human rights.

In June 2011, the UN Human Rights Council approved a framework to respect and protect human rights in the context of business operations based on the following three guiding principles; 1) the duty of states to protect all human rights against abuses committed by or involving business enterprises and corporations; 2) the responsibility of business enterprises to respect all human rights, and 3) the need for access to effective remedy including appropriate legal or extralegal mechanisms.² The HRC also agreed to establish the UN Working Group on the issue of human rights and transnational corporations and other business enterprises, the mandate of which is especially relevant for indigenous peoples. There are therefore high expectations that this new working group will place special attention on the impact of corporations on the human rights of indigenous peoples

A rights-based approach to development

The sustainable alternative to the ongoing development aggression is to take a genuine rights-based approach to development. Here, it is of crucial impor-

tance to get both business and donor agencies on board, and IWGIA therefore welcomes initiatives such as the one taken by the UN to establish a Working Group on Business and Human Rights, the new EU Strategy 2011-2014 for Corporate Social Responsibility, and the increase in rights-based foreign aid policies. It is, however, necessary to monitor such initiatives to ensure that they do not become mere window dressing behind which “real” development is sought through the usual instruments of economic growth.

Unfortunately, this book signals an escalating global race for resources in which the urgency of exploiting a diminishing natural resource base, the financial crisis and an uncertain global power structure, with new strong players not known for attaching any strings to business deals or foreign aid, justifies a de facto *laissez faire* politics. As noted in relation to the UN Climate Change negotiations this year: “The issue of rights was, while acknowledged in form, considered as a hurdle or irritant in already very tense negotiations, and thus succumbed to ‘*realpolitik*’”.

At the country level, this tendency is reflected in the fact that, from the USA to Rwanda - despite the increasing openness of governments to discuss how states can better extend social services to so called “individuals, local communities, or minorities in situations of special vulnerability” and perhaps seek their opinion on economic, social and cultural issues - many states are still not ready to commit to actually addressing or solving the structural inequalities affecting indigenous peoples in terms of recognition, land rights and self-determination.

Future issues

In 2012, indigenous peoples and IWGIA hope that the World Bank will finally revise its safeguards policy on indigenous peoples and bring it in line with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and, particularly, that it will explicitly include the principle of FPIC in its Indigenous Peoples Policy.

We also hope that the ASEAN member states, who have all supported the adoption of the UNDRIP, will include a reference to indigenous peoples’ recognition as distinct peoples with inherent collective rights to their lands, territories and resources in the forthcoming ASEAN Human Rights Declaration.

In 2012, the international community has a unique opportunity in the United Nations Conference on Sustainable Development, which will take place in Rio de Janeiro in June, to make a renewed and strong political commitment to the protection and promotion of indigenous peoples' rights and thus to move the global sustainable development agenda forward in a comprehensive way.

Based on the agreement from the global indigenous peoples' preparatory meeting for Rio + 20, which took place in Manaus (Brazil) in August 2011, the indigenous peoples have identified five key issues in relation to the Zero Draft, which will form the starting point for the negotiations in Rio: 1) a key role for the UNDRIP; 2) the cultural pillar as the 4th pillar of sustainable development; 3) protection and respect for indigenous peoples' rights to lands, territories and resources; 4) recognition and respect for traditional knowledge and diverse local economies and their role in poverty eradication and as a cornerstone for the Green Economy; and 5) support to indigenous peoples' holistic framework and self-determined development within the Green Economy.

In 2011, another of the themes that was given special attention by the indigenous peoples and which was considered both during the session of the UN Permanent Forum and during the EMRIP session was the follow-up to the decision taken by the UN General Assembly in November 2010 to celebrate a World Conference on Indigenous Peoples in 2014. To the indigenous peoples, limited participation in this conference process would be absolutely unacceptable and would be contrary to the UNDRIP, which explicitly recognizes their right to participate in all decision-making processes that affect them. If the UN member states are consistent with their own instruments and are really committed to advancing the practical implementation of the rights of indigenous peoples, the UN should secure the necessary procedures to ensure indigenous participation in this process. IWGIA hopes that the UN, in 2012, will take the necessary decisions and establish the modalities required to ensure the full and effective participation of indigenous peoples, as these latter have been demanding throughout the year.

About this book

First and foremost, IWGIA would like to thank all the contributors to this volume for their commitment and their collaboration. Without them, IWGIA would never

be able to publish such a comprehensive overview of the past year's developments and events in the indigenous world. The authors of this volume are indigenous and non-indigenous activists and scholars who have worked with the indigenous movement for many years and are part of IWGIA's network. They are identified by IWGIA's regional coordinators on the basis of their knowledge and network in the regions. This year, the volume includes 61 country reports and 12 reports on international processes. All the contributions 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. Unfortunately, this year we were not able to include an article on Sápmi and reports on several countries in Africa, the Middle East, Central America and the Pacific are also lacking. We find it important to stress that this omission is not an indication that there are no indigenous peoples or no human rights issues for indigenous peoples in these countries.

The articles in the book express the views and visions of the authors, and IWGIA cannot be held responsible for the opinions stated therein. We therefore encourage those who are interested in obtaining more information about a specific country to contact the authors directly. It is nonetheless our policy to allow those authors who wish to remain anonymous to do so, due to the political sensitivity of some of the issues raised in their articles. A number of country reports presented here take their point of departure as ethnographic regions rather than strict state boundaries. This policy has attracted criticism from states that consider this a lack of respect for national sovereignty, but it is in accordance with indigenous peoples' worldview and cultural identification which, in many cases, cut across state borders.

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

Cæcilie Mikkelsen, editor and Lola García-Alix, director
April 2012

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- 1 Report of the Expert Mechanism on the Rights of Indigenous Peoples 2011: Final study on indigenous peoples and the right to participate in decision making. Can be accessed from : <http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/AEVfinalreportStudyIPRightParticipate.pdf>
- 2 Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, 2011: Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. Can be accessed from <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>



PART I

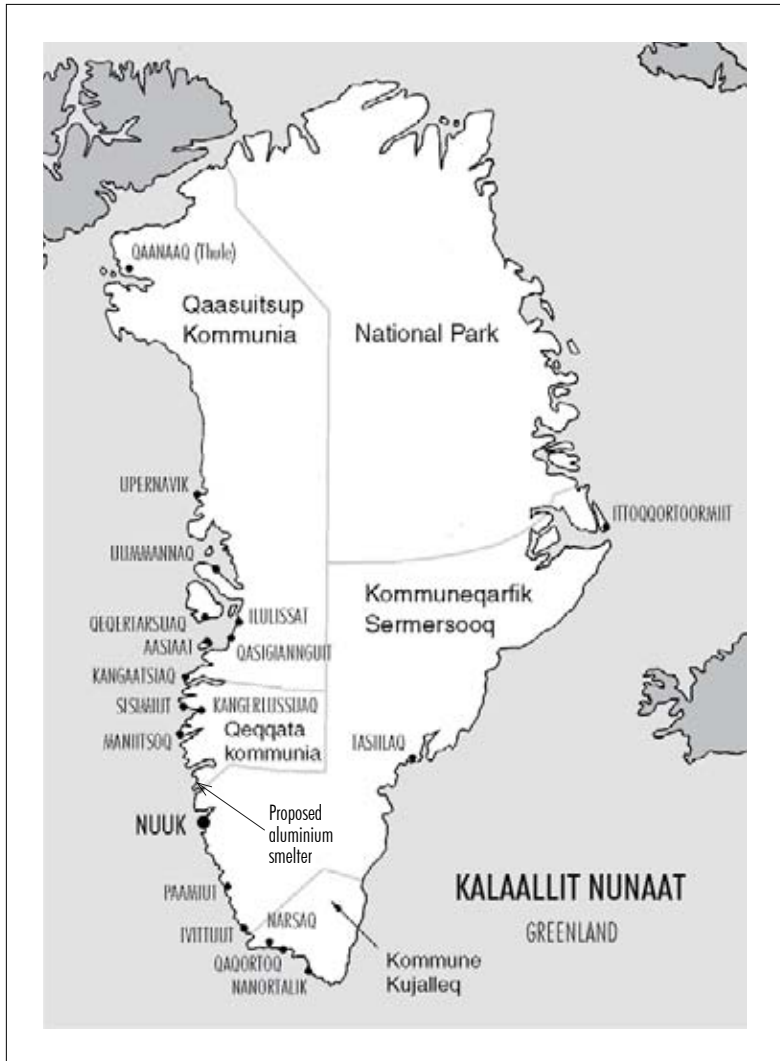
REGION AND
COUNTRY REPORTS
THE ARCTIC

GREENLAND

Kalaallit Nunaat (Greenland) has, since 1979, been a self-governing country within the Danish Realm. In 2009, Greenland entered a new era with the inauguration of the new Act on Self-Government, which gave the country further self-determination within the state of Denmark. Greenland has a public government, and aims to establish a sustainable economy in order to achieve greater independence. The population numbers 57,000, of whom 50,000 are Inuit. Greenland's diverse culture includes subsistence hunting, commercial fisheries, tourism and emerging efforts to develop the oil and mining industries. Approximately 50 per cent of the national budget is subsidized by Denmark. The Inuit Circumpolar Council (ICC), an indigenous peoples' organization (IPO) and an ECOSOC-accredited NGO, represents Inuit from Greenland, Canada, Alaska and Chukotka (Russia) and is also a permanent participant in the Arctic Council. The majority of the people of Greenland speak the Inuit language, *Kalaallisut*, while the second language of the country is Danish. Greenland is increasingly becoming a multicultural society, with immigrants from many parts of the world.

Greenland on its way

Since the inauguration of the new Act on Self-Government in 2009, Greenland has had greater political self-determination and this political process can be seen as the most recent step in Greenland's strive to obtain more autonomy. For several hundred years, Denmark and Greenland have co-existed as part of the Danish Realm and, today, thousands of Greenlanders live permanently in Denmark or travel there for shorter or longer periods to study or work. Many Danes also travel to Greenland to work. Greenlanders and Danes have thus interacted intimately for many years and close ties enhance the bond between the two nations. The royal Danish family is very popular amongst Greenlanders and is often held up as a symbol of the unity of the two nations. The future relationship be-



tween the two nations is being widely discussed due to the political aspirations of some Greenlanders for more economic and political independence, as made possible in the Act of Self-Government in 2009. A number of different models are being put forward and, in 2011, the Greenlandic Parliament initiated a process by

which to formulate a constitution for Greenland, to be completed within 10 years. The Greenlandic Premier Kuupik Kleist announced that the constitution was not to be seen as a step towards secession from Denmark but rather as a way of formulating the values on which Greenlandic society should be based. The Premier explained to the Danish media that the rapid changes that Greenland is facing have to be followed by a clarification of Greenland's views on, for example, the rights of children, the management of power, sovereignty, language and environmental rights. The proposal was seen as controversial in the Danish media as it was considered a first step towards Greenland's independence, made economically possible by the presence of the rich non-renewable resources of Greenland.

There have been significant societal changes and reforms in recent decades, and Greenland is seeking its own brand of large-scale industrial activity in order to strengthen the tax revenues of the country, maintain the welfare society and establish the economic foundations for increased self-rule. An important aspect of this process is to increase the educational level of Greenlanders, offering the population the possibility of engaging in the new job sectors created by industry. This is a primary political focus of the Greenlandic government and much effort is being put into enhancing people's abilities to make a living and reduce the need for social welfare.

As an integral part of the research into potential new industrial projects, a number of public hearings have taken place. This has required a great deal of human and financial input from civil society in order to maintain an engagement in this process and make a qualified and continuous contribution. There are few organisations in Greenland that maintain a critical approach to the large corporations seeking to operate in their country.¹ Oil and mineral prospecting, as well as the establishment of an aluminium smelter, have been positive and a series of endeavours on the part of international companies will most likely take place. The fishing industry is currently one of the main pillars of the Greenlandic economy, and policies have been set in motion to reform the sector in order to make it more economically efficient; one step in this process is to encourage a reduction in the number of fishermen and boats.

The role of women

In traditional hunting society, men and women held highly specialized positions; men pursued hunting while the women took care of the household. This house-

hold arrangement, however, lost its importance as society modernized. Since the 1950s, women have been able to support themselves through paid work, for instance in the fishing industry. Today, more women than men continue on into higher education. As an example, the percentage of female students in the different departments at the University of Greenland ranges from 51 to 95 per cent.²

As a member of the Danish Realm, Greenland has representatives in the Danish Parliament, an arrangement that started in 1953 when Greenland became an equal part of the Danish Realm.³ In the 2011 elections to the Danish parliament, Greenland elected two women representatives for the first time in its history: Sara Olsvig from the left-winged *Inuit Ataqatigiit* (IA),⁴ and Doris Jakobsen from the Social Democrat *Siumut*.⁵ Their agendas are, however, focused on furthering the interests of Greenland and not specifically the interests of women. The Cabinet of the Greenland government consists of nine ministers⁶ – of which four are women. The standing and influence of women are becoming increasingly apparent and the mobility pattern of women, as documented in 2010,⁷ also indicates that the educational level of women, and a desire to improve their children's education, is a primary driver for women when deciding to move.

Historical investigation into inequality

In June 2011, the research findings from an historical investigation into children born out of wedlock in Greenland were published. A group of individuals born out of wedlock had the previous year demanded to know why their civil rights were different from children born to married parents. The problem was that these children did not have a legal father, often a Dane but just as often a Greenlandic one, according to laws upheld in Greenland by the Danish state. These laws remained in Greenland despite reforms in Denmark which improved the legal position of children born out of wedlock. The Greenlandic Premier, also such a child, came to an agreement with the Danish Prime Minister to initiate an historical investigation. Three researchers (two Danish academics - one historian and one professor of law – and one Danish/Greenlandic historian) subsequently looked into the conditions behind this state of inequality within the Danish Realm over the period 1914-1974. The report found that Greenlandic politicians had been very influential in the law-making process leading up to the Children's Law of 1962, and did not find the Danish administration guilty of discriminating against Greenlanders.⁸

The group in question welcomed the report and the Danish state is currently preparing legal actions to remove this inequality.

Historical examinations of the Danish-Greenlandic relationship can be seen as a process of dismantling some of the issues related to Danish-Greenlandic colonial relations but also as a way of improving the rights of individuals in Greenland today.

The fact still remains, however, that most historical research is conducted by Danish researchers, even though Greenland does have competent individuals. Greenland needs to trust its own abilities and deviate from ingrown habits, such as looking to Denmark to get problems solved or examined. The symbolic value of Greenlanders being able to undertake these examinations is not to be underestimated. Given the relationship between Denmark and Greenland, Greenlandic researchers have an advantage over Danish researchers as they are “allowed” to criticise the historical actions of Greenlanders. The historical research produced by Greenlanders can thus add an extra dimension to the historical literature.

Climate change

The rise in global temperature is being seen most significantly in the Arctic where the extent and quality of sea-ice are recurrent concern, as well as the speed with which the glaciers are melting. The traditional sea mammal hunt in the Arctic is highly influenced by these changes but, in Greenland, climate change is perceived by some groups as having positive effects as well. In southern Greenland, agricultural experiments have been conducted over a period of years and have demonstrated increasing potato and cattle production, which is often given as a positive effect of climate change.

Another case, often mentioned, is the possibility of mineral and oil exploitation. Less sea-ice, and thereby easier access to these resources, is the effect of a warmer climate. A longer season for tourism in Greenland is another impact which may improve income in this sector.⁹ The changing ecosystem and accessibility have supported a strong discourse in Greenland about the possibilities of adapting to and prospering from these changes. The prospect of having large-scale industries settle in Greenland has led to a number of political issues. First, the Greenlandic government has maintained continuous negotiations with the Danish state regarding how to deal with the increasing greenhouse gas emis-

sions that will follow such industrial projects. The establishment of one aluminium smelter will, for example, nearly double Greenland's CO₂ emissions. Second, the establishment of large-scale industrial projects requires the use of skilled foreign workers. The salaries and rights of these workers were a recurrent issue during 2011 and the Greenlandic government is looking to balance the need to maintain attractive investment conditions with guarantees that social dumping will not take place. One particular case triggered this discussion. The American company Alcoa wanted to reduce construction costs (and thus make the project internationally competitive) by employing Chinese workers at what was termed "international" salaries, which are below Greenlandic standards. The use of foreign workers (primarily Chinese) has raised new issues regarding how Greenlandic society is to deal with a highly multicultural situation and the dynamics this fosters.

Arctic Strategy

In August 2011, Denmark, Greenland and the Faroe Island launched a new Arctic Strategy (*Kingdom of Denmark. Strategy for the Arctic 2011 – 2020*). The main goals of the strategy are to ensure a peaceful, secure and safe Arctic, with sustained economic growth and development, respect for the vulnerable Arctic climate, environment and nature and close cooperation with international partners. The strategy also contains a renewed commitment to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and particularly its implementation, as well as support for the UN Special Rapporteur on the rights of indigenous peoples and the Expert Mechanism on the Rights of Indigenous Peoples. Denmark / Greenland have played a crucial role in advancing indigenous peoples' rights at the UN and particularly in the establishment of the UN Permanent Forum on Indigenous Issues. And Denmark / Greenland's commitment is furthermore visible through its positions and priority treatment of indigenous issues within the UN human rights mechanisms and instruments such as the Universal Periodic Review (UPR). In the spirit of the new Strategy for the Arctic and its commitment to the implementation of the UNDRIP, renewed focus should also be placed on the situation of indigenous peoples in the Russian Arctic and on a dialogue with organizations regarding how best the most vulnerable indigenous peoples in the Arctic can be supported. ○

Notes

- 1 A Greenlandic NGO (Avataq) is protesting against the plans to build an aluminum factory near the town of Maniitsoq on the West Coast of Greenland. See the NGO's homepage: <http://www.avataq.gl/>
- 2 **Rafndóttir (red.), 2010:** "Kvinder og velfærd i Vestnorden". *TemaNord* 2010:578. Nordisk Ministerråd, København 2010. page 39-68. The University has departments of political science, humanities, theology, linguistics, health, journalism, social work and teacher training.
- 3 The Faroe Islands also holds two seats in the Danish Parliament, which has a total of 179 seats.
- 4 *Ataqtigiit* means united – inuit means people. IA, founded in 1978 as a political party, is the ruling party, holding power in the Greenlandic parliament, in cooperation with the liberal party known as the Democrats.
- 5 *Siumut* means forward. Siumut was founded as a political party in 1977 and was the movement behind the Greenlandic Home Rule of the same year.
- 6 The current Cabinet is based on political cooperation between Inuit Ataqtigiit, the liberal Demokraatit and the conservative *Kattuseqatigiit Partiat*.
- 7 **Nordregio, 2010:** *Mobilitet i Grønland*. Stockholm: Nordregio.
- 8 The report can be seen here (in Danish) http://sermitsiaq.ag/sites/default/files/historisk_udredning_m_bilag_dansk.pdf
- 9 See <http://climategreenland.gl/> for further information

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RUSSIA

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

The small-numbered indigenous peoples are protected by Article 69 of the Russian Constitution and three federal framework laws¹ that establish the cultural, territorial and political rights of indigenous peoples and their communities. However, the implementation of the aims and regulations contained in these laws has been complicated by subsequent changes to natural resource legislation and government decisions on natural resource use in the North.

The national umbrella organization – the Russian Association of Numerically Small Indigenous Peoples of the North, Siberia and the Far East (RAIPON), established in 1990, represents 41 indigenous peoples of the North, Siberia and the Far East, 40 of which are officially recognized, with one still seeking recognition. RAIPON’s mission is to protect their rights at the national and international level.

Russia has not ratified ILO Convention 169 and abstained from voting in the UN General Assembly on the adoption of the UN Declaration on the Rights of Indigenous Peoples.

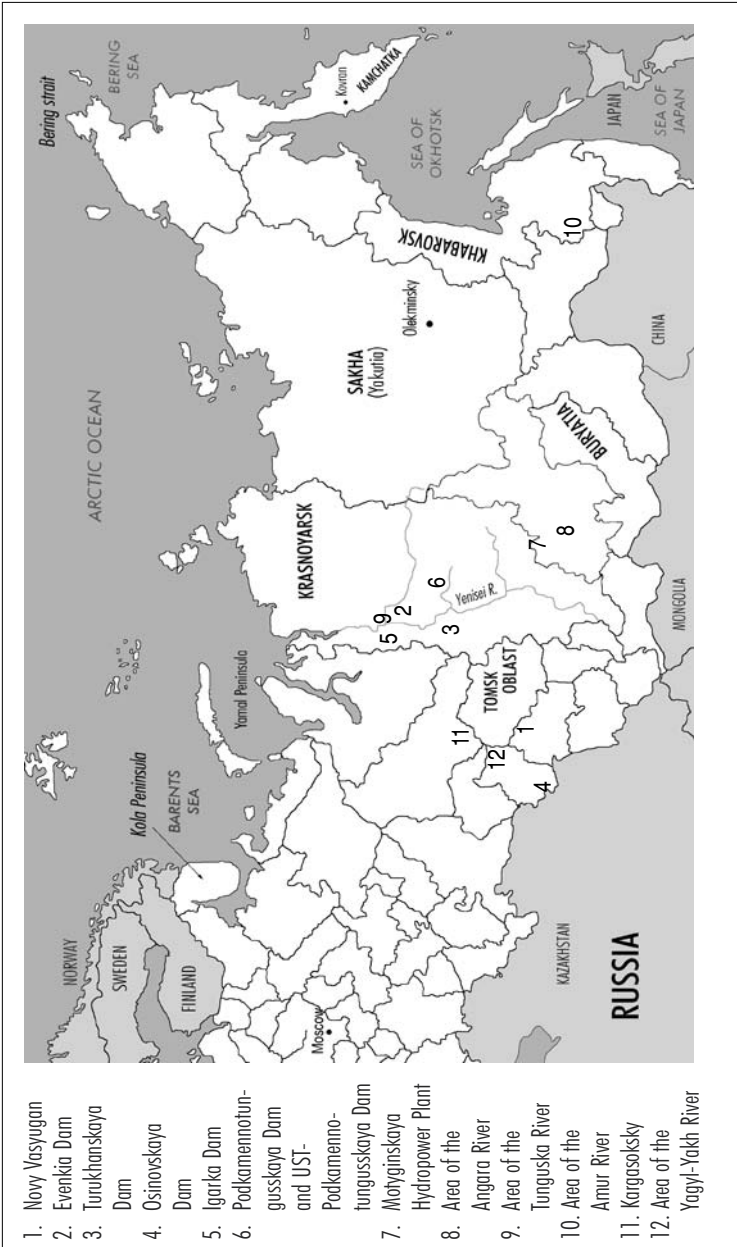
In 2011, the most pressing problems for indigenous peoples in Russia were access to natural resources and participation in decision making. This situation stems from a lack of:

- implementation of the law on territories of traditional nature use (TTPs);
- legislative control over access to land for fishing, hunting, harvesting and reindeer herding;
- documentation of indigenous self-identity in order to gain specific land use and access rights;
- protection of the right to a dignified existence in the case of loss of traditional livelihood and low income of indigenous peoples;
- instruments for indigenous peoples to control the commercial use of lands;
- instruments for indigenous peoples to represent themselves in decision making related to development;
- adequate processes for assessing the impacts of development projects on the environment, natural resources, and social and economic development of indigenous peoples.

Failed Expectations

Russia's indigenous peoples had high hopes for 2011. Within the framework of the 2009-2011 Action Plan for the Implementation of the Concept of the Sustainable Development of Indigenous Small-numbered Peoples of the North, Siberia and the Far East of the Russian Federation,² the government had envisaged improving legislation and solving the above-mentioned problems by the end of 2011. Some of the expected legislative improvements were the following:³

1. development of the required regulatory documents to establish territories for traditional use of natural resources by indigenous peoples, according to the Federal Law on TTPs;
2. establishment of model territories for TTPs;
3. development of a Relationship Strategy between representatives of indigenous peoples and industrial companies operating in their territories and regulations governing compensation for losses sustained by indigenous-



- peoples through damage to their traditional living environment and thereby their traditional way of life;
4. preparation of proposals to amend the Forest Code, Land Code and Water Code in relation to indigenous peoples' access to the territories necessary for their traditional economic activities and livelihood at no cost to them;
 5. development of a draft federal law to ensure priority access for indigenous peoples, their communities and other indigenous associations to hunting grounds, game, fishing areas and water resources on their traditional land;
 6. development of regulations related to documents confirming indigenous peoples' nationalities;
 7. development of proposals concerning forms of representation for indigenous peoples in the legislative (representative) bodies of the public authorities in the Russian Federation's provinces.

Legislative proposals developed by the Ministry of Regional Development (MINREG)⁴ over the period 2009-2011 relating to the first five items on this list were inconsistent with existing laws and consequently rejected by the government. MINREG proposed draft laws that further derogated the rights granted by current legislation. For example, according to a new draft law on territories of traditional nature use, which would replace the law of 2001, the TTPs would lose their status as specially protected territories, which would mean depriving them of their environmental protection. This contradicts the Russian federal government instruction dated April 14, 2009 No. ДК-П-16-2033, which implied that there would be a special focus on retaining the status of specially protected territories in the course of developing the new version of the law.

Furthermore, the proposed draft law on TTPs prevents the numerically small indigenous peoples from implementing their initiative to establish TTPs and the possibility of TTP joint management. The provincial and municipal authorities will lose their power to establish TTPs at the regional and local levels. The legitimacy of already established TTPs will, in some regions, be jeopardized. MINREG has been elaborating this draft law for three years now but it has never been presented to the State Duma. In practice, this behavior prevents implementation of the 2001 Law on traditional territories and thus the establishment of TTPs. As of 2011, no nationally recognized TTPs had yet been established.

As for the draft laws on fishing and hunting, these only allow indigenous peoples to fish and hunt for food, without the right to sell the surplus, as has been the practice for the past 300 years.

RAIPON contributed to developing the above draft laws by proposing its own versions but these were rejected by the government.

Legislative activities concerning items 3 and 4 above are not yet complete. Legislative initiatives concerning items 6 and 7 were not taken forward. RAIPON's legislative proposals for these items were also rejected.

Consequently, in 2011, the government's plans for Russia's indigenous peoples were not fulfilled and the expected legislative reform regulating indigenous peoples' rights never materialised.

Monitoring and assessment of the government's activities are important in RAIPON's work and were addressed by a special seminar in September 2011. As a result, RAIPON's Coordination Council demanded that the President and the Chairman of the government explain the reasons for the government's failure to implement the approved plans for indigenous issues for 2009-2011, and proposed including RAIPON representatives in the working groups for implementation of the plans for 2012-2015.

Access to resources and a dignified existence

According to three federal laws adopted or revised since 2001 (the Forestry Code⁵ 2005, the Law On Fishing and Conservation of Water Biological Resources⁶ 2006 and the Federal Law On Hunting and Conservation of Hunting Grounds and Amendments to Specific Regulations of the RF 2010⁷) all forest, hunting and fishing areas, including those in the territories inhabited by indigenous peoples, may be granted to commercial companies on the basis of long-term licenses obtained by tender. The license duration is usually 20 years or more. This means that even if the government takes measures to implement the law on TTPs, many of the land areas and resources necessary for the indigenous peoples are already under private control, protected by long-term contracts.

The Land Code, Forestry Code and Water Code have no norms to limit tenders and auctions of land, forest and water areas in the territories where indigenous peoples live and use the natural resources, leading to reduced hunting grounds and pastures for indigenous peoples.

The law, which gives indigenous peoples the right to hunt and fish for their own consumption without any restriction or official permits, even in areas under the control of commercial license holders, is only declaratory. Firstly, inspectors request documentary confirmation that a hunter or fisherman belongs to an indigenous people. However, as outlined above, the law to establish such identification certification has not yet been drafted. Secondly, the law has no regulation that obliges the license holders to provide access for indigenous users to their areas. Such legislation creates grounds for endless conflicts and lawsuits where indigenous peoples have to defend their right to traditional livelihood.

In many regions, indigenous peoples establish small local community-based enterprises called *obshchinas*.⁸ In small, remote indigenous settlements, these serve as the only source of employment and income. Since 2008, however, *obshchinas* have lost their access to fishing, hunting areas and pastures in many regions and, with this, their economic basis for development.

Amur

On August 31, 2011 the fishing permits of the indigenous peoples on the Amur River (Khabarovskiy Krai) expired. At that time, the spawning season had not yet started – it was a year of late spawning. Fish is commonly known to be the main food for the Nanais and Ulchis. The indigenous peoples are wondering why, according to the new procedure of quota allocation, they have to prove their right to fish in their traditional areas of residence to Moscow officials.

Apparently, the indigenous peoples of Buryatia – Evenks and Soyots – will not know the taste of first fish this summer. The careless Ministry of Agriculture and Food is still in the process of allocating fishing quotas for 2011. By doing that the Ministry is violating the rights of indigenous peoples to traditional food and livelihood. ... Now they are looking at the approved annual 70kg of fish per capita again. The ministry officials think that 70kg is too much, - Anna Naikanchina, a member of the UN Permanent Forum on Indigenous Issues reports.

Oil company pays US\$1,700 (50,000 Russian roubles) for 600 kilometers of oil-contaminated rivers

Tomsk Oblast is the traditional territory of the Selkups, Khanty, Evenks, Tchulymtsy and Keto.⁹ Unfortunately, extremely plentiful deposits of oil, gas and other natural resources can be found in their territory.

The OJSC Tomskneft VNK company holds 24 licenses for oil and gas production and produces up to 75% of all oil in Tomsk Oblast.¹⁰ On February 6, 2011 an oil pipeline owned by OJSC Tomskneft VNK ruptured in the Kargasoksky Region, where it crosses the River Yagyl-Yakh. According to the company's own technical investigation, the oil spill amounted to 0.06 tons (60 kg), and the affected area was 130 m². At the same time, OJSC Tomskneft VNK announced that a full package of measures was being taken to localize the accident's negative impact. However, in April 2011, residents of Novy Vasyugan village 300 km from the rupture's location reported that dead fish and oil slicks could be seen on the surface of the Vasyugan River, a tributary of the Yagyl Yakh, during the spring freshet.

Only when the mass media began to report the issue was an administrative action brought against OJSC Tomskneft VNK.

According to the Environmental Prosecution Office, under a ruling dated April 27, OJSC Tomskneft VNK was found guilty of an administrative infringement. The company was fined 50,000 roubles (US\$1,700).

The people of Kargasoksky Region were outraged at such an insignificant fine and remain convinced that the real amount of the oil spill is several tens or even hundreds of times larger:

We knew about the accident as early as in winter, - a resident from Kargaska says, - but the people had no idea that the situation with fish would be as bad as that. The distance from the site of accident to the Yagyl-Yakh estuary is 70 km; absolutely all the fish died there and they will continue to die because a part of the oil sediment is on the bottom or penetrated into the silt. 600 km along the Vasyugan River, even in the lower reaches, the fish are not edible – it is all diesel oil.¹¹

By early May, the situation could quite fairly be considered an environmental disaster. The Yagyl-Yakh River will be contaminated for several years to come and, in those years, it will not be suitable for fishing.

Evenkia hydroelectric dam pops up again

In November 2011, the Deputy General Manager and Chief Engineer of “Lenhydroproject”, a subsidiary of RusHydro, Russia’s largest hydropower company, announced in a lecture shown on the Russian TV channel “Kultura” that the “development of project documentation for the construction of the Evenki hydroelectric power station on Lower Tunguska River is complete. The project is undergoing approval at various levels.” This came as a surprise to many who had strongly opposed this dam. If built, the Evenkia Hydroelectric power plant will produce the world’s largest artificial lake, covering 9,000 square kilometers, will deprive up to 7,000 indigenous Evenks of their livelihood and submerge one million hectares of virtually untouched pristine forest (see also *The Indigenous World 2011*). During the public hearings in the Legislative Assembly of Krasnoyarsk Territory, which took place in 2009, experts and MPs lashed out at the plans by RusHydro and Lenhydroproject to build Russia’s largest hydroelectric power station thousands of miles from consumers. In 2010, RusHydro company shelved plans to construct this dam (see also *The Indigenous World 2011*). After that, the dam also disappeared from the “Strategy for socio-economic development to 2020”.

However, in December 2011, Sergei Voskresensky, general director of Lenhydroproject, responding to an inquiry by “Plotina.net”, partly retracted the statements of his chief engineer, pointing to the exclusion of the Evenkia dam from the state planning scheme and conceding that ultimately, the decision to build the dam would have to be taken by the state authorities, not the company.¹² The environmental impact assessment procedure is nonetheless ongoing.

Both the state and RusHydro remain determined to substantially expand hydropower in Siberia and the Russian Far East. According to a new “territorial planning scheme for Krasnoyarsk Territory” in the basin of the Yenisei River, which covers the period until 2030, the plan is to construct seven new large hydropower plants. If they are built, approx. 2.11 million hectares will be flooded. This will lead to the resettlement of many indigenous Evenks and will have serious environmental impacts. Among the most active lobbyists for the Evenki hydroelectric projects were the companies “Rusal” and “RusHydro”. One of the potential main consumers of the electricity generated in Evenkia is China. The proponents of the project believe that the most promising dams will be the Evenki, Turukhanskaya, Osinovskaya and Igarka dams on the Yenisei River, the Podka-

mennotungusskaya and Ust-Podkamennotungusskaya dams on the river Stony Tunguska (Podkamennaya Tunguska), and Motyiginskaya hydropower plant on the Angara River.

Speaking at the sixth congress of deputies of Krasnoyarsk Territory, the chairman of the Legislative Assembly of the Region, Alexander Uss, said, "For very profound reasons, the people of Krasnoyarsk oppose the idea of economic development at any cost, without consideration of the consequences for the environment and for human health. And their 'no' to the construction of the Evenki hydroelectric power station was a visible confirmation of this fact."

Participation in decision making

Indigenous peoples' participation in decision making is provided for by the law "On guarantees of the rights of indigenous small-numbered peoples"¹³ adopted on April 30, 1999, although the procedures for such participation have not yet been developed (see also *The Indigenous World 2011*).

Reports from the areas of indigenous peoples' settlement confirm that they most often learn about the industrial development of their traditional livelihood areas after such development has begun or when an accident takes place; their protests are ignored and their losses are not compensated.

According to the mass media and indigenous peoples' organizations,¹⁴ in December 2010, 213 people from Tyanya village, Olekminsky Region, sent a message to the presidents and governments of Russia and Yakutia, calling on them to protect the indigenous peoples' territories:

In the past industrial projects affected peripheries of our territories and hunters could find new hunting areas, reindeer herds could find new pastures, and our territory and environment remained pristine and retained their natural beauty. Today everything is different. The designed gas pipeline will lie across the heart of our land, and this will put our existence under threat. The gas corporation insists on the second option: it will help the company save 49 billion roubles. But is money more important than a whole nation whose culture, language and way of life are priceless?"¹⁵

In Russia, no instruments have been developed with which to implement the principle of free, prior, and informed consent for the use of lands traditionally occupied by indigenous peoples, as required by the UN Declaration on the Rights of Indigenous Peoples adopted in 2007.

The UN Committee on Economic, Social and Cultural Rights

In March 2011, RAIPON and IWGIA jointly submitted an alternative report¹⁶ to the UN Committee on Economic, Social and Cultural Rights (CESCR), which considered Russia's fifth periodic report on its compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁷ during its 46th session (2-20 May 2011). This alternative report was a follow-up to reports submitted to preceding sessions in 1997¹⁸ and 2003¹⁹ as well as to parallel reports submitted to other UN treaty bodies and human rights mechanisms. The report highlights Russia's failures to comply with its human rights obligations under ICESCR vis-à-vis the indigenous peoples of the North in a variety of areas. This includes the right to self-determination, to adequate food, to subsistence and culture as well the right to education and to health. In most of these areas, very little progress has been noted since the submission of the first alternative report, while in some of them the situation has deteriorated seriously. Throughout the last decade, Russia has pursued a policy of privatising forests, land, waters and many other resources. Indigenous communities are deprived of fishing and hunting rights, or these rights are subject to highly bureaucratic and costly procedures whereby they often have to compete with commercial entities for their own traditional lands and resources, as also illustrated in this article.

In this context, the Committee expressed its concern and asked Russia to "seek the free informed consent of indigenous communities and give primary consideration to their special needs prior to granting licences to private companies for economic activities on territories traditionally occupied or used by those communities."²⁰

Furthermore, the Committee, in keeping with the conclusions drawn in the alternative report, noted that even well-intentioned initiatives such as the policy framework for the sustainable development of the indigenous peoples in the North, Siberia and the Far East of the Russian Federation and the action plan for its implementation (see above) have yielded very little concrete outcomes. It

called on Russia to intensify its efforts to implement the plan and echoed earlier recommendations made by CESC, CERD and other human rights bodies to the effect that, more than ten years after its adoption, Russia should implement the Federal Law on Territories of Traditional Nature Use, the only federal legislation providing a protective regime for indigenous territories. ○

Notes and references

- 1 The three framework laws are: 1) On the guarantees of the rights of the indigenous small-numbered peoples of the Russian Federation (1999); 2) On general principles of the organization of communities [obshchinas] of the indigenous small-numbered peoples of the North, Siberia and the Far East of Russian Federation; and 3) On Territories of Traditional Nature Use of the indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation (2001).
- 2 RF Government Resolution dated 28.08.2009 No. 1245-p.
- 3 RF Government Resolution dated 23.06.2008 No. 895-p.
- 4 MINREG is the Ministry empowered to address the issues of indigenous peoples in Russia.
- 5 "Forestry Code".
- 6 "On Fishing and Conservation of Aquatic Biological Resources".
- 7 "On Hunting and Conservation of Hunting Resources and on Amendments to Specific Regulations of the RF".
- 8 *Obschina* - "community". Obschinas emerged in the early 1990s; they were supposed to perform both economic functions and functions of self-government. The status of obschinas is determined by the federal law "On Principles of Organization of Obschinas of Numerically Small Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation".
- 9 The small-numbered indigenous peoples of the North in Tomsk Oblast are the Selkups, the Khanty, the Evenks, the Tchulymtsy and the Keto. They number approximately 3,500 people. They live in seven regions of the Oblast: in Aleksandrovsky, Kargasoksky, Parabelsky, Kolpashovsky, Verkhneketsky, Chulymsky and Asinovsky. These regions are a traditional territory of these peoples' residence and livelihood.
- 10 <http://www.tomskneft.ru/social-responsibility/social-policy/>
- 11 The information was received from indigenous peoples and local residents of Kargasoksky Region, Tomsk Oblast, as well as from the following Internet-sites: <http://www.tv2.tomsk.ru/category/tegi/razliv-nefti>; <http://www.pressoboz.ru>; <http://raipon.info/>
- 12 <http://www.plotina.net/evges-yurkevich-otvet/>
- 13 Russian title: "*O garantiakh prav korennykh, malochislennykh narodov Severa, Sibiri i Dal'nego Vostoka Rossiiskoi Federatsii*".
- 14 *The Indigenous World, Living Arctic*, Vol 27 (2011), p 45
- 15 Yakut Association of Indigenous Peoples of the North
- 16 Downloadable from http://www2.ohchr.org/english/bodies/cescr/docs/ngos/IWGIA_RAIPON_RussianFederation_CESCR46.pdf
- 17 UN document E/C.12/RUS/5.
- 18 <http://www.infoe.de/report.html>

19 <http://www.infoe.de/report-2003.pdf>

20 Concluding Observations of the Committee on Economic, Social and Cultural Rights - Russian Federation UN Document E/C.12/RUS/CO/5.

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INUIT REGIONS OF CANADA

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

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

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

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

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

2011 marked the 40th anniversary of Canada's national Inuit organization – Inuit Tapiriit Kanatami (ITK). On this occasion, ITK held a conference in Ottawa entitled "*From Eskimo to Inuit in 40 Years*", which quite literally chronicled a period in which Canadian Inuit transformed the Arctic political, social, and economic map of Canada.¹

Large-scale resource development

In 2011, both domestically and abroad, Canadian Inuit focused on the issue of large-scale resource development. In some Canadian Arctic regions, regulatory processes continued to hear concerns from northerners about prospective major development practices, such as offshore Arctic drilling and uranium mining. As the effects of global warming continue to open up navigable waters across the Arctic regions, this is creating a global focus on the Arctic, and a “race for resources” mentality.

Circumpolar Inuit gathered in Ottawa for the Inuit Leaders’ Summit on Resources Development in February 2011 and, as a result, the “Circumpolar Inuit Declaration on Resource Development Principles in Inuit Nunaat”² was issued by the Inuit Circumpolar Council (ICC) on May 11, 2011, just before the Ministers’ Arctic Council meeting in Nuuk, Greenland.

The five-page Declaration is mindful of both the UN Declaration on the Rights of Indigenous Peoples and the Circumpolar Inuit Declaration on Sovereignty (issued by ICC in 2009). It sets the context for resource development in the modern Arctic, taking into account the economic, social and political development of Inuit in Canada, Greenland, Alaska and Russia.

The concluding paragraph of the Declaration is noteworthy in its scope. It reads: “We, the Inuit of *Inuit Nunaat*, are committed to the principles of resource development in *Inuit Nunaat* set out in this Declaration. Inuit invite – and are entitled to expect – all those who have or seek a role in the governance, management, development, or use of the resources of *Inuit Nunaat* to conduct themselves within the letter and spirit of this Declaration.”

EU import ban on seal skin

In 2011, Canadian Inuit continued their legal battle against the European Union ban on the import of sealskin products. In the fall, Inuit leaders announced they would appeal an EU Court decision rendered on September 6, 2011 which ruled against the Canadian Inuit case on the grounds of “admissibility”. National Inuit leader Mary Simon stated: “We fully expect our views on the injustice of the EU



legislation to be vindicated. Inuit will not rest until the EU courts strike down this unfair and unjust legislation.”

Inuit education strategy

In June, following several years of research, consultations and political meetings, the President of ITK, Mary Simon, released a national Inuit Strategy on Education at a press conference in Canada’s Parliament. This was entitled, “*First Canadians, Canadians First*”. The title is in honour of ITK’s past president, Jose Kusugak, who passed away from cancer on January 18, 2011. Mary Simon said:

“Our objective is nothing less than to graduate children confident in the Inuit language and culture, and capable of contributing with pride to the emerging opportunities in Canada’s Arctic. This is an opportunity for us to turn the words of the Prime Minister’s Apology for the legacy of residential schools into real action”.

The strategy aims to empower parents, expand early childhood education, invest in curriculum development, and create a fully bilingual education system based on the Inuit language and one of Canada's two official languages. An important goal is to establish a standardized writing system so that Inuit across Canada can more easily share teaching materials and published texts.

Inuvialuit Settlement Region

Following Canada's 2008 Apology to victims of residential school abuses, the Truth and Reconciliation Commission (TRC) was created to hear testimony in various forums from the victims, families and concerned citizens. Some of these forums are called "National Events". In 2011, one was held in Inuvik. The event theme, *It's about Courage - A National Journey Home*, was inspired by approximately 1,000 survivors in the North who shared their personal experiences. The event was also webcasted.

From November 2010 through September 2011, the National Energy Board (NEB) commenced hearings regarding Arctic offshore drilling. NEB held more than 40 meetings in 11 communities across the Yukon, the Northwest Territories and Nunavut. The consultations culminated in a roundtable session in Inuvik in September 2011.

People in the North told the NEB that they understood the importance of the energy sector and were not opposed to development but that any drilling activity had to be carried out responsibly and that Northerners wanted to be involved in preparing for potential drilling in the future.

In December 2011, the NEB issued its review of the filing requirements for Canadian Arctic offshore drilling, maintaining the requirement that oil and gas companies wanting to operate in Arctic waters demonstrate the capability to contain an out-of-control well during the same drilling season. The Inuvialuit Regional Corporation (IRC) praised the NEB for retaining the same-season relief well requirement.

In January 2011, IRC Chair and CEO, Nellie Cournoyea signed an agreement-in-principle with Floyd Roland, then-Premier of the Northwest Territories, and John Duncan, Minister of Aboriginal Affairs and Northern Development Canada, for the devolution of lands and resources from Canada to the Northwest Territories. Nellie Cournoyea said:

The Inuvialuit were the first in the Northwest Territories to sign a land claim agreement. We have worked hard in the implementation of that agreement to improve the economy in the region and communities to improve the life of the Inuvialuit. Today we take another step as a signatory to this agreement-in-principle on devolution to achieve our goals.

The signing of the agreement-in-principle is a key step in the devolution process and signifies the commitment of the parties to commence negotiations towards a final Devolution Agreement. The final Devolution Agreement will include the transfer of administration, control and management of land, water, minerals and other resources such as oil and gas to the Northwest Territories.³

Nunavut

In 2011, Nunavut Tunngavik Incorporated (NTI) continued to make progress on its major lawsuit against the Crown in right of Canada, in the Nunavut Court of Justice, for numerous and damaging implementation breaches of the Nunavut Land Claims Agreement by the Crown. This lawsuit, launched in December 2006, is of key importance not just to the Inuit of Nunavut but for all Aboriginal peoples in Canada.

Furthermore, NTI continued to work closely and cooperatively with other modern treaty signatories across Canada, through the Land Claims Agreements Coalition, to persuade the Government of Canada to correct the major deficiencies in its land claims agreements implementation policies. These deficiencies have been noted over a number of years, including by the Auditor General of Canada and the Senate Committee on Aboriginal Peoples.

NTI, and regional Inuit organizations within Nunavut, also invested much time, energy and creativity in working with major natural resource development proponents in Nunavut. Nunavut is rich in mineral and other resources, and it is critical that Inuit speak in a coordinated and informed way both to evaluate proposals and, as appropriate, seek to maximize and fairly allocate Inuit benefits from those that go forward.⁴

Nunavik

A referendum in April 2011 on creating a Nunavik government was rejected by Nunavik Inuit. Six months later, a regional meeting was held to discuss the way forward. Inuit in the region plan to revise the “Self-Government” proposal for Nunavik and continue negotiating to create a Nunavik government, and ensure that Inuit are in control of their own destiny.

In response to the province of Quebec’s “Plan Nord” originally announced in 2010, the main Nunavik organizations – Makivik Corporation, the Kativik regional government, Avataq Cultural Institute, Kativik School Board, Regional Health Board and FCNQ (co-op) - responded with the “Plan Nunavik”. This plan has precise short, medium and long-term goals and addresses the key pressing issues, including the need for more social housing, reducing the high cost of living, establishing “essential services” as basic community needs, substantial improvements to health care and education services adapted to the Inuit of Nunavik, and self-government for Nunavik.

Nunavik Inuit stated clearly that one of the threats of Quebec’s “Plan Nord” was to Inuit culture and language, something Inuit would never sacrifice at the altar of large scale development.

One positive development in 2011 was an announcement from the government of Quebec that it was going to build 300 additional housing units for the Nunavik region, with 200 additional private homes under a private home ownership program.

Finally, Nunavik Inuit were grateful that the Quebec government made a formal apology regarding the slaughter of Inuit sled dogs in the 1950s and 1960s.⁵ On August 8, 2011 Quebec Premier Jean Charest went to Kangiqsualujjuaq to make the apology in person, and to extend financial compensation related to the issue to Makivik Corporation.⁶

Nunatsiavut

The new legislative assembly held its first session in Hopedale in late 2011. An official opening ceremony is planned for 2012.

Subsequent to the May 2 federal election, the newly-elected Member of Parliament for Labrador, Peter Penashue, a former President of the Innu Nation, was

appointed to the federal cabinet as Minister of Intergovernmental Affairs and President of the Queen's Privy Council for Canada. He is the second Aboriginal MP in the federal cabinet, along with Minister of Health, Leona Aglukkaq, MP for Nunavut.

In tune with the resource development theme throughout the Canadian Arctic, the Nunatsiavut region voted in December to lift a moratorium on uranium mining imposed in April 2008. It was originally decreed to provide Inuit in Nunatsiavut time to review the issue. Nunatsiavut has since established a land administration system, developed environmental protection legislation and made progress on a land-use plan for the Labrador Inuit Settlement Area.

Late in the year, Nunatsiavut Inuit were pleased with a court decision that would allow a class action suit on behalf of 4,000 Inuit beneficiaries to sue the Government of Canada for excluding Labrador Inuit from the Residential Schools Settlement Agreement. Both the Nunatsiavut government and national Inuit leader, Mary Simon, publicly declared their strong support for this class action suit.⁷ ○

Notes

- 1 Developments related to ITK can be followed at www.itk.ca
- 2 "Inuit Nunaat" comprises the circumpolar Inuit homeland of the Inuit communities located in Greenland, Canada, Alaska and Russia.
- 3 Developments in this region can be followed at the following website: irc.inuvialuit.com
- 4 Developments in this region can be followed at the following websites: tunngavik.com and www.gov.nu.ca
- 5 The killing of sled dogs was part of a Canadian effort in the 1950s and 1960s to force Inuit to give up their nomadic lifestyle and settle in communities.
- 6 Developments in this region can be followed at the following website: makivik.org
- 7 Developments in this region can be followed at the following website: nunatsiavut.com

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NORTH AMERICA

CANADA

The indigenous peoples of Canada are collectively referred to as “Aboriginal peoples”. The Constitution Act, 1982 of Canada recognizes three groups of Aboriginal peoples: Indians, Inuit and Métis. According to the 2006 census, Aboriginal peoples in Canada total 1,172,790, 3.6% of the population of Canada. First Nations (referred to as “Indians” in the Constitution and generally registered under Canada’s Indian Act) are a diverse group of 698,025 people, representing more than 52 nations and more than 60 languages. Around 55% live on-reserve and 45% reside off-reserve in urban, rural, special access and remote areas. The Métis constitute a distinct Aboriginal nation, numbering 389,785 in 2006, many of whom live in urban centres, mostly in western Canada. The majority (78 %) of the Inuit lives in four land claim regions in the Arctic (see separate report on Arctic Canada in this volume).

In 2010, the Canadian government revised its initial opposition and announced its endorsement of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) which was passed by the UN General Assembly in September 2007. Canada has not ratified ILO Convention 169.

UN Declaration on the Rights of Indigenous Peoples

As reported in *The Indigenous World 2011*, Canada finally announced its support for the UNDRIP in 2010.³ Unfortunately, there are no signs that attitudes/perspectives within the Canadian government have fundamentally changed. The government continues to put forward positions that undermine the meaning and effect of the UNDRIP. In both legal and policy initiatives, Canada continues to seek to devalue the UNDRIP.⁴ In contrast, Indigenous Peoples’ Nations and organizations are implementing the UNDRIP widely in policy and decision-making, negotiations with governments and corporations, and educational initiatives. The



Assembly of First Nations hosted an introductory webinar attended by an estimated 1,000 viewers.⁵

Aboriginal child welfare case

The previous two editions of *The Indigenous World* have included information on the complaint brought to the Canadian Human Rights Commission by the First Nations Child and Family Caring Society (FNCFCS) and the Assembly of First Nations (AFN) regarding discrimination in the federal government's funding of child welfare services for Aboriginal children who live on reserves.⁶ In March 2011, the Chair of the Canadian Human Rights Tribunal (appointed by the federal government) ruled in favor of the government and dismissed the case on the basis of legal technicalities, without hearing all of the factual evidence. FNCFCS, AFN and the Canadian Human Rights Commission disagreed with the decision and filed applications with the Federal Court to have the decision judicially reviewed. In April, indigenous and human rights organizations jointly called on the government to end the discrimination, which continues to cause serious harm

in First Nations.⁷ More Indigenous children are in state care now than at the height of the Indian Residential School system.⁸ Providing culturally-appropriate, supportive services to ensure that children can remain in their communities is imperative.

Attawapiskat state of emergency

An emergency intervention by the Red Cross drew public attention to the housing crisis in the sub-Arctic Ontario Cree community of Attawapiskat last year. Canadians were shocked to see images of children living in overcrowded moldy shacks with no water or electricity. With winter approaching and some community members living in tents, the community called a state of emergency. The Red Cross delivered sleeping bags and supplies to assist with the oncoming winter conditions. The Canadian government only responded once the media had picked up on the story. The government did not engage in a comprehensive assessment of Attawapiskat's needs nor why these needs were not being met. Instead, the government removed the Chief and Council's authority by placing the community under third party management.⁹ The community has to pay the manager - Can\$1,300 per day plus expenses. The imposition of third-party management moves a community further away from self-determination. Such exercise of government power appears arbitrary and punitive, and communities often have no effective legal recourse within their means.¹⁰

Indigenous peoples' rights to basic services such as housing, health and education are not diminished by the fact of living in remote communities. Canada's Constitution affirms that federal and provincial governments and legislatures are committed to promoting equal opportunities, reducing regional disparities and providing essential public services of reasonable quality to all.¹¹ Whenever challenged over the inequalities experienced by indigenous peoples, the government points to the amount of money spent on services. However, the government fails to compare its funding of First Nations services either to what is generally available to other Canadians or to the urgent needs facing First Nations communities, based on decades of human rights violations and government neglect.

Resource extraction and Aboriginal rights

Much publicity and attention has been focused on the Keystone XL and Northern Gateway pipelines. Both projects are about moving resources from Alberta's oilsands to global destinations. There is considerable profit at stake for multilateral corporations and the governments of Alberta and Canada. There is also considerable risk and environmental damage involved – and the projects cross indigenous territories. The governments therefore have a legal duty to consult indigenous peoples and accommodate their concerns. As reported previously in *The Indigenous World 2010* and *2011*, in the *Haida Nation* case, Canada's highest court ruled in 2004 that the nature and scope of the Crown's duty to consult would require the "full consent of [the] aboriginal nation ...on very serious issues".¹²

Activism, including extensive work undertaken by the Indigenous Environmental Network (IEN) and the Dene Nation, among others, led to a temporary victory in the Keystone XL pipeline case (the pipeline that would take oil south to the US), as the US Obama administration created a delay that is having far reaching effects.¹³ In British Columbia, First Nations, including Yinka Dene Alliance and Coastal First Nations, have said they will not support Enbridge's Northern Gateway project (the pipeline that would take oil west, through British Columbia to the Pacific shore) under any circumstances.¹⁴ Unfortunately, the federal government appears to be looking for ways to avoid constitutional obligations and the right of indigenous peoples to free, prior and informed consent. In March, the federal government released updated guidelines on the duty to consult and accommodate, which did not include the requirement to obtain Aboriginal consent within this spectrum.¹⁵

In June 2011, the Assembly of First Nations hosted an International Indigenous Summit on Mining and Energy.¹⁶ The message coming from that meeting was clear – resource development on indigenous territory can only take place with the consent of the Indigenous Nations involved. Many First Nations, who are willing to explore the benefits of economic development, insist on their terms being respected. Clearly, there are large disparities between the positions of Indigenous peoples and the Canadian government.

Truth and Reconciliation

The Truth and Reconciliation Commission (TRC) – reported on in *The Indigenous World 2009* and *2010* - continued its work in 2011, with national gatherings held in Inuvik, North West Territories (June) and Halifax, Nova Scotia (October). In addition, regional events and educational work are also taking place.¹⁷ In Halifax, Commissioner Wilton Littlechild stated: “As a committee we have often discussed the title ‘Truth and Reconciliation’. We believe there should be five words to communicate what is needed: Truth, Forgiveness, Healing, Justice, and then Reconciliation: the most important one being Justice.” The gatherings bring together hundreds of residential school survivors, their families and non-Indigenous Canadians.

Tsilhqot’in Nation and Prosperity Mine

The Tsilhqot’in Nation has never ceded its traditional territory (in what is now British Columbia), nor its Title and rights. For decades they have been fighting off mining threats on their territory. Taseko Mines is attempting to develop the Prosperity Gold-Copper Mine in the heartland of Tsilhqot’in territory. Previous attempts to create this mine were stopped at the federal environmental review level in 2010. In 2011, Taseko Mines submitted an alternative to the rejected proposal and, with the approval of the provincial government of British Columbia, began exploratory work. In late September, Taseko was authorized to conduct work that included creating 59 test pits and geotechnical drilling. A separate licence permitted Taseko Mines to clear more than 1,000 cubic meters of timber. In December 2011, the Tsilhqot’in were granted an injunction by the Supreme Court of British Columbia to stop the development while the project goes through the review process. This is an example of how, in the name of development and profits, companies and governments wilfully ignore their legal obligations. There was no consultation with the Tsilhqot’in before this work began. This is the first time in Canadian history that a rejected mine proposal has immediately undergone a second review following its rejection. The decision to reconsider the mine, despite the decision of the review panel, shows a complete lack of regard for Aboriginal Title and Rights.¹⁸

Violence against Indigenous women

After years of commenting on the need for government action to address the shockingly high rates of violence faced by indigenous women in Canada, the UN Committee on the Elimination of Discrimination against Women announced in December that it had initiated an investigation into the matter. This investigation is in response to a complaint filed by the Native Women's Association of Canada and the Feminist Alliance for International Action under the Convention's Optional Protocol. This marks only the second time that the Committee has undertaken an investigation under this mechanism. The previous investigation looked into the disappearance and murder of Mexican women in the region bordering the US.

Skwxwú7mesh Sníchim- Xwelíten Sníchim Skexwts

Loss of indigenous languages is a critical issue in Canada.¹⁹ In 2011, the Squamish Nation proudly released *Skwxwú7mesh Sníchim - Xwelíten Sníchim Skexwts* – a Squamish / English dictionary. Language retention is closely linked to culture and the exercise of self-determination. *Skwxwú7mesh Sníchim - Xwelíten Sníchim Skexwts* provides a view of modern life, as well as containing the historical records, protocols and laws of the Squamish people. It can be used as a foundational tool in Nation building.²⁰ It is the result of 18 years of work by a team of elders, linguists and researchers. The dictionary is part of the Squamish ongoing efforts at cultural resistance and preservation.²¹

Hul'qumi'num Treaty Group

As previously reported in *The Indigenous World 2010*, the Hul'qumi'num Treaty Group (HTG) had their human rights complaint accepted by the Inter-American Commission on Human Rights (IACHR) of the Organization of American States. On October 28, 2011 the first case dealing with the violation of indigenous land rights in Canada to be heard by the IACHR took place at the OAS headquarters in Washington DC. The Hul'qumi'num Treaty Group alleges that Canada has violated international human rights standards by refusing to negotiate any form of

redress for their expropriated lands, which are now mostly in the hands of large forestry companies, and by failing to protect Hul'qumi'num interests while the dispute remains unresolved.²² Indigenous peoples and human rights organizations are supporting the HTG in their landmark case, which is of potential importance for indigenous peoples across Canada.²³ The HTG petition to the IACHR was specifically aimed at recognizing the ongoing violations by Canada of Hul'qumi'num rights to property, culture, religion and equality under the law. Lead counsel for the HTG, Robert A. Williams, Jr., a law professor and Director of the Indigenous Peoples Law and Policy Program of the University of Arizona, states that a favorable decision for HTG "will vindicate the position of First Nations leaders and communities throughout Canada that the Comprehensive Land Claims Policy needs to be scrapped in favor of a process that complies with international human rights standards for the recognition and protection of First Nations' peoples in their ancestral lands."²⁴

Grassy Narrows First Nation - Asubpeeschoseewagong Netum Anishinaabek

Trappers from the Grassy Narrows First Nation (*Asubpeeschoseewagong Netum Anishinaabek*) in north-western Ontario won a significant court victory in August 2011 when the Ontario Superior Court ruled that the provincial government did not have the authority to issue logging permits that jeopardized rights protected in their Treaty with the federal government.²⁵ Justice Mary-Anne Sanderson stated: "Ontario cannot infringe on aboriginal rights to hunt and trap enshrined in the Treaty 3 agreement signed in 1873". The province has appealed against the decision. Grassy Narrows is the site of one of Canada's longest standing blockades against resource development on indigenous lands. High-level talks continue between the First Nation and the province over forest management. The province has failed to institute interim measures to protect the First Nation's rights in its traditional territory. Despite the province having approved new clear-cut logging plans, a *de facto* moratorium has held since four major transnational forest companies withdrew from logging or buying wood logged at Grassy Narrows. In December 2011, the community rejected a "Long Term Management Direction" for the forest land on their traditional territory, developed by Ontario's Ministry of Natural Resources. Chief Simon Fobister explained the rejection thus: "This document was developed without our participation or consent, and entirely outside the good faith negotiations

we have undertaken with MNR since the 2008 Process Agreement. It sets the stage for more clear-cutting throughout our traditional lands, contrary to our Treaty and inherent rights. And we have not given our consent.”²⁶ ○

Notes and references

- 1 Statistics Canada. 2009. *Aboriginal Peoples of Canada: 2006 Census*. Released 29 January 2009. <http://www.statcan.gc.ca/bsolc/olc-cel/olc-cel?lang=eng&catno=92-593-X>
- 2 The Indian Act remains the principal vehicle for the exercise of federal jurisdiction over “status Indians”, and governs most aspects of their lives. It defines who is an Indian and regulates band membership and government, taxation, lands and resources, money management, wills and estates, and education. **Hurley, Mary C., 1999: *The Indian Act***. <http://dsp-psd.pwgsc.gc.ca/Collection-R/LoPBdP/EB/prb9923-e.htm>.
- 3 Canada, “Canada’s Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples”, November 12, 2010, online: <http://www.ainc-inac.gc.ca/ap/ia/dcl/stmt-eng.asp>.
- 4 Included the HTG and child welfare cases documented in this chapter, and the policy document on consultation and accomodation, see endnote 12.
- 5 The webinar was for anyone and widely advertised. It was to explain the Declaration and talk about concrete steps in implementation. It also covered the concerns with Canada’s behaviour concerning the Declaration. The webinar and other Declaration resources can be accessed at <http://quakerservice.ca/our-work/indigenous-peoples-rights/un-declaration/>.
- 6 Information on this case is available at <http://www.fncfcs.ca/>.
- 7 **Amnesty International Canada et al., 2011: *Children’s rights denied by indifference and legal technicalities***. April 27, 2011, online: <http://quakerservice.ca/wpcontent/uploads/2011/06/FNchild-welfarejointletterApril272011.pdf>.
- 8 **FNCFCS et al. v. Attorney General of Canada**, FNCFCS Submissions, December 17, 2010, Tribunal File No. T1340/7008, at 5: “... the urgency of this complaint ... involves an estimated 27,000 First Nations children, including 8,000-9,000 children on reserves, who are presently in state custody. ... [E]very delay that occurs in this matter causes thousands of First Nations children to be further isolated from their families and communities and deprived of adequate and culturally relevant care.”
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- 11 *Constitution Act, 1982*, section 36.
- 12 *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, para. 24.
- 13 **Nathan Vanderklippe And Carrie Tait, 2011: “U.S. delay could spell end for Keystone XL” *Globe & Mail*** Nov. 10, 2011. <http://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/us-delay-could-spell-end-for-keystone-xl/article2232016/>.
- 14 **David Ljunggren and Jeffrey Jones, 2011: “Natives to oppose West Coast oil pipelines”**, December 1, 2011. <http://www.reuters.com/article/2011/12/01/us-oilsands-idUSTRE7B025I20111201>.

- 15 Minister of the Department of Indian Affairs and Northern Development, Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Duty to Consult, March 2011. <http://www.aadnc-aandc.gc.ca/eng/1100100014664>
- 16 Documents from this Summit can be found at <http://www.afn.ca/index.php/en/news-media/events/international-indigenous-summit-on-energy-mining2>.
- 17 www.trc.ca.
- 18 **Tsilhqot'in Nation, 2012:** Submission to Canada's 19th and 20th Periodic Reports: Shadow Report by the Tsilhqot'in Nation on the denial of Indigenous peoples' rights in Canada with a focus on the Extractive Sector Operating within Canada. Submitted to Committee on the Elimination of Racial Discrimination 80th Session 13 February – 9 March 2012 United Nations, Geneva. Online at: http://www2.ohchr.org/english/bodies/cerd/docs/ngos/Tsilhqotin_Canada80.pdf.
- 19 **Marie Battiste, 2002:** "Decolonizing University Research: Ethical Guidelines for Research Involving Indigenous Populations" in G. Alfredsson & M. Stavropoulou, eds., *Justice Pending: Indigenous Peoples and Other Good Causes*, Essays in Honour of Erica-Irene A. Daes (The Hague: Kluwer Law International, 2002) 33, at 39: "... we are aware of the great losses of indigenous peoples due to Eurocentrism. In North America from an estimated 2,000 indigenous languages existing before contact, only 52 indigenous languages remain in Canada, in the next century only three are predicted to remain."
- 20 **Squamish Nation, 2011:** *Endangered First Nation Languages: Launch of the Skwxwú7mesh Snichim - Xweliten Sníchim Skexwts*. April 6, 2011.
- 21 **Kevin Griffin, 2011:** "Squamish Nation publishes dictionary to keep its language alive" in *Vancouver Sun*, June 18, 2011.
- 22 Documentation on this case can be found at <http://www.htg-humanrights.bc.ca/> and <http://www.law.arizona.edu/depts/ipip/international/Hulqumimum.cfm>.
- 23 **Amnesty International Canada et al.:** Human rights groups and Indigenous peoples' organizations will closely monitor landmark international hearing into Canadian land rights case. Oct 26, 2011. Online at: <http://quakerservice.ca/wp-content/uploads/2011/10/Oct-26-joint-statement-supporting-HTG-copy.pdf>
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- 25 *Keewatin v. Ontario (Minister of Natural Resources)*, [2011] O.J. No. 3907.
- 26 Grassy Narrows Chief and Council, *Grassy Narrows Rejects MNR's "Long Term Management Direction" for the Whiskey Jack Forest*. December 21, 2011.

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USA

According to the United States Census Bureau, approximately 5.2 million people in the U.S., or 1.7%, identified as Native American in combination with another ethnic identity in 2010. About 2.9 million, or 0.9% of the population, identified themselves only as American Indian or Alaska Native. There are currently around 335 federally recognized tribes in the United States (minus Alaska): most have reservations as national homelands. More than half of American Indians live off-reservation, many in large cities.

The government has treaty and trust obligations toward indigenous nations, stemming from historical land sales by Indian nations to the federal government. American Indian nations are theoretically sovereign but limited by individual treaties and federal Indian law. They are under the tutelage of the state, which acts as their guardian. Separate federal agencies, such as the Bureau of Indian Affairs and the Indian Health Service, are responsible for the federal government's responsibilities to Indian tribes.

The United States has not ratified ILO Convention 169. The United States voted against the UN Declaration on the Rights of Indigenous Peoples (UN-DRIP) in 2007; however, it announced in 2010 that it would support the UNDRIP. This announcement has not, however, been implemented to date.

The UN Declaration on the Rights of Indigenous Peoples

After the announcement in 2010 that the United States would support the UN-DRIP (see *The Indigenous World 2011*), the U.S. Senate Committee on Indian Affairs held hearings in June 2011 on the declaration and its implications.¹ The Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior, Del Laverdure, testified on behalf of the administration. He reiterated

that the Obama administration saw the Declaration as “a not legally binding, aspirational international instrument” that “has both moral and political force”. This characterization limits the Declaration. According to Mr. Laverdure, the Obama administration is working on five main issues to implement the spirit of the declaration: “Consultation and cooperation before adopting measures that may affect indigenous peoples; maintaining, protecting, and accessing private indigenous religious and cultural sites; protecting indigenous lands, territories, and natural resources; improvement of the economic and social conditions of indigenous peoples, and; living in freedom, peace and security as distinct peoples.” However, none of these initiatives addresses the legal and political status of indigenous nations in the United States. Instead, most of the federal government’s initiatives try to address these issues by increasing individual access to resources. As such, the initiatives taken by the administration seem to actually undermine the notion of the Declaration whereby indigenous peoples have rights as peoples and not only as individual citizens. The exception is the initiative on consultation and cooperation, which has been delayed (see *The Indigenous World 2011*) and, where implemented, has often buried tribes in bureaucratic requests instead of opening up a true dialogue on fundamental issues.

Robert Coulter, Executive Director of the Indian Law Resource Center,² testified at the same hearing that: “the Declaration can be useful as a guide to bring about positive change” in the framework of Indian law, which “is not only inconsistent with our Constitution and human-rights standards worldwide” but also creates “enormous adverse consequences” for indigenous nations in the United States. There is no doubt that Indian law would need to change should the United States indeed implement the Declaration as it is intended. The limitation of the Declaration to a non-binding, “aspirational” document, however, does not offer too much hope. It is indigenous nations that are pushing for an implementation of the Declaration, not the government. Duane Yazzie, testifying for the Navajo Nation, asserted that this “will hold the U.S. accountable to its responsibility toward Native Americans”. Like others, he pushed for ratification of the Declaration and an integration of the Declaration into existing law. In the context of implementation, Fawn Sharp, President of the Quinault Nation, pointed out that what is needed is true dialogue: “By ‘dialogue’, I mean substantive discussion between sovereigns to resolve differences, not ‘consultation’ which has been interpreted to enable the United States to unilaterally retain all decision-making power.”



Whether or not the United States will be able to engage in such dialogue with indigenous peoples will probably also be a discussion point in the first official visit to the United States by James Anaya, the UN Special Rapporteur on the Rights of Indigenous Peoples, in April and May of 2012.

Trust land

The U.S. government holds certain lands in trust for indigenous peoples, either as individuals or tribes. Although they own these lands, they are restricted in their use, and the government has mismanaged trust lands and associated money accounts for decades. Currently, the government manages around 56 million acres of land for 384,000 individual account holders and around 2,900 tribal accounts for 250 tribes. Although President Obama signed into law the settlement for the Cobell class-action lawsuits against the federal government in 2010 (see *The Indigenous World 2011*), the settlement has been challenged in court. In June 2011, a federal judge affirmed that the US\$3.4 billion settlement could go ahead. However, appeals will keep the settlement from taking effect well into 2012. In the meantime, Elouise Cobell, the originator of the lawsuit in 1996, died on October 16, 2011. While the settlement provides partial restitution, it does not

address the systemic mismanagement of accounts. In November, President Obama named the members of the Secretarial Commission on Indian Trust Administration and Reform, which will provide the government with recommendations on how to improve the administration of trust lands and accounts. The members are: Fawn Sharp (Quinault), Peterson Zah (Navajo), Stacy Leeds (Cherokee), Tex Hall (Three Affiliated Tribes) and Bob Anderson (Bois Forte Chippewa). Also in November, the administration released a proposal for new rules applying to the approval of leases of Indian trust lands. Since the government holds these lands in trust, it generally has to approve any lease or land use change. The new proposal aims to streamline the process. For example, the Bureau of Indian Affairs would have to come to a decision on leases within 30 days for residential applications and 60 days for business applications. Currently, there are no deadlines. The proposed reforms would also do away with requirements such as the approval of parades, bake sales or other community events, among other things. Native nations had been pushing for such a reform for more than ten years.

Native women and violence

In July 2011, the U.S. Department of Justice wrote to Vice President and President of the Senate, Joseph Robinette Biden, and Speaker of the House of Representatives, John Andrew Boehner, stating that: “Violence against Native women has reached epidemic rates”. The Department proposed enacting new legislation to strengthen the Tribal Law and Order Act (see *The Indigenous World 2011*). Also in July, the Senate Committee on Indian Affairs held hearings on this pressing issue, as did the Inter-American Commission on Human Rights in October. At the end of October, Senator Daniel Akaka (D - Hawaii) co-sponsored the Stand Against Violence and Empower Native Women (SAVE Native Women) Act. This bill, which has gained the full support of the National Congress of American Indians, proposes providing tribes with more tools to collect data on violence against women and clarifying that Indian tribal courts have civil jurisdiction over non-Indians in Indian country. It would also give tribes the option of expanding their criminal jurisdiction by creating “special domestic violence criminal jurisdiction” over Indians and non-Indians who commit acts of domestic and dating violence or violate a protection order in Indian country. This special jurisdiction would only apply if either the victim or the defendant were American Indian and had ties to the

prosecuting tribe, and the tribe would exercise this jurisdiction concurrently with the federal government, not exclusively.³ However, any shift in jurisdiction toward indigenous nations is a monumental political undertaking because it reverses the historical trend in appropriating jurisdictional power from indigenous nations. While the bill cleared the Senate Committee on Indian Affairs in December, it is unfortunately extremely unlikely that it will be approved by Congress. Contemporary politics in the U.S. Congress are dominated by nationalistic, conservative trends that mostly ignore the legal sovereignty of American Indian nations: granting more sovereignty to them is not a popular proposition.

In October, the Minnesota Indian Women's Sexual Assault Coalition released a joint study with Prostitution Research and Education on prostitution and sexual trafficking of indigenous women in the state.⁴ The report is based on interviews with 105 women who are or were involved in prostitution or trafficking and describes the trauma caused by and at the origin of these activities. While the report is based on Minnesota, the results coincide with the few other studies that have been undertaken on indigenous women in the sex trade in North America. It describes histories of sexual abuse, rape, homelessness, violence and post-traumatic stress, and emphasizes the importance of Native cultures in finding a way out of cycles of violence.

Foster care

In October, National Public Radio (NPR) ran a series of reports on foster care of American Indian children in South Dakota. The report made serious allegations against the foster care system in the state, including that the state removes children from homes because it has a financial incentive to do so, that the dominant private foster care provider, Children's Home Society, is protected by its links to the state's government, and that Native children are placed in non-Native homes.⁵ This last point would mean that the state does not follow the Indian Child Welfare Act (ICWA), which is supposed to ensure that Native children are placed, whenever possible, with Native families or relatives. Around 700 Native children are placed with foster families every year in South Dakota. In response, the accused claim that the reporter was "one-sided and predisposed to a particular position, regardless of the facts". Regardless of the details, the story brought to the public's attention the fact that Native children are over-represented in the foster care sys-

tem in many states, especially those with a large number of reservations. A report in May showed that Idaho had Native children in the foster care system at 6.6 times their percentage of the population in 2009. Nebraska had a disproportionality level of 6.8, Washington of 6.9, and in Minnesota, Native children were in foster care at 11.6 times their percentage in the general population. In comparison, South Dakota presented a disproportionality level of 3.9.⁶ In response to the NPR report, the Department of the Interior is planning a summit in South Dakota to address the state's foster care policy. In November, Minnesota Public Radio reported that Native children in Minnesota had a 14 times higher probability of being in foster care than white children in the state. Only two-thirds of the Native children are placed with Native families or relatives.⁷ Tribes have responded with concern to these numbers. While a 2010 report showed that there was a correlation between higher poverty and violence in Native communities and the higher proportion of children in foster care,⁸ tribes are trying to expand their sovereignty over social work decisions, even off reservation. The issue becomes more complex when one takes into account the fact that there has been a shortage of Native American foster parents for many years. Foster care issues are highly sensitive for tribes because of the long history of forced assimilation programs, during which children were intentionally separated from their families and cultures. Some Native peoples today see a continuation of such policies, albeit unstated, in contemporary foster care practices. In May, the state of Maine and Wabenaki chiefs agreed to work together in a process to document historical welfare policies and practices as they were applied to Native children and families. Members of a truth and reconciliation commission will visit communities and collect testimony. This will be used to document the past, promote healing and improve current practices.

Lands and mining

The Havasupai Tribe and the Kaibab Paiute Tribe in Arizona, in conjunction with several environmental organizations, have filed a federal appeal against the reopening of the Arizona 1 mine, a uranium mine north of the Grand Canyon. The suit could impact other mines that are set to reopen. In October, the Interior Department recommended that a moratorium be placed on new uranium mining in the area for 20 years. However, old mines would be grandfathered in⁹ and not be affected by the moratorium. Several Congressmen and Senators from Utah and

Arizona introduced the Northern Arizona Mining Continuity Act of 2011 in response but the bill has yet to be voted on. Uranium mining and its effects on the environment, water supplies and health have been pressing issues for tribes for decades. The U.S. House of Representatives approved a land swap between Resolution Copper and the federal government that would allow the Rio Tinto/BHP Billiton joint venture to build a mine under current National Forest lands. Several tribes are opposing the mine because it would affect sacred sites. The Senate has yet to vote on the proposal (see *The Indigenous World 2010*).

An organization founded in 2010 and dedicated to restoring the land base for indigenous nations, Indian Country Conservancy, has grown fast over this last year and has received national recognition. Tribes can buy lands and ask the federal government to take them into trust, which alleviates the tax burden and protects the lands, although this process has been stalled for many years for fear that tribes would build casinos on the newly acquired lands. Land conservancies can circumvent these bureaucratic hurdles; apart from the national organization, there are around ten tribal land conservancies. These organizations not only protect the lands from being lost again, but also from development. They can ensure that the management and use of the lands follows indigenous values and can set access limitations. In California, the Maidu have received national attention because they created an organization, Maidu Summit, to manage the remote Humbug Valley, a proposal in competition to the California Department of Fish and Game. The decision over which entity will receive the land will be taken next year, but the fact that Maidu Summit is in serious contention shows how tribes are successfully using innovative ideas to restore and preserve their sovereignty.

Cultural appropriation

Native cultures and their connections to land are still often threatened in issues concerning sacred sites. In South Dakota, the Board of Minerals and Development has allowed the drilling of five oil wells in the vicinity of Bear Butte, a sacred place for the Lakota and Northern Cheyenne, although the wells will have to be outside the National Historic Landmark property. Additional restrictions were put in place at the suggestion of the South Dakota State Historical Society. After the Department of the Interior rejected the appeals of tribes, a shooting range is to be built in the Mohave Valley in Arizona, on land that tribes say is sacred to them.

The retail chain Urban Outfitters last year created a “Navajo” line inspired by “Native” designs that included a “Navajo Flask” and a “Navajo Hipster Panty”. The Navajo Nation, which owns the trademark for the word, sent the retailer a cease-and-desist letter in June, asking the company to stop using the name. The chain has indeed stopped using the term, although the line continues to be on sale. The use of American indigenous nations’ names to brand commercial items is a widespread practice. From GPS systems to dresses, from backpacks to t-shirts, from watches to beauty products, the names of Native peoples are still appropriated in this way. Some companies pay indigenous nations for this use; others do not.

In December, the Navajo Nation also filed a lawsuit against the National Park Service, trying to force it to return or rebury artifacts and human remains from archaeological excavations in Canyon de Chelly National Monument. The Park Service is arguing that, according to the Native American Graves Protection and Repatriation Act (NAGPRA), it first needs to identify the cultural affiliation of the artifacts. However, the Navajo Nation argues that since all the territory within the monument is Navajo tribal trust land, the Navajo Nation owns the land and NAGPRA should not apply.

After a prolonged fight against the National Collegiate Athletic Association’s (NCAA) decision to ban the use of most Native American names and logos for college sports teams (see *The Indigenous World 2006*), the University of North Dakota decided to end its use of the name “Fighting Sioux” because it could not obtain approval from both Lakota/Dakota nations in North Dakota. This decision was overturned in January by the state legislature, which enacted a law requiring the university to keep using the name. In November, the legislature overturned its own law, after it could not convince the NCAA to ease sanctions on the university. However, a group of name supporters from the Spirit Lake Nation, supported by outside interests, has started to raise signatures for a statewide referendum to force the university to keep the name by enshrining it in the state constitution. The issue would be a sideshow for comedians did it not impact on the educational experience of Native students at the university. In August, before the legislature reversed itself, six students brought a federal lawsuit against the university, the state and the governor over the issue. ○

Notes

- 1 The written testimony from which the following excerpts are taken is available at: <http://indian.senate.gov/hearings/hearing.cfm?hearingID=e655f9e2809e5476862f735da16ddd16>.
- 2 <http://www.indianlaw.org>.

- 3 The full text of the bill is available at <http://www.govtrack.us/congress/billtext.xpd?bill=s112-1763>.
- 4 "Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota," available at <http://miwsac.org/>.
- 5 The full reports are available at <http://www.npr.org/2011/10/25/141672992/native-foster-care-lost-children-shattered-families>.
- 6 National Council of Juvenile and Family Court Judges. *Disproportionality Rates for Children of Color in Foster Care*.
- 7 <http://minnesota.publicradio.org/display/web/2011/11/30/american-indian-children-foster-care/>.
- 8 Minnesota Department of Human Services. *Minnesota Child Welfare Disparities Report*.
- 9 Grandfather clause is a legal term used to describe a situation in which an old rule continues to apply to some existing situations, while a new rule will apply to all future situations (ed).

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MEXICO AND
CENTRAL AMERICA

MEXICO

In 2010, the National Institute for Statistics, Geography and Computing (INEGI) conducted the 13th Census of Population and Housing. The results were published during 2011 although there is still some information relating to indigenous peoples that has not yet been released. The indications are that there are a total of 15,703,474 indigenous people in the country, a figure that is obtained by adding 6,695,228 *Indigenous language speakers* and *Population aged 0 to 4 years living with a head of household that is an indigenous language speaker* to the 9,008,246 on the registry of *Population in indigenous census households*. This population size makes Mexico the country with the largest indigenous population on the American continent, and the greatest number of native languages spoken within its borders, with 68 languages and 364 different dialects recorded.

The country ratified ILO Convention 169 in 1990 and, in 1992, Mexico was recognised as a pluricultural nation when Article 6 of the Constitution was amended. In 2001, as a result of the mobilization of indigenous peoples claiming the legalization of the “San Andres Accords” negotiated between the government and the Zapatista National Liberation Army (*Ejército Zapatista de Liberación Nacional - EZLN*) in 1996, the articles 1,2,4,18 and 115 of the Mexican Constitution were amended. From 2003 onwards, the EZLN and the Indigenous National Congress (*Congreso Nacional Indígena - CNI*) began to implement the Accords in practice throughout their territories, creating autonomous indigenous governments in Chiapas, Michoacán and Oaxaca. Although the states of Chihuahua, Nayarit, Oaxaca, Quintana Roo and San Luís Potosí have state constitutions with regard to indigenous peoples, indigenous legal systems are still not fully recognised.¹ Mexico voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007.



Education

Education has been a priority theme of the state's official indigenous policy since the end of the Mexican Revolution (1921), and a controversial issue given the diversity of educational models. Education is a perpetual aspiration for wide sectors of the native population and an ominous illustration of educational homogenization, budgetary carry overs and technical and social marginalisation. The creation of the Department for Indigenous Education (DGEI, 1978) and its subsequent evolution is reflected in the number of school age indigenous children (1,300,000 in 2011), the expansion of infrastructure (22,800 educational institutions), the lack of teachers to staff those institutions (58,000 teachers) and the cultural inadequacy of the educational plans, programmes and materials.

One additional and alarming fact is that there are now 400,000 indigenous migrant children, and only 20% of them are within the education system. On top of this, information from the Ministry for Public Education (SEP) shows that the budget allocated to the DGEI for 2012 was 32% down on 2011's budget of 312,199,245 Mexican pesos. This will seriously exacerbate all of the sector's

problems given that the communities' own authorities have denounced the fact that, "more than 50% [of the 22,800 educational establishments] do not have the minimum conditions of access to electricity, water, equipment and connectivity".² In view of the above, in 2011 the National Indigenous Peoples' Development Commission (CDI) began to conduct a consultation on reforming the General Education Law with the intended "aim of producing a consensual proposal for reforming the Law that will ensure the fulfilment of each and every person, in the context of a pluricultural and multilingual nation".³ This would involve designing a public policy that is in tune with the specific needs of the country's indigenous population.

The above is in sharp contrast to the murder, by the police, of two young students from the Ayotzinapa Rural Teacher Training School on 12 December in Chilpancingo, Guerrero. They were demonstrating in order to try and gain a meeting with the governor to discuss better conditions for their studies. This state-run institution is the only one of its kind in Guerrero that provides teacher training for the region's rural indigenous children, and their living conditions while studying at the school are very poor.⁴

Sending remittances home

There has been a growing interest over the last two decades in studying the financial remittances sent home by the large number of migrants who move abroad essentially but not exclusively in search of better employment and working conditions. China, India and, in America, Mexico, receive the largest amounts (in absolute terms) of such remittances. To date, however, there has been no data that would enable an assessment of the contribution of indigenous migrants to the national economy. For this reason, the Mexico University Programme, Multicultural Nation (PUMC), and the Institute for Economic Research - both of the National Autonomous University of Mexico (UNAM), are currently implementing the "Remittances, Migration and Development in Mexico's Indigenous Communities, 1980-2010" project.⁵ Some preliminary figures reveal the extent of the phenomenon: in 2011, the total amount of officially recorded remittances (there is no data on money sent informally) came to USD 21,964 million; in Mexican states with a strong indigenous presence, remittances represented: 56.0% of public income in Michoacán, 31.6% in Oaxaca, 38.1% in Guerrero, 32.9% in Hidalgo and 31.7% in

Puebla. The way in which such remittances are spent is also revealing of the conditions of poverty and extreme poverty that the indigenous communities live in, as they are primarily used to satisfy basic needs: over the 2000-2009 period, the use of remittances for *Food, rent, purchase or improvement of housing* accounted for more than 80% of the funds each year (with the highest rate, 87.4%, noted in 2006-2007), while their use for *Payment of debts and Purchase of land or business* was less than 9% in every year. Achieving stability in the sources of work, protecting payments from the extortionate charges of national and US middlemen, and creating decent and well-paid jobs in Mexico are the basic issues that are constantly raised by the communities, political movements and indigenous organisations.

Megaprojects on indigenous territories

Territorial conflict may seem to be a constantly recurring issue but, given the growing ease with which different business sectors are monopolizing natural resources and the increasing militarization of the country under the justification of the illegal drugs trade, there has been a notable deepening of the conflicts on indigenous territories, alongside a greater determination on the part of indigenous peoples to resist by creating their own self-determination and development alternatives.

Despite the low profile adopted by the Mesoamerican Project (PM), this has been encroaching onto indigenous territories both in relation to electricity generation and extraction activities, both legal and illegal. The 13th Summit of the Tuxtla Dialogue and Consultation Mechanism was held in Mérida (Yucatán) on 5 December 2011. Five basic points with which to further deepen the Project were agreed at this meeting: i) the creation of the Pacific Corridor Management Union to coordinate the necessary financing, on the basis of Inter-American Development Bank (IDB) studies regarding a Regional Investment Programme; ii) the establishment of the Procedure for International Transit of Goods (TM), which involves modernizing border customs controls; iii) the operationalization of the integrated electricity network, connecting Guatemala and Mexico, in 2012; iv) the creation of a Regional Electricity market; and v) the production of a business plan for a fibre optic network.⁶

In terms of electricity production on the Isthmus of Tehuantepec, there is growing conflict on the Zapotec and Huave (Ikoots or Ikojts) territories. The Assembly of Peoples in Defence of Land and Territory⁷ has stated that the community of San Dionisio del Mar is rejecting the wind project on the Santa Teresa sandbank, and is refusing to issue licences for a change in land use or a building permit. This project was being promoted by PRENEAL (Spain), FEMSA (Mexico) and MacQuaire Capital (Australia). This latter is, in turn, trying to negotiate the passage of construction equipment and machinery, along with the laying of a transmission line to the Juchitán electricity sub-station, with the indigenous Zapotec cooperatives of Charis and Álvaro Obregón on the basis of contracts stipulating the cooperative members' non-interference on their own lands for 30 years, during which time the company would take all decisions, including with regard to the use of contracts as loan guarantees and their transfer by sale, as necessary. Both cases illustrate how, under the banner of producing clean energy, transnational companies are in actual fact taking over indigenous territories, in violation of ILO Convention 169, and without the Mexican state moving to defend the interests of those affected. These companies have their head offices in Spain, France, Italy, Germany and Australia, where they supposedly adhere to norms of corporate social responsibility, and yet they are complying with no such responsibilities on the Isthmus of Tehuantepec where their business, construction and operational plans for wind power projects lack any integrated social programmes and, indeed, they are under no official obligation to include these, the only pressure coming from the social movement. This movement has, to date, put forward no proposals for a partnership with the companies, and does not have sufficient programmatic capacity to enable it to set up its own wind power project; in general, it has not gone beyond rejecting these projects or, in the best of cases, negotiating better land rental charges.

Mining

This section draws its information from two substantial articles published in the journal *Contralínea*,⁸ which indicate that: between 2000 and 2009, 51,099,312.7 hectares of national territory were awarded as concessions to 24,531 mining projects, and between 2010 and 2011, 1,512 new concessions were issued; there are 293 foreign mining companies in the country (213 from Canada; 45 from the

USA; 8 from China; 5 from Australia; the UK, Japan and South Korea with 4 each; India and Peru with 2 each and Belgium, Luxemburg, Chile, Italy, Spain and the Netherlands with 1 each). The companies pay 25 US cents per hectare allocated, and nothing for the material extracted. This capitulation on the part of the Mexican state in terms of protecting the subsoil wealth as an asset not only of the nation but also of the people not only guarantees greater profits for the transnational companies but also, without a second thought, exacerbates situations of conflict by extending the mining frontier onto territories for which indigenous people hold a title, whether in the form of an “agrarian community” or a cooperative (*ejido*). Without diminishing the importance of other conflicts caused by the mining companies, the case of the Wixárika (Huichol) people was perhaps the most symbolic in 2011, given that James Anaya, Special Rapporteur on the rights of indigenous peoples, examined the case of 22 mining concessions, awarded without any prior consultation of the indigenous people, to the Canadian company First Majestic Silver Corp by the Mexican state, covering an area of 6,327 hectares around Wirikuta, Real de Catorce, a sacred site for the Wixárika in San Luis Potosí. The area of the concessions is superimposed on an important pilgrimage route that has been used by the Wixárika for more than a thousand years, and along which can be found numerous sacred sites of great cultural and religious significance. Ceremonies are conducted there, their forefathers are buried there, and they collect *híkuri* (peyote) for ceremonial use there. It has been stated that 68.92% (4,107 has.) of the concession falls within a protected area known as the Wirikuta Ecological and Cultural Reserve, established in 1994 to protect the Wixárika pilgrimage route and the area’s ecosystem. On 26 April 2011, the Special Rapporteur drew the Mexican government’s attention to information received with regard to the granting of mining concessions in this region. On receiving no response, the Special Rapporteur sent a second letter, dated 7 July 2011, giving his observations and preliminary assessment of the situation. Subsequently, by means of a note dated 19 July 2011, the Mexican government responded to the information and allegations contained in the Special Rapporteur’s initial letter, noting that the Management Plan for this project had created sub-zones for the “special exploitation” of the reserve, thus permitting mining activities; that the company had specified that the mining operations would be underground and not open cast; and that none of Wixárika’s three sacred sites would be affected. Nonetheless, the Special Rapporteur emphasized that the Mexican state had still not conducted a study into the effects of the proposed mining activities on said

Reserve and that it was therefore necessary, in accordance with Article 7 of ILO Convention 169, ratified by Mexico in 1990, for the state to conduct “studies, in cooperation with the affected peoples, in order to evaluate the social, spiritual, cultural and environmental impact” of the mining concessions granted in said territory. He lastly reminded the state of the provisions of Article 19 of the Declaration on the Rights of Indigenous Peoples, in accordance with which discussions with the Wixárika people on mining activity that could affect them had to be based on the aim of “obtaining their free, prior and informed consent”. The Special Rapporteur hopes that the government will agree that, if the Wixárika’s consent cannot be obtained in this regard, and the proposed activities cannot be implemented in a way that is compatible with all the relevant rights of the Wixárika people, the mining activities should not take place.⁹ It is important to note that the Wixárika’s agrarian communities have asked UNAM to establish a multidisciplinary team to design an alternative project aimed at promoting social well-being and environmental protection in Wirikuta.

In addition, the Coordinating Body of the United Peoples of Ocotlán Valley (CPUVO) has, since 19 June 2010 when the municipal president and a councillor were murdered, continued to demand (unsuccessfully) that the Oaxaca government cancel the Cuzcatlán Mining Project of Fortuna Silver Inc. (Canadian). They are also demanding the dissolution of and legal action against the paramilitary group known as the San José Civil Association in Defence of Rights, which has been responsible for three murders, threats to the population and extortion. For its part, the Regional Coordinating Body of Community Authorities (CRAC) of Guerrero is continuing to denounce the Hochschild and CamSin mining companies in the municipalities of Tlacoapan, Minialtepec, Zapotitlan Tablas, San Luís Acatlán and Iliatenco to the authorities but their complaints are falling on deaf ears.¹⁰

The Zapatista Army (EZLN) and Chiapas

The Fray Bartolomé de las Casas Human Rights Centre¹¹ (Frayba) continues to denounce the blockade of and aggression against the autonomous Zapatista municipalities and their support bases. On 4 December 2011, it made known the military and paramilitary actions against the cooperatives of Mercedes and Santa Rosa in Tenejapa, and particularly the events at Banavil cooperative which left

one person dead, one in arbitrary detention, one disappeared and four families displaced. This was caused by local power barons, who are accused of land evictions, illegal felling, arbitrary taxation and breaking and entering of homes.

Perhaps the most outstanding event of 2011, however, was the case lodged by the Las Abejas civil association against former President Ernesto Zedillo for the Acteal massacre, in which 45 indigenous Tzotzil (including pregnant women and children) were massacred by paramilitaries in 1997. Given the release of those allegedly responsible in 2010 and 2011, survivors of this massacre lodged a lawsuit against Zedillo in the Connecticut Federal Court, USA, in September, stating that he was primarily responsible for the massacre:

According to the plaintiffs, the massacre was a result of the 'Chiapas 94 Campaign Plan', a secret document of the Mexican government's armed forces aimed at undermining the strength of and 'crushing' the EZLN insurgency that had taken up arms in January 1994. According to the lawyers, a fundamental part of getting the plan up and running was the creation and deployment of paramilitary and civil/military self-defence groups to help the armed forces in its operations, including illegally arming civilians with weapons intended for the sole use of the armed forces.¹²

This whole plan was designed by the Zedillo government with the President's knowledge. Lawyers for the former President and the Mexican government itself are seeking diplomatic immunity for the defendant, a strategy that may have repercussions for the case that the civil association is also bringing against the Mexican state through the Inter-American Commission on Human Rights on the same issue.

Community policing

The Nahua of Santa María Ostula, Michoacán, are continuing to suffer harassment from mining, forestry, agro-industrial and construction (coastal highway) interests on their territory. In the last two years, 28 of their members have been murdered, and in November and December 2011 they suffered two more; to these must be added four cases of enforced disappearance (Enrique Domínguez Macías, Francisco de Asís Manuel, Javier Martínez Robles and Gerardo Vera

Orcino). They are accusing the army, navy and federal police of these crimes, which have led them to create their own Community Guard as a form of self-defence, with the approval of the community's assembly.

Faced with similar issues, indigenous self-defence structures are multiplying throughout the country on the basis of the experience of the autonomous Zapatista communities. In Guerrero, the Regional Coordinating Body of Community Authorities (CRAC) has its own Community Police. As of its 16th anniversary (14 and 15 October 2011, Paraje Montero, Malinaltepec), the CRAC had 700 community police forces in five municipalities covering 60 communities, all elected by the communities. For their part, Purépecha communities from the municipalities of Cheran and Nahuatzen, in Michoacán, have also established their own community police forces given the impact that illegal felling on the part of drugs traffickers is having on them. In other words, if the state is unable to solve their security problems and face up to external threats then the communities will take the law into their own hands, on their own territories and with their own people, ensuring local public safety.

Tarahumara Mountains

The Chihuahua Mountains were back in the media headlines in 2011 due to the famine suffered by their four indigenous peoples: the Tarahumara (Rarámuri), the Tepehuan (Ódami), the Pima (O'odam) and the Guarijío (Warijoo). As is the case every year, public and private charitable donations were requested over the winter period to provide temporary food, clothing and blankets for "these poor needy people". This year, in addition to the usual situation, there was a prolonged drought that affected the whole of the north of the country. And yet tourism, open cast mining and large-scale forestry megaprojects are being implemented and developed in this same territory. There has been a continuous failure to ensure decent living conditions for these indigenous peoples in Tarahumara for the last 50 years, both on the part of the federal institutions (CDI, SAGARPA, SEMARNAT, CONAGUA) and the Church, chambers of commerce, foundations and NGOs. While such bodies continue to champion charity as the model of support for these indigenous peoples without considering the dignity of those receiving it, this vicious circle will never be broken.

Drugs trafficking

The expansion of territories under the control of drugs traffickers is having an impact on the indigenous population. The “Tlachinollan” Montaña de Guerrero Human Rights Centre has noted that, in the face of poverty, one of the few options open to people is to grow poppies.¹³ According to the CDI’s Prison Census, there are 400 Tepehuan, Mexicanero and Huichol community members in prison in Durango for growing stimulants.¹⁴ The Rarámuri are recruited into poppy growing in Chihuahua. Gilberto López y Rivas notes that the indigenous peoples of Michoacán, Jalisco, Sonora, Guerrero, Durango, Chihuahua, Oaxaca, Chiapas and Veracruz are affected by increasing drugs cultivation/transport and arms trafficking which, in turn, leads to the militarization of their territories and expanding circuits of violence.¹⁵

Indigenous companies

Indigenous peoples are finding other ways of defending their territories and resources than simply using their customs and traditions or creating their own police forces; they are also exploring new economic paths. Such is the case of the Indigenous Alternative Tourism Network (RITA) which is establishing an Indigenous Chamber of Commerce. As a result of these efforts, the Indigenous Business Centre was created on 11 June 2011, in the state of Mexico, with businessmen and women from the handicrafts, tourism, food, clothing design, traditional sweet manufacture, agricultural and livestock and marketing sectors. Months later (January 2012), the first Indigenous Business Association of Mexico was officially noted, a first legal step towards creating the Indigenous Business Chamber of Mexico (CIEM), a project coordinated, formulated and promoted by Cecilio Solís Librado.

Another innovative initiative is being implemented by the indigenous Totonac of Espinal municipality in the Veracruz Mountains where, since November 2010, the “Tumin” has been created. In the Totonac language this means money for the local bartering system. It takes the form of a voucher that is exchanged for products or services. The Bank of Mexico is accusing the Totonac of “monetary rebellion” and has initiated an investigation into the “Tumin” through the Attorney-General’s Office. Local people state that it promotes regional products, and stimulates

production and the exchange of goods and services, as well as reaffirming identity. It has been expanded from Espinal to cover Papanltla as well. The people of Espinal state that: “It’s not money, it’s a voucher, it only has the value we give to it”. It is not the only alternative “currency” in Mexico; there are also systems in Cajeme (Sonora), Mezquite (Dolores, Guanajuato) Tlaloc and Trueke (Federal District) but, unlike “Tumin”, these are used at markets for alternative products (environmental and recycled). ○

Notes and references

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- 5 For more information on the PUMC’s development projects, see www.nacionmulticultural.unam.mx
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GUATEMALA

60% of the country's total population, or around 6 million inhabitants are made up of the: Achi', Akateco, Awakateco, Chalchiteco, Ch'orti', Chuj, Itza', Ixil, Jacalteco, Kaqchikel, K'iche', Mam, Mopan, Poqomam, Poqomchi', Q'anjob'al, Q'eqchi', Sakapulteco, Sipakapense, Tektiteko, Tz'utujil, Uspanteko, Xinka and Garífuna indigenous peoples. The indigenous population, especially the indigenous women, continue to lag behind the non-indigenous population in social statistics. The human development report from 2008 indicates that 73% are poor and 26% are extremely poor (as opposed to 35% and 8 % respectively of the non-indigenous population). Indigenous peoples have 13 years' less life expectancy, and only 5% of university students are indigenous. Even so, indigenous participation in the country's economy as a whole accounts for 61.7% of output, as opposed to 57.1% for the non-indigenous population.

Guatemala ratified ILO Convention 169 in 1996 and voted in favour of the UN Declaration on Rights of Indigenous Peoples in 2007.

For indigenous peoples, 2011 was marked by events that yet again highlighted their social, economic and political under-development in relation to the rest of society, in a country in which, although they form the majority, they are treated as a complete minority. Fifteen years on from the signing of the Peace Accords, conditions do not seem to have substantially improved for the indigenous peoples. The elections held this year to elect the president, MPs and mayors also failed to offer opportunities for improved indigenous representation in electoral office, and were instead “used” in the interests of a wide range of differing political parties to capture the indigenous vote, more than half of the country's electoral register. For its part, the struggle of the indigenous movement was channelled towards rejecting the megaprojects on their territories, and at the government proposal for a regulation on community consultation. In legislative terms, none of the more than ten draft bills of law on issues of indigenous interest were approved by the Congress of the Republic, thus demonstrating the lack of political will to address ethnic demands.



15 years since the signing of the Peace Accords

The Peace Accords signed in December 1996 brought to an end 36 years of civil war, and created expectations on the part of Guatemalan society with regard to the existence of a real political will on the part of all social actors to build a fairer, more inclusive and sustainable model of development. One of the agree-

ments specifically suggested guidelines to overcome the causes of racism, discrimination, exclusion and social deprivation that indigenous peoples suffer and emphasised recognition of their social and cultural rights. In 15 years, some progress has been made, such as the creation of the Commission against Discrimination and Racism (CODISRA), the Indigenous Women's Ombudsman, the Law on Mayan Languages, the programmes promoted through the Ministry of Education's Intercultural Bilingual Education Department (DIGEBI), and some specific development programmes such as the Indigenous Development Fund (FODIGUA), along with various specific government commissions to address indigenous peoples' problems. However, judging by the socio-economic indicators, these initiatives have had no impact on the mono-ethnic state structure, and the situation of indigenous peoples remains one of severe under-development in relation to the rest of Guatemalan society.

The government in office for the last, recently-ended, four-year term was presented as the "government with the Mayan face" as it proposed implementing various actions in favour of indigenous peoples; however, these actions ended up as little more than folkloric window dressing given that little progress was made in the recognition of their collective rights. In contrast, the balance shows that little attention was paid to fundamental issues and some decisive matters were resolved to the detriment of indigenous rights, such as the case of the violent evictions of community members protesting against mining projects and the expansion of large industrial-scale monocropping.

The 15th anniversary celebrations of the Peace Accords thus passed unnoticed by indigenous and peasant organisations who are once again aware of the little interest their demands can muster and will remain sceptical with regard to electoral promises made in their name in the future.

Use of the indigenous vote in elections

One of the main focal points of the competing political parties in the 2011 electoral campaign was the indigenous electorate and a number of social organisations, supported by international cooperation, also joined with them to call on indigenous people to "vote conscientiously". In fact, more than half of the electorate is indigenous, for which reason it was important to encourage their attendance at the polling stations. Competition for their votes meant that some political organi-

sations worked hard to register indigenous people on the electoral register, others launched campaigns in native languages and some even included notable indigenous individuals on their electoral lists, all with the aim of attracting their vote. There were, in fact, indigenous women candidates, one for president and another for vice-president. The campaign messages offered no specific content of interest to indigenous peoples apart from recurring offers to reduce poverty and hunger, improve salaries and lower the prices of basic consumer goods; they all avoided key issues such as respect for indigenous territories, recognition of the Mayan languages, protection of indigenous cultural heritage and, particularly, enhanced rights to self-determination and consultation.

Despite the above, it is estimated that more than 60% of indigenous people who were eligible to vote did so although, given the lack of representative proposals, the indigenous vote became divided between the different political options, reflecting the lack of a political proposal giving any direction to their demands.¹ The only political entity that declared itself to be representing the indigenous people achieved scarcely 3% of the vote. In all, only 18 out of 158 members elected to the Congress of the Republic are indigenous, and only four of these are women. The difficulty in moving indigenous issues forward on the legislative agenda lies in the fact that these members represent parties whose interests have been shown to be alien to indigenous concerns. In fact, more than ten draft bills of law proposed by indigenous organisations during the 2008-2011 legislature were shelved, and never got as far as a full discussion in Congress. There is only one indigenous person in the government's new cabinet for the 2012-2015 term, the Minister of Culture, a position that has already traditionally become a kind of consolation prize for those indigenous peoples who supported the successful party.

Criminalisation of the social movements and government repression

2011 demonstrated the extent to which the government forces are capable of coming out in defence of the interests of the dominant groups, suppressing the indigenous and peasant movements no matter what the possible cost to human life. One of the most high-profile cases was the violent eviction of hundreds of families of the Maya Qeqchi' people in Polochic valley, Alta Verapaz department. A number of families had been occupying the lands they historically own and, in March, they began to suffer harassment aimed at removing them from the plots,

which the sugar company *Chabil Utzaj* (now owned by the Nicaraguan Grupo Pellas) claims it owns. This company, which has recently established a sugar plantation in the area, has taken possession of a number of large estates that it says it holds the legal documentation for, although it is doubtful as to whether this is genuine. In May, a contingent of national police officers and mercenaries hired by the company violently entered the land to remove the families, destroying the houses, household utensils, tools, food and crops of hundreds of indigenous families and causing the death of one person. It is all too often the case in Guatemala that owners holding apparently legal documents suddenly appear on the ancestral lands of indigenous peoples and mobilise the forces of law and order to remove the local residents, all in the name of defending private property, thus criminalising social struggle and resistance.²

The expansion of large monocrop plantations for the production of agrifuels is creating a serious shortage of land and this is affecting the indigenous territories, particularly in the departments of Alta Verapaz, Izabal and Petén, thus exacerbating the already characteristic land conflicts in this region. The large landowners are turning the land regularisation programmes, designed to provide greater legal security to small landowners, to their own advantage. As the small landowners hold individual titles to their lands, the large landowners use different tricks to pressurise these generally poor, illiterate indigenous farmers to sell their plots, which they then turn over to large-scale palm oil, sugar cane or cattle production.

Extraction projects on indigenous territories: resistance and protective measures

Given the protective measures recommended to the Guatemalan state by the Inter-American Commission of Human Rights (IACHR) in 2010 with regard to the mining operations of the transnational corporation Goldcorp in San Marcos department, the company and the government last year mobilised their political players to get these measures lifted. In view of the evidence presented by the communities affected, the IACHR had recommended the suspension of mining activity, the decontamination of the waters and the provision of treatment for inhabitants whose health had been affected by the pollution. In July 2011, the Guatemalan Presidential Human Rights Commission requested that the IACHR amend its recommendations, stating that technical studies had been carried out

which established that there was no water contamination nor harm done to the health of the local residents, and also noting that the government had taken responsibility for the care of the 18 communities that were claiming to be affected. In December 2011, the IACHR thus issued a new resolution toning down its previous protective measures. Instead of suspending the mining, the Court recommended measures to ensure access to drinking water and measures that would ensure that it is not polluted by mining activities. Although this change in the protective measures demonstrates the success of Goldcorp and the government's lobbying, the indigenous organisations remain firm on a local level in calling for the closure of the mine, which they consider an inalienable right as these activities are in violation of the collective rights these indigenous peoples have on their ancestral territories. During the last elections, this issue was addressed only in terms of the increased royalties the company will pay to the state, which are currently 1%.

Alongside this, community organisations of the Maya Ixil people, one of the peoples most affected by genocide during the internal war, mobilised actively to protest at a hydroelectric dam being built on their ancestral territory by the Italian company Enel. Between January and May 2011, Ixil members blocked the passage of lorries transporting materials for the dam's construction, a measure they lifted after company representatives agreed to talk to their traditional authorities. The Ixil were calling for recognition of their territorial rights to the rivers and mountains that would be used by the dam, and concretely that 20% of the electricity generated should be used for development projects for the Ixil people. To begin with, Enel was prepared to talk and to agree to these demands, on condition that the road was opened to traffic. Not long after, however, they changed their minds and instead offered small fancy gifts of development projects and even offered to bring Italian technicians to teach the people "the path to progress". At the same time, Ixil community members began to suffer acts of repression, particularly against the women, and they therefore suspended the dialogue given the company's obvious lack of good faith in the negotiations.

The bill of law to regulate community consultation processes

Given the proliferation of community consultations regarding extraction projects on their territories, the government decided to regulate these with the alleged argument

of making them legally binding. Up until now, the government has said that it could not recognise the validity of these consultations because they do not follow a legally-established process that would demonstrate their validity in terms of the exercise of free democratic expression. In order to rectify this situation, and with the support of experts from the International Labour Organisation, the government prepared the “Regulation for the consultation process of ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries”. The stated regulation establishes a commission made up of different government bodies but overlooks the real representation of the indigenous peoples, which lies in their traditional authorities. The proposal was presented to the indigenous peoples on 24 February 2011. They were given 30 days to respond, in writing and in Spanish. The unilateral way in which this regulation was prepared, without any consultation, once again demonstrates the authoritarian and domineering way in which the state deals with indigenous peoples.

In his reaction to this, Special Rapporteur James Anaya stated that:

(the) current text presents serious limitations and gaps in relation to the essential content of the state's duty to consult indigenous peoples, as established in ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples and other international instruments that are binding upon Guatemala, as well as the jurisprudential provisions of the international human rights mechanisms.³

Trying to regulate the indigenous peoples' right to freely decide on megaprojects on their territories “is a crude manipulation that only involves the actors who have access to the proposal because they speak and read Spanish but overlooks the rural and illiterate indigenous majority.”⁴

Faced with widespread opposition, Guatemala's Constitutional Court ruled the permanent suspension of discussions on this proposed regulation on community consultation in October 2011.

Call for self-identification in the National Civil Registry

Faced with constant complaints regarding the discretion government officials have when deciding on the ethnic belonging of a person and, in particular, an indigenous person, in December 2011 the Guatemalan Association of Indigenous

Mayors and Authorities (AGAAI) submitted a complaint to the Constitutional Court for the partial unconstitutionality of the Law on National Civil Registry. It believes that their rights as indigenous peoples are being violated because, during the registration process, valid criteria are not being followed to determine either the physical characteristics of a person or the ethnic group to which he or she belongs. In recent years, indigenous individuals have denounced the abuses of registry officials who determine a person's ethnic group on a whim, according to their physical appearance, clothes or the language they speak but never asking for their own ethnic self-identification. The association believes this to be discriminatory.

Representatives of the Xinca people had already complained about these anomalies back in 2009 but the authorities had ignored their complaints. In order to move towards resolving this issue, four indigenous organisations (the Rigoberta Menchú Tum Foundation, the Academy of Maya Languages of Guatemala, the Guatemalan Association of Indigenous Mayors and Authorities and the Presidential Commission against Racism and Discrimination) set up a technical committee with the National Civil Registry (RENAP) in May 2011 in order to encourage better treatment of the indigenous population with the aim of giving this body's technical staff and officials guidance regarding the multiethnic, multicultural and multilingual reality of the country.

Process of returning indigenous peoples' collective rights to land

As a result of the pressure being placed on the indigenous territories by megaprojects, various academic bodies and the social movements have organised a number of fora at which the impact of these large investments on the lives and rights of the peoples has been discussed. In this regard, in 2011, an unprecedented number of varying events of a national and international nature took place in different parts of the country suggesting that the issue of territory may well finally be gradually gaining a foothold on the agendas of the academic institutions and social movements in general.

Linked to the above, a momentous and symbolic event took place by means of which the municipality of Palín, in Escuintla department, returned the title and right to community farmlands to the Indigenous Community of Palín, part of the Maya Poqomam people. This event is of particular importance because many municipalities have misappropriated titles and rights that originally corresponded to the indigenous peoples, and this is at the root of many of the land problems still

prevailing in the country. This precedent illustrates the methodological route that indigenous communities can legally follow to obtain restitution of their territorial rights. It is, moreover, happening at a key moment given that a cadastral survey is currently being conducted in the country.

Genocide denial and military retaliation in the post-war period

The power and military elites continue to deny that any genocide took place in Guatemala during the internal war. Despite multiple findings with regard to communities that were totally obliterated, massacres of entire villages, hidden graves and interminable lists of the dead and disappeared, most of them indigenous, there continues to be little coverage given to this period in the country's murky history. However, in 2011, the first arrests took place of the senior military officers who led the reprisals against the civilian population.

Nonetheless, the old soldiers have grouped together in their veterans' association and begun to accuse their guerrilla counterparts to ensure that they are also prosecuted, in a clear attempt to put a halt to the cases against the soldiers. Apart from this, however, many columnists writing in the mainstream media have applied themselves to denying or even justifying the genocide that took place against the indigenous population, exploiting the fact that the government that came to power in 2012 is headed by a former soldier. ○

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NICARAGUA

The seven indigenous peoples of Nicaragua have their cultural and historical roots differentiated between the Pacific, which is home to the Chorotega (221,000), the Cacaopera or Matagalpa (97,500), the Ocanxiu or Sutiaba (49,000) and the Nahoá or Náhuatl (20,000); and the Caribbean (or Atlantic) Coast, inhabited by the Miskitu (150,000), the Sumu-Mayangna (27,000) and the Rama (2,000). Other peoples enjoying collective rights in accordance with the Political Constitution of Nicaragua (1987) are the Afro-descendants, known as “ethnic communities” in national legislation. These include the Kriol or Creole (43,000) and the Garífuna (2,500).

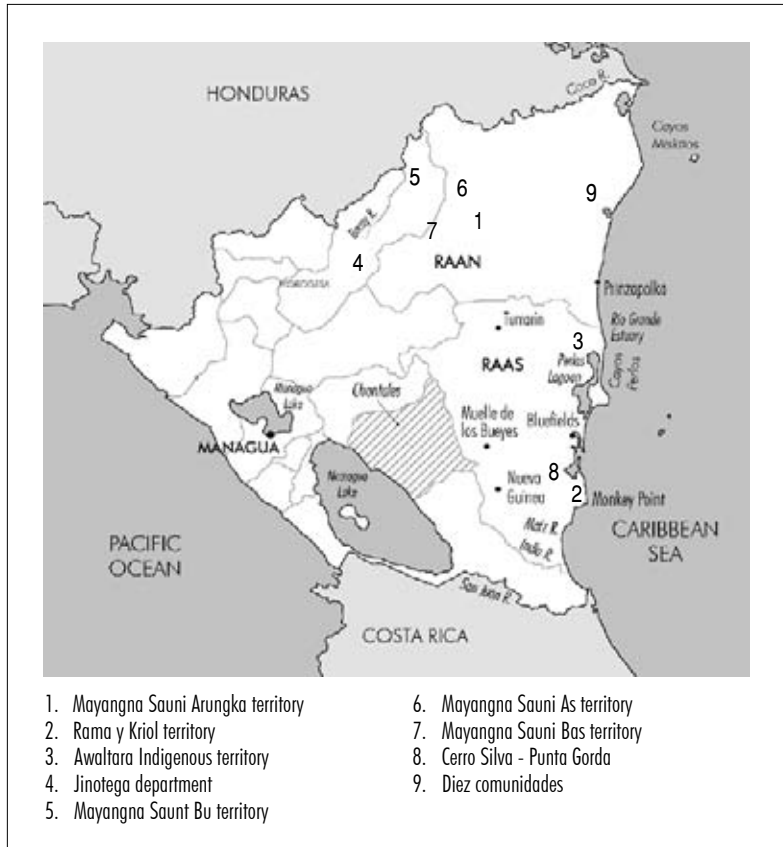
Initiatives have been taken to establish regulations for and improve regional autonomy, such as the 1993 Languages Law; the 2003 General Health Law, which promotes respect for community health models; Law 445 on the System of Communal Ownership of Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and the Bocay, Coco, Indio and Maíz Rivers, which came into force at the start of 2003 and which also clarifies the communities’ and titled territories’ right to self-government; and the 2006 General Education Law, which recognises a Regional Autonomous Education System (SEAR). Nicaragua voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007 and ratified the ILO Convention 169 in 2010.

The Sandinista National Liberation Front (FSLN) came to power in Nicaragua in 1979, subsequently having to face an armed insurgency supported by the United States. Indigenous peoples from the Caribbean Coast, primarily the Miskitu, took part in this insurgency. In order to put an end to indigenous resistance, the FSLN created the Autonomous Regions of the North and South Atlantic (RAAN/RAAS) in 1987, on the basis of a New Political Constitution and the Autonomy Law (Law 28). In 1990, the FSLN lost the first national democratic elections in Nicaragua to the National Opposition Union (UNO) of liberal inclination. Its government be-

gan to establish protected areas over indigenous territories. However, no government has managed to stop the advancing agricultural frontier, and supplementary and agrarian reform titles continued to be granted, even in the autonomous regions where it can be argued that there are no state lands. Daniel Ortega, the historic leader of the FSLN, returned to power as President following the 2007 elections and his third term in office, which will end in 2016, has just begun.

The Political Constitution of Nicaragua does not permit the consecutive re-election of the country's president, nor is there the option of occupying this position for more than two terms. Nonetheless, in 2009, pro-FSLN Supreme Court of Justice judges ruled in favour of the re-election of the President of the Republic, which is what happened in 2011. The Supreme Electoral Council, also dominated by FSLN allies, further recognised the FSLN an absolute majority in the National Assembly (63%), leaving society even more polarised and widening the gap between those who support the governing party's policies and those who do not. The few observers permitted during the process, including from the European Union, questioned the electoral process for failing to comply with minimum guarantees of participation, plurality and transparency. This statement was contradicted by the Supreme Electoral Court judges who evaluated the electoral process as one of the most transparent in Nicaragua's history.

As in previous elections, YATAMA – the Miskitu political party – entered into an alliance with the FLSN following negotiations conducted by its leader and national assembly member for the RAAN, Brooklyn Rivera. The Mayangna and the Miskitu traditionally live in territorial and political conflict. As a strategy for attracting Mayangna votes, Rivera offered Noe Coleman, a young and well-known president of the Mayangna Sauni Arungka territory, the post as alternate member. In the hope of influencing national policies in favour of the Mayangna nation, this latter subsequently left his role as traditional leader. Soon after the elections, Brooklyn Rivera began to criticise the favouritism of FLSN officials and their interests in the Caribbean Coast, which raises doubts as to whether the electoral alliance will hold for the municipal elections in 2012.



Bilateral cooperation is continuing to decline in Nicaragua due to questions over the country's reduced democratic spaces and because of the financial crisis in Europe. Austria, Norway and Denmark all decided to withdraw their cooperation and Germany remains with only a very limited programme that is unrelated to indigenous affairs. Various donors are, nonetheless, still maintaining a lesser and more indirect presence by means of multilateral agencies and regional programmes.

Some bilateral funds continue to be disbursed, with the national government's backing, via the Common Support Fund to Civil Society for Democratic Governance in Nicaragua. When the Danish NGO, IBIS, took over administration of the

fund in 2011, the call for applications clarified that there would now be giving priority to projects favouring indigenous peoples' interests. This represented a challenge to national NGOs who choose to apply for this funding as they were now faced with an obligation to obtain the prior consent of the beneficiaries.

Legislative processes

The ILO Convention 169 came into force in Nicaragua on 25 August 2011. Despite this recognition, however, no substantial changes have taken place in practice.

As a supplement to the Health Law, the Law on Traditional Medicine was approved. Its aim is to respect, protect and promote the practices and expressions of ancestral indigenous and Afro-descendant traditional medicine and the exercise of the right to their own intercultural health, with the state establishing the appropriate guarantees for its implementation.

A few months prior to the national elections, a presidential decree reduced the size of the South Atlantic Autonomous Region (RAAS) by almost half, excluding three of the region's municipalities (El Rama, Nueva Guinea and Muelle de los Bueyes) as part of the FSLN's electoral strategy. Apart from the fact that such a change is unconstitutional, if not put right, this error by the affected stakeholder—it could affect the legislation associated with the jurisdiction of the autonomous regions, such as Law 445, because the titling process has yet not been completed in the RAAS. The reduction of the RAAS would also locate a part of the already titled Rama y Kriol territory in Chontales department.

The consequences of the Law on Borders, enacted last year, have begun to be felt. The Army, which now plays an unprecedented role in natural resource management, spent months preventing Rama y Kriol communities from felling timber for the construction of their communal houses, co-financed by the Danish Embassy's Environment Sector Support Programme (PASMA).

The process of reforming the Regional Autonomy Statute (Law 28), which indigenous and Afro-descendant people believe should link their communal and territorial structures directly to their regional ones without having to go through the political parties (*see previous editions of The Indigenous World*), has become a subject for discussion although it is doubtful as to whether any reform will take place before all the territories have been titled and disputes between YATAMA,

the FSLN and the traditional authorities over the political leadership of these territories have been resolved.

The indigenous movement and the state institutions

The FSLN and YATAMA last year intervened in the traditional political structures of various indigenous governments and territories in order to gain political control. The following are among the most noteworthy: the mother territory of the Mayangna nation, Sauni As; the territory of Pearl Lagoon, Awaltara, Diez Comunidades, the three special regime territories (see map) and the indigenous government of the Sutiaba people (with FSLN activists marginalising their Council of Elders). Over the course of the year, the traditional authorities presented many legal complaints, declarations of *persona non grata* and comparisons with dictators because of these actions.

As a test on transfer of public funds to the territorial (as opposed to the municipal) governments, up to USD 20,000 was awarded to some of the territories titled in accordance with Law 445. There was, however, notable interference from the Caribbean Coast Development Council and its secretariat, justifying their intervention by claiming that the territorial authorities had little capacity for taking decisions regarding the use of these funds, something the territorial governments considered “disrespectful of their right to self-determination”.¹

The demarcation and titling of indigenous and Afro-descendant territories

The National Demarcation and Titling Commission (CONADETI) did not sit once throughout the whole year and various posts fell vacant. In practice, however, many officials maintained their office and without the competence to do so continued to intervene improperly in the definition of authorities and the manipulation of territorial configurations.

The only initiative on the part of the state and CONADETI that made progress towards implementing Law 445 was an attempt to issue the communal property title to the multiethnic territory of Pearl Lagoon, in the RAAS. On 9 October, however, two of the 12 communities initially in the territorial alliance,

Tasbapounie and Marshall Point (now acting as an independent territorial government) lodged an appeal for unconstitutionality against the President of the Republic, the president of CONADETI, the RAAN member in the National Assembly, the coordinator of the Caribbean Coast Development Council (CDC), the Citizens' Power representative in the RAAS, the Vice-Minister of the Property Office and the representative of the Secretariat for Development of the Caribbean Coast (SDC). These two communities believed the act to be one of electoral propaganda and their appeal states that a title was going to be issued that corresponded to almost one half of what was requested, specifically the part corresponding to their intact forest, the areas that were going to be flooded by construction of the Tumarín hydroelectric dam and areas planted with African palm by an agro industrial company. They also alleged that authorities with no competence to do so had certified communal and territorial authorities that had acquiesced to the political interests of the FSLN. The Nicaraguan Human Rights Centre (CENIDH) produced a report on the matter to be sent to the Inter-American Commission on Human Rights (IA-CHR). One consequence of this kind of action in general is that there are now duplicates of the communal and territorial authorities certified in the RAAN's registry. Such a situation has hindered the normal implementation of demarcation and titling activities.

After the national elections, the president of CONADETI approved the Rama y Kriol Territorial Government's (GTR-K) land regularisation (*saneamiento*) plan, also in the RAAS. This is the first initiative aimed at resolving land ownership conflicts with third parties on a territory that has already been titled, and corresponds to the last stage in the titling and demarcation process, in accordance with Law 445. The GTR-K will thus be able to apply its Guide to Social and Economic Coexistence in 2012, which means offering coexistence titles to *mestizo* peasants who have no right to land or property but who are settled on their territory. In accordance with Law 445, these settlers must either move off the territory without compensation or pay rent to the indigenous community. The state, for its part, is doubly incapable of resolving this situation. It has found no livelihood alternatives for these settlers, is unable to authorise their continued settlement on communal properties, and is prevented by protected areas legislation from titling individual properties in such areas. As the recognised owner of the territory, however, the GTR-K can give a third party the right to remain there under reasonable environmental and so-

cial conditions, thus promoting intercultural alliances with the aim of jointly preventing future influxes of settlers. It is thus hoped to be able to avoid uncontrollable social conflict on their territory and establish a model for other territories to follow.

While no progress is being made in the regularisation of the territories, the tense situation and conflict on the so-called agricultural frontier continues to cost lives. Four Mayangna were murdered in Jinotega, in the Mayangna Sauni Bu territory. They had previously been threatened by a group of invaders.

German cooperation (GIZ) supported the regularisation process on the two Mayangna territories of Sauni As and Bas in the RAAN. Their assemblies have taken the position that all third parties without valid title must leave or be removed. An initial case was resolved via a legal complaint, without the intervention of CONADETI. In the RAAN, Mayangna Sauni Arungka has also been experimenting with regularisation.

Outside of the autonomous regions, in the centre-north of the country, the Chorotega people last year denounced the lack of respect for their communal properties in a cadastral clean-up being conducted by the Property Regularisation Programme (PRODEP) with funds from the Inter-American Development Bank and the World Bank. In 2011, the Attorney-General's Office provided funding for studies to revise, and acknowledge from an indigenous rights perspective, the errors and mistakes that might exist in the project design and to make the corresponding adjustments. The study on the territory of the Chorotega of Telpaneca reveals that their actual title is greater than the whole municipality of the same name. Unfortunately, these studies refuse to accept that this territory and many others belonging to the Chorotega people fall within the jurisdiction of Law 445.² By not mentioning the legal possibility of recourse to Law 445, they are concealing this indigenous people's possibility of extending the area of the communal property currently titled. In addition, the titles granted by CONADETI establish that communal or territorial properties constitute the political jurisdiction of the indigenous governments. This means that the state has to negotiate joint management agreements with the indigenous governments concerning protected areas overlapping their territories and need to redistribute political power between municipality and indigenous governments.

“Development” projects and natural resources

While the indigenous and Afro-descendant peoples have been consolidating their territories and their territorial governments in the Caribbean Coast, including rights over the natural resources, international companies interested in exploiting those resources have been arriving in the country. Noteworthy this year was the Israeli company, RKA A.L. Ltd., with whom - according to information from the company itself - various territorial governments of the RAAS have already signed contracts, although not always with the knowledge or support of the territorial assemblies, which would thus invalidate them. All indications are that RKA's strategy is to co-opt territorial leaders, plying them with international trips, individual benefits and initially offering relatively reasonable development projects, in agriculture, for example. The contracts that are being signed, however, endorse an irrevocable transfer of the management of all natural resources on their territories, making their own economic development process, based on principles of self-determination, impossible in perpetuity. The business sectors envisaged include, among others, mining, forestry, fishing, oil exploitation and carbon market-related contracts.

A couple of years ago, the Nicaraguan state signed two oil and natural gas reserve exploration and exploitation contracts on the Nicaraguan maritime platform in the Caribbean with US company MKJ Exploraciones Internacionales S.A. (now Noble Energy). This company completed the first environmental impact assessment on the exploratory phase of the Tyra and Isabel banks on the basis of six public hearings in the RAAN/S, although only a few leaders, NGOs and state institutions participated.

The company, backed up by the state institutions, considers that this activity formed an acceptable public consultation of the indigenous peoples; however, the consultation processes were conducted in all of the communities that will be affected, nor were they conducted with focal groups such as divers, fishers, *pikineras* (shellfish gatherers), elders or spiritual guides. In fact, some of the communities did not wish to participate in the study as their views were not taken into account when the concessions were initially granted.

The Caribbean Coast Development Programme of the World Bank (WB), which is focused on facilitating physical infrastructure in accordance with the priorities of the indigenous territorial governments, has been suffering various prob-

lems with a trust fund from British cooperation. By the end of 2011, there had been three years of studies and negotiations on institutional rules but no implementation had taken place, and there is now less than one year left in which to complete the projects. Because of complex administrative rules, Oxfam UK has withdrawn as executing agency for the Mayangna Sauni Bu territory; and IBIS Nicaragua is out of the programme following disagreements with the WB over budgetary rules and the sustainability of the intervention on the Rama y Kriol territory. In a third (of the five) beneficiary territories, the elected Hijos del Río Grande de Matagalpa/Awaltara territorial authorities have stated on various occasions that the WB was coordinating the programme with leaders whose terms in office had expired but who were being maintained in a kind of “parallel post” through party political desire and manipulation. The WB, of which the Nicaraguan government is a shareholder, has turned a blind eye to these complaints. This year, Awaltara also suffered the murder of its territorial government’s vice-president, Ronald Davis, known to be highly active in the field of forest resource defence.

In coordination with the Negro-Creole Government of Bluefields and the Awaltara Territorial Government, the GTR-K sent a letter to the regional and municipal authorities and central government requesting an explanation regarding the signing of an agreement between the Nicaraguan and Japanese governments for the construction of the Bluefields-Naciones Unidas highway across their communal lands without an environmental impact assessment and without prior consultation.

It was noted in *The Indigenous World 2009* that the Maderas Preciosas Indígenas e Industriales de Nicaragua S.A. (MAPIINICSA) company was responsible for the unlawful purchase of 12,400 hectares of the symbolic territory of Awas Tingni Mayangna Sauni Umani (AMASAU) with a loan from the World Bank’s International Financial Corporation (IFC). With no intervention from the Attorney-General’s Office responsible for the case, CONADETI affirmed that these lands did not form part of the territory, stating that: “It is neither protected area nor indigenous territory...the present certification is sufficient for the beneficiaries to be able to sign any kind of contract for natural resource exploitation within the context of Law 445”.³ In 2011, MARENA thus accepted that MAPIINICSA opened up a landing strip and a permanent road to extract forest resources without any environmental authorisation or permit, simply applying a negligible fine. Mahogany and cedar, supposedly protected by a logging ban, are now being felled by MAPIINICSA and exported by ALBA-Forestal under the “community forest” concept,

which is one that is used to extract trees that came down during Hurricane Felix in 2007, and which have now lost their commercial value due to natural degeneration processes.

The Brazilian company Andrade Gutiérrez signed an agreement with the Government of Nicaragua to produce feasibility studies for the construction of a deep water port at Monkey Point and a 70-kilometre highway linking the port to Nueva Guinea via the Rama y Kriol titled territory. The agreement envisages an exclusivity clause in favour of the Brazilians and specifies that the Nicaraguan state, if the project comes out feasible, shall own 10% of the port management company. The community of Monkey Point, which last year denounced the Nicaraguan Army for sexual abuse of minors in their community (a case that CENIDH has taken to the IACHR), agreed to the feasibility studies out of desperation, provided the government resolve all its problems with the army.

The Ministry of Environment and Natural Resources (MARENA) and the RAAS Regional Ministry of Natural Resources (SERENA-RAAS) signed an agreement with the GTR-K regarding a joint management system for all protected areas superimposed on their titled territory (Indio-Maíz Biological Reserve, Río San Juan Wildlife Refuge and the Cerro Silva and Punta Gorda nature reserves). This is the first agreement of its kind, implemented by means of the Protected Areas Regulation and Law 445, issued in 2003. The agreement is positive in that it specifies that the territorial government shall be the one to authorise the small-scale extraction of natural resources, both for its communities and for third parties. Projects with a wider impact will require the prior authorisation of the GTR-K before the procedures for obtaining environmental permits and/or authorisations can commence. In other words, this agreement respects in practical terms the right to free, prior and informed consent for any project taking place on their territory. Related to the negotiation of this agreement, the GTR-K also approved management plans for the protected areas of Cerro Silva and Punta Gorda, something that had been in dispute for a number of years. ○

Notes

- 1 The Rama y Kriol Regional Government also observed that there was an almost equal decline in transfers coming from taxes raised by way of natural resource exploitation rights on their territory! These funds are not subject to such kinds of conditions.

- 2 Law 445. Article 1. The object of this Law is to regulate the system of communal property of the lands of the indigenous and ethnic communities of the Atlantic Coast and the Coco, Bocay, Indio and Maíz river basins (without ethnic discrimination).
- 3 Signed by Rufino Lucas Wilfred, Director of CONADETI and Marcos Hoppington Scott, representing the Miskitu Nation within CONADETI.

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COSTA RICA

Almost 6% of Costa Rica's geographical area is covered by 24 indigenous territories, accounting for some 3,344 km² of the country. With an indigenous population of little more than 60,000 people, this territorial provision might seem sufficient. However, since the Indigenous Law was enacted in 1977, the territorial rights recognised in this law have never been respected and the indigenous peoples have been forced to adopt forms of representation that are alien to their traditional power structures. Ratification of ILO Convention 169 has likewise brought about no changes to the protection and exercise of their rights as individuals or peoples. Quite the contrary, public policy continues to be set without regard to the country's cultural diversity, the indigenous territories remain in the possession of non-indigenous individuals and the state is reluctant to accept the right to consultation, to name but a few of those actions that illustrate the discrimination being practised by public institutions.

Eight different peoples inhabit these 24 indigenous territories, seven of them of Chibchan origin (Huetar in Quitirrisí and Zapatón; Maleku in Guatuso; Bribri in Salitre, Cabagra, Talamanca Bribri and Kekoldi; Cabecar in Alto Chirripó, Tayni, Talamanca Cabecar, Telire and China Kichá, Bajo Chirripó, Nairi Awari and Ujarrás; Brunca in Boruca and Rey Curré, Ngöbe in Abrojos Montezuma, Coto Brus, Conte Burica, Altos de San Antonio and Osa; Teribe in Térraba) and one of Mesoamerican origin (Chorotega in Matambú). In the 2000 population census,¹ 63,876 people (1.7% of the total population) self-identified as indigenous and, of these, 33,128 (42.3%) live on these territories, 18.2% in nearby areas and 39.5% in the rest of the country.

Most of Costa Rica's indigenous peoples, with the exception of the Bribri and the Cabecar, populate their territories in very low densities. This, added to the continuing dispossession of their lands and natural resources, makes them highly vulnerable from cultural, economic and



social points of view. These minority peoples are at high risk of ethnocide and they thus require special protection measures to enable them to develop and strengthen their cultures and their forms of social and political organisation.

Territorial vulnerability as a state policy

There has historically been a great deal of doublespeak involved in recognising the territorial rights of Costa Rica's indigenous peoples. Areas of land described as "indigenous reserves" have been established since at least 1956. The 1977 Indigenous Law improved the legal status of these lands and set out the state's obligation to provide funds to recover properties within these areas that were in the hands of non-indigenous settlers. Then, in 1992, ILO Convention 169, updating Convention 107 already in force since 1959 as an international human rights instrument recognised in Costa Rica, gained constitutional status by law and, at the same time, the category of "indigenous territories" was established, replacing the concept of "reserve". Not only did the funding provision never materialise, however, or at least not in sufficient or timely form, but the invasions also continued, in full view and with the full knowledge of the state, despite repeated and constant complaints from the indigenous organisations themselves. The state's inability to ensure that the laws it enacts and adopts are enforced means that the situation can but be described as a "systematic failure to apply the law". In June 2011, a preliminary presentation of the Land Survey and Registry Regularisation Programme's investigation into "areas under special regime", which includes indigenous territories, showed that the situation was even worse than had been thought.² Although the study is still ongoing, partial data from 15 territories shows that there are legally registered plans from state institutions and private owners, many of them superimposed, with only a minority in the names of the indigenous communities.

The case of Keköldi, near Puerto Viejo on the Caribbean Coast, is a clear example of the kind of procedure and chaos that is reigning as a result of the lack of care and political will to effectively establish the indigenous territories. The first territorial boundaries were set in 1977 on the basis of aerial photography, without any exploration on the ground, which meant that the cocoa farms of the Afro-descendant neighbours of the indigenous groups ended up inside the indigenous jurisdiction. Some years later, this led to conflict between the Afro-descendant and indigenous groups, although the Bribri and Cabecar of Keköldi realised the error and began working on a proposal that would remove the lands of the Afro-descendants from their territory and instead include some properties that had previously been left out. In 2001, without any consultation, the state decreed the current borders of the Keköldi territory, massively expanding it north-eastwards for no clear reason. The si-

tuation remained like this for several years and property transfers continued to take place in the area with no preventive action taken by the land registry officials; however, more recently, as some owners have begun to initiate legal proceedings aimed particularly at promoting tourism initiatives, the problem has finally been noted and restrictions established. Clashes have occurred with the indigenous population because, in the state's confusion over the situation, it sent the police in to support these businessmen, leading to the arrest and prosecution of indigenous leaders. It is worrying that, in this kind of conflict, the state - without so much as a second thought - takes the side of those who hold economic power, despite itself having decreed the boundaries of these lands and declared the indigenous community the owner. Information from the Land Survey and Registry Regularisation Programme, which conducted the study on the Keköldi territory, clearly shows the inconsistencies in the state's conduct as it reveals the existence of 180 registered plans within the territory's jurisdiction, 76 of which have possessory information, 5 in the name of the Agricultural Development Institute (state-run) and 23 in the names of private individuals. The only plan actually in the name of the indigenous community corresponds to the first territory established in 1977, which was not even repealed when the 2001 reform was brought in.

Although the imprecision and confusion would still have been questionable, if we had been talking of an immense and isolated territory then the cadastral problems would at least have been more understandable; however, we are talking of a territory that measures 3,538 hectares (35 km²), lies close to large settlements and cities and is easily accessible by surfaced road. The state's inability to guarantee the Keköldi territory has been such that one has to wonder whether there was actually a planned intention to try and divide the people and create suspicion with regard to the indigenous community.

Racism and discrimination

Almost two decades have passed since the draft "Law on Autonomous Development of Indigenous Peoples" (Legislative File 14,352) began its passage through Congress following its participatory drafting jointly with indigenous peoples. Approval of this law would mean implementing ILO Convention 169 and would require state recognition of indigenous peoples' individual and collective rights, something that has been repeatedly challenged in Costa Rica. The text has been revised and approved by the Supreme Court of Justice and it has been demon-

strated *ad nauseam* that it is not in contradiction with the Political Constitution of the Republic. In addition, it has passed through various congressional committees. The indigenous peoples, plus significant sectors of civil society and academia, have been calling for its enactment via different means, ranging from articles and letters to massive and regular popular demonstrations. And yet the law has still not been approved, perhaps perpetuating the Costa Rican state's tradition of ignoring its cultural diversity and the rights of its native peoples. The current government, which took office in 2010, has done little to conceal its scant interest in and radical rejection of indigenous rights and both the government and the governing party's members of congress have refused to place this draft bill on the legislative agenda.

The Costa Rican state does not recognise the multicultural nature of its population nor the rights that its own legislation, including ILO Convention 169, grants to indigenous peoples. The right to free, prior and informed consultation is one of the rights that has encountered the greatest resistance from state institutions. For this and other reasons, the UN Special Rapporteur on the rights of indigenous peoples, James Anaya, visited the country in 2011 and warned the authorities of their serious failure to comply with international legislation by not expediting approval of the law on the autonomous development of indigenous peoples and by tolerating the dispossession of their territories.³

Indigenous consultation on the El Diquís hydroelectric project

The obligation to consult is clearly established in international legislation, notably in ILO Convention 169, ratified by the Costa Rican Congress in 1992. In 2004, the Costa Rican Ombudsman established an obligation on the part of the Costa Rican state to consult indigenous peoples on all state actions that could affect them, with the exception of those falling within the judicial sphere. The Ombudsman's resolution is supported by rulings of the Constitutional Chamber of the Supreme Court of Justice. Inherent to such consultation is the right of indigenous peoples' themselves to establish what issues are of concern to them and who should represent them in the consultation. From this angle, consultation is a public policy instrument that enables the state's actions to be guided in a culturally-relevant way, ensuring respect for the rights of its indigenous citizens. However, this right is still questioned by some state authorities and the process of prior studies for a

hydroelectric project was commenced without thinking to consult the indigenous peoples that might be affected. This action led, in part, to a complaint made to various international bodies, primarily by the Teribe tribe, with regard to the violation of their rights as enshrined in ILO Convention 169. These complaints, along with the Costa Rican government's invitation to the Special Rapporteur, formed the immediate context for his visit in 2011, the focus of which was an analysis of this project and its relationship with the indigenous peoples.

The El Diquís Hydroelectric Project, in the south of the country, affects seven indigenous territories of the Teribe, Cabecar, Bribri and Brunka peoples. In the case of the Teribe, the dam may flood almost ten per cent of their territory along with 60 hectares of that of the Cabecar; the Brunka and Bribri territories would suffer different impacts. In conversation with the Special Rapporteur, the public body responsible for the project - the Costa Rican Electricity Institute - acknowledged the need for consultation and produced a draft document covering the basic conceptual, technical and instrumental requirements for the participatory design of the consultation method. It sent this to the Rapporteur prior to his visit. The Institute's proposal emphasises the fact that the consultation process must take place under the terms laid down by Convention 169, respecting the characteristics of each people and culture, and recognising their representative organisations. The design of the consultation itself is part of the same process and must form part of the general consensus reached between the state and the indigenous peoples. The following principles are included in the consultation: i) transparency and free availability of information; ii) balance between interlocutors and their representation, iii) recognition of indigenous systems for conflict management and consensus building, iv) participatory design of the consultation process; v) a commitment to respect the agreements; and vi) participation by external observers.

Although the 1977 Indigenous Law established that the indigenous territories were to be governed by each people's traditional system, a subsequent regulation delegated territorial representation to Indigenous Integral Development Associations, a model that is alien to all of the country's indigenous peoples' decision-making systems. This has led to decades of socio-political conflict, governance problems, clientelism and corruption, among other things. Faced with this situation, the Special Rapporteur emphasised the importance of the fact that the consultation should take place with the participation of the communities' representative organisations.

The Special Rapporteur's report highlights the need and obligation for consultation, emphasising that it is still possible to achieve this even though it should have been implemented before the prior studies stage. He has therefore proposed involving a team of independent facilitators to ensure its implementation. This proposal was accepted by the indigenous organisations and government institutions involved in the process. It is hoped that the rapporteur will put together a group of facilitators and send them to the country so that the first stage in the process, namely the consultation on the consultation process, can commence in 2012.

Multiculturalism: a strategy to avoid a real indigenous education?

The decision to mainstream multiculturalism that led to the dismantling of the Department for Indigenous Education and its absorption into the Ministry of Public Education, noted last year, has led to a marginalisation of indigenous education in the country. The situation that occurred at the start of this school year (February 2012) clearly illustrates this, as indigenous teaching staff were not appointed to a school within the Térraba indigenous territory despite recognised and proven Teribe teachers being available. With the support of much of the community, the indigenous teachers took over the Térraba High School buildings to demand the appointment of indigenous staff to the school's administration, along with improvements to its buildings, which were in such a state that they were a danger to the pupils' health. A similar incident had occurred the previous year in the Brunca community school in Boruca. Although, in the end, the indigenous movement was partially successful in both cases with regard to its demands for indigenous staff appointments, this led to clashes with non-indigenous neighbours upset by the situation, despite the existence of an order to prevent confrontations from the Prosecutor for Indigenous Affairs this year.

Given the ambiguity of the public authority's decisions and its lack of appropriate action, one is again forced to wonder whether it is perhaps more a question of a lack of political will to address these basic issues in the indigenous communities, and whether this failure to apply the law and these avoidance tactics are not perhaps established state policy in this regard. The situation of all schools and colleges in the country with indigenous students is, unfortunately, similar: a lack of investment in infrastructure, limited budgets for appointing culturally-qualified

teachers and, worse still, improper questioning of the capacity of indigenous elders and individuals grounded in their culture to lead discussions and provide classroom support due to their lack of any official qualification. The scant progress that had been made in the indigenous education plans in previous years has been virtually reduced to nothing now that “language and cultural teachers” can no longer be appointed from among community members fluent in the indigenous language unless they meet the absurd requirement of having a formal qualification. The supposed mainstreaming of multiculturalism within the school and college curriculum has only served to subsume, yet again, the specific and the particular within the desire to achieve a nationalising and uniform education.

The outlook is not much more positive for higher education, although there are some glimmers of hope. For some years now, the four public universities have had committees to address the demands of indigenous people wishing to gain professional qualifications. However, despite some laudable and innovative projects on the part of intellectuals who identify with the idea of interculturality, few if any adjustments have been made by the universities to their own admission rules and structures. An Indigenous Student Federation (FIE) was created at the end of 2011 by students from the state universities as a body to coordinate with (or confront, if necessary) the academic authorities. Attempts have already been made by the universities to co-opt this new body, given the interest in benefiting from World Bank funds available to academic bodies wishing to promote a *rapprochement* with indigenous peoples. Opportunism or opportunity? Doublespeak again. An indigenous coordination committee was established which, fortunately, came out in support of the FIE’s proposals, making its support conditional upon the universities really taking into account the specific features of indigenous peoples and their calls for access to a free university education that is appropriate to their needs.

Conclusion

Deep-rooted ideologies of identity have masked the existence of indigenous peoples in Costa Rica since the 19th century. The state, official history, legislation and the daily expressions of the population all conceive of the country as a homogeneous nation that exists only in fairytales. Members of Congress and the President of the Republic now refer to indigenous autonomy, cultural education, indig-

enous rights to land, free, prior and informed consent and constitutional recognition of diversity by claiming that they are not “national issues”. This is no less than unfettered racism and a violation of the human rights of the indigenous peoples, who have lived on the same territories for thousands of years. Costa Rica is perhaps the only country on the continent in which poverty, social exclusion and inequality have been increasing year on year, while it has been systematically dropping down the human development index for two decades. As we already know, these processes affect the most vulnerable sectors of society and minorities first and foremost, those who are least protected in the exercise of their rights. This is why this decline in the country’s social development indicators will affect its indigenous peoples disproportionately and, if immediate measures are not taken, such as approval of the Law on Autonomous Development of Indigenous Peoples, these unique peoples will continue to drift towards the irremediable loss of their identities and cultures. Moreover, Costa Rica will become consolidated as a paradise of racism, discrimination and violation of the fundamental rights of indigenous peoples. This policy of silence and concealment of the indigenous reality and indigenous problems is creating a situation which, despite current international legal instruments and despite Costa Rica’s international name as a country that is respectful of human rights, can only be described as systematic ethnocide. As the popular saying goes, “It’s not a question of having the right to be equal but of having an equal right to be different”. If we understand that, for an indigenous people, the exercise of freedom means enjoying the necessary conditions for their own social and cultural reproduction then we will understand why events in Costa Rica lead us to question whether the country should continue to be considered a free and exemplary democracy. ○

Notes and references

- 1 **Instituto Nacional de Estadística y Censos, 2001:** *IX Censo Nacional de Población y V de Vivienda Resultados generales*. San José: Imprenta Lil; and **Elizabeth Solano Salazar, 2000:** *La población indígena en Costa Rica según el censo 2000*. San José: no publisher/date. In 2011, a national census was conducted but the results broken down by ethnic self-identification and associated variables have still not been published.
- 2 “Tenencia de la tierra y Territorios Indígenas de Costa Rica”, Instituto Interamericano de Derechos Humanos, San José, 28 June 2011. Part of the conclusions were picked up in the results document of Component II of the Land Survey and Registration Programme, 2012.

- 3 See the report of the UN Special Rapporteur on the rights of indigenous peoples, **James Anaya, 2011**: *La situación de los pueblos indígenas afectados por el proyecto hidroeléctrico El Diquís en Costa Rica*. No publisher. 30 May 2011.

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PANAMA

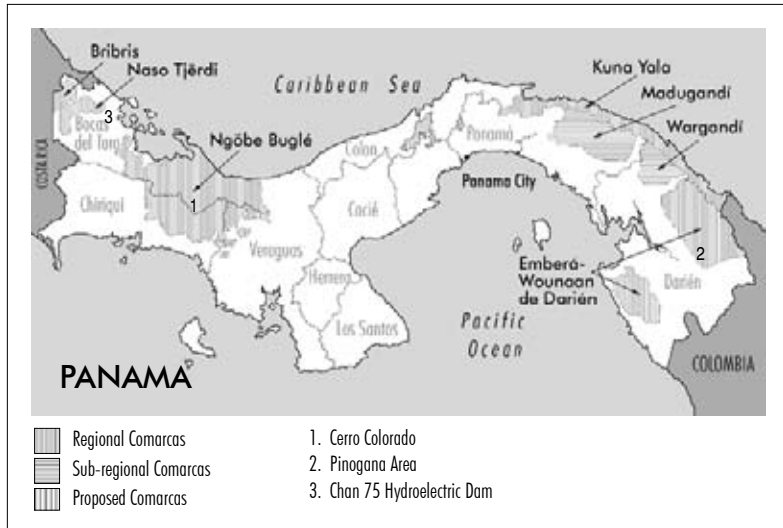
There are seven indigenous peoples or nations living in the Republic of Panama: the Ngäbe, the Kuna (Guna), the Emberá, the Wounaan, the Buglé, the Naso Tjerdi and the Bri Bri.¹ According to the May 2010 census,² they represent 12.7% (417,559) of the total population of 3,405,813.

When their territories were demarcated, the legal form they were given was the *comarca* and, within this, their own territory and political/administrative structure are recognised. There are the following *comarcas* established by law: San Blas or Kuna Yala in 1953; Emberá-Wounaan, 1983; Kuna-Madungandi, 1996; Ngöbe-Buglé, 1997; and Kuna-Wargandi, 2000.³ The Naso-Tjerdi (previously known as the Teribe) territory still remains to be legalised. There are communities that live outside of the *comarcas*, such as the Emberá and Wounaan of Darién,⁴ and the Ngäbe and Buglé in Chiriquí and Bocas, and they are still seeking the legalisation of their lands.

The main issues affecting Panama's indigenous peoples in one way or another over the last year were: 1) the constant confrontation with government officials and repression of indigenous peoples on the part of the government's armed units;⁵ 2) the collapse of the government coalition, which led to reprisals; 3) the failure to ratify ILO Convention 169 or implement Bilingual Intercultural Education; 4) the increased strength of the indigenous organisations nationally; and 5) the continued rise in indigenous migration.

Confrontation with government officials over development projects

The government's outstanding debts to the indigenous Ngäbe people continued along the same lines as in the previous year:⁶ unclarified deaths, unattended injuries, apathy with regard to the provision of care for indigenous peoples, etc.



Moreover, this situation became even worse following the National Assembly's approval in January of the Mining Law (Law 8 of 2011) which, among other things, opens up the Cerro Colorado, in the heart of the Ngäbe-Buglé *Comarca*, to gold and copper mining. Initial protests were ignored and so demonstrations followed, with the indigenous protestors blocking the Pan-American highway for five days. Repression from the forces of law and order followed, resulting in one death, and countless injuries and arrests.⁷

The Catholic church mediated in the conflict,⁸ and an agreement was signed to repeal the Mining Law. A committee was established to propose a special law for the *comarca* that would ban mineral exploitation and hydroelectric power stations on its land.⁹ The negotiations lasted seven months and, in October last year, a proposal was presented to the Assembly. This draft bill of law proposes banning mining and hydroelectric power stations in the Ngäbe-Buglé *comarca* and adjacent areas.¹⁰ The bill had, however, made little progress through the Assembly by the end of the year.

There is one particular case that remains unresolved and which has, in previous years, attracted the attention of the UN Special Rapporteur on the rights of indigenous peoples. This relates to the lands flooded by the construction of the Chan 75 dam built in 2011, which forced many families to move, some of whom have still not received any compensation.¹¹

Another confrontation that was a permanent feature of 2011 was that of the Guna (Kuna) people. The government, supported and encouraged by the USA, has for some time now wanted to build one or more air-sea bases on the Guna indigenous territory, apparently with the aim of bringing drugs trafficking under control. The Guna, however, are strongly opposed to this construction. Their authorities have denounced the violence meted out to communities in the Guna Yala *comarca* and in the area known as Takarkunyala (on the border with Colombia) by the public security forces' militarised unit (Senafront¹²). This has been denounced by the Guna General Congress and the traditional authorities on many occasions.

The Guna population have also been in dispute with the government over tourism. Because the Guna authorities have control over their territory, a practise of anchoring "floating hotels" off the coast has become common, thus enabling these enterprises to conduct their business without any supervision from the Guna General Congress. Another focus of conflict is the possible construction of the Muladup-Morti highway, which would open up another cattle frontier in the Guna Yala and Guna de Wargandi *comarcas*.

Problems have continued for the Emberá and Wounaan peoples in the *comarca* of the same name and in the Darién region. On the one hand, clashes with Senafront continued from previous years. This military unit claims to want to control the border with Colombia and repulse "drugs terrorists" but it exercises control aggressively and despotically over the Embera and Wounaan communities of the *comarca* and over the lands and rivers close to the border.

To this problem must now be added the conflict with settlers who are logging¹³ within the *comarca* and the dangers being posed by the discovery of oil deposits – apparently substantial – in the Pinogana area. This discovery was noted last year and, although there have been no further developments in this regard to date, the threat remains looming on the Panamanian horizon.

Political reprisals

One of the consequences of the collapse of the government coalition (between the Democratic Change and Panameñista parties)¹⁴ was the political reprisals suffered by most of the indigenous communities, whose representatives do not belong to the Democratic Change party. For example, the municipal funds that

should have been forthcoming did not arrive,¹⁵ projects were hindered and division was fomented within the communities.

Lack of ratification and implementation

The government failed to discuss ratification of ILO Convention 169 last year, despite repeated requests from the indigenous organisations to do so, made both in writing and verbally. A working group was even set up to discuss this issue in October 2010 but no changes were forthcoming and so this has remained another area of dispute with the government.

In addition, Bilingual Intercultural Education remains almost completely unimplemented. Only in the Guna Yala *comarca* is it being taken forward, under the impetus of the Guna General Congress itself. In other indigenous areas, the programme is virtually non-existent. Despite having received some resources and being a requirement of national legislation,¹⁶ it seems the necessary political will is lacking.

Indigenous movement strengthens

The Guna people continue to be highly organised, implementing projects in areas such as tourism, and publishing their own dictionary last year. They also continue to have a strong presence at different national and international indigenous meetings. The Ngäbe and Buglé people maintain their presence through their struggle to prevent open-cast mining and the construction of hydro-electric power stations on their territories. Steps have been taken to ensure more and better organisation (for example, the election of a Paramount Chief and other authorities in September) and negotiations have continued with the National Assembly with regard to submitting a special anti-mining law.

The Emberá and Wounaan continue to organise and denounce the continual evictions caused by loggers, both inside and outside the *comarca*. In addition, in July, the Naso went ahead with the election of their principal authority (the King), thus providing them with greater stability in their struggle.

The National Coordinating Body of Indigenous Peoples of Panama, which includes representatives from the country's seven native peoples, has continued its organisational strengthening process, participating in a number of different

activities. These include producing a Declaration on Climate Change and REDD+ jointly with the Meso-American Alliance of Peoples and Forests.¹⁷ The organisation also demonstrated against the government's repression of the Ngäbe people in February.

Indigenous migration to urban areas

The rural exodus continues unabated. According to the 2010 census, 40% of the Guna population now live in the *comarcas* while the figure climbs to 52.3% in the case of the Ngäbe and Buglé. In the case of the Emberá and Wounaan, however, the situation is more serious, with only 24% of the population living in the *comarca*.

An absence of development programmes, discrimination, the lack of any political will on the part of the government, the marginal zones they live in, the need for cheap labour in the cities and on the farms, their unproductive lands and serious health situation¹⁸ all contribute to the continuing situation of extreme poverty amongst indigenous communities and thus to increasing urban migration. The attraction of indigenous labour from Costa Rica¹⁹ also has a bearing as this affects the situation of Ngäbe families, the youth culture, the schooling of the children and the health of the people. ○

Notes and references

- 1 These are how the names are written in Law 88 of 2010 although there is some disagreement on the part of indigenous linguists.
- 2 In other words an increase from 8% (2000 estimates) to 12.7%, according to this Census. Even so, serious deficiencies have been noted in this census.
- 3 In 1997, when they established the *comarca*, they officially wrote "Ngöbe".
- 4 There is a draft Law on Collective Lands for these communities but, in the face of the government's apathy, this has lent itself to conflicts with non-indigenous settlers.
- 5 Panama has no army, as established in Article 310 of the National Constitution.
- 6 See *The Indigenous World 2011*, pp. 114-118. Copenhagen: IWGIA
- 7 For press sources and witness statement on these events see **Human Rights Everywhere, 2011: Informe preliminar sobre violaciones a los derechos humanos en las jornadas de protesta contra la reforma minera en Panamá**, January-March 2011, Panama.
- 8 The UN Special Rapporteur on the rights of indigenous peoples also called for dialogue, see press release at www2.ohchr.org/english/issues/indigenous/rapporteur

- 9 There were at that time three hydroelectric projects planned but not started in the *Comarca* and another two in adjacent areas. There were also two mining concessions within the *Comarca*.
- 10 See the draft bill of law (14 March 2011) submitted to the National Assembly by the *Coordinadora por la Defensa de los Recursos Naturales y el Derecho del Pueblo Ngäbe Buglé y Campesino*.
- 11 See www.treatyconuncil.org: Press release of 30 January 2009, Visit of the UN Rapporteur and www.jamesanaya.org: Panamá la situación de la comunidad Charco La Pava y otras afectadas por el proyecto Chan-75, 15 September 2010.
- 12 National Borders Agency, created in 2008 as part of the law enforcement services. It is highly militarised, with all kinds of arms and resources. It has even had armed clashes with the Colombian FARC.
- 13 See newspaper *Día a Día*, 25 April 2011.
- 14 The “public” reason for the collapse of the coalition put forward by President Martinelli was the lack of support from the Panameñista party at the second round of elections. A rather lightweight reason given everything that was at stake. There were most likely serious conflicts of economic interests and these led to the breakdown.
- 15 Each of the country’s municipalities receives a certain amount of money for its works, particularly those with no fixed income. In the Ngäbe-Buglé *comarca*, the municipalities should receive 1.5 million dollars each year; in 2010 and 2011 they received not even a quarter of this. This was put down to bureaucratic delays resulting from the government’s relationship with the political opposition (first with the PRD party and then with the Panameñista, parties to which most in the *comarca* belong).
- 16 See Articles 88, 90 and 108 of the National Constitution; Law 88 of 2010 and *Comarca* law.
- 17 See the press release of September 2011, the result of a meeting of both organisations in Panama.
- 18 See **De León R., Ruth G. et al, 2011: ENASSER. Encuesta Nacional de Salud Sexual Reproductiva**, Instituto Gorgas.
- 19 See news item in *La Estrella de Panamá*, 17 October 2011.

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SOUTH AMERICA

COLOMBIA

Colombia has approximately 1,400,000 indigenous individuals (3.1% of the country's population), belonging to 87 different peoples. These peoples live in such contrasting ecosystems as the Andes, the Amazon, the Pacific, the Eastern Plains and the desert peninsula of Guajira.

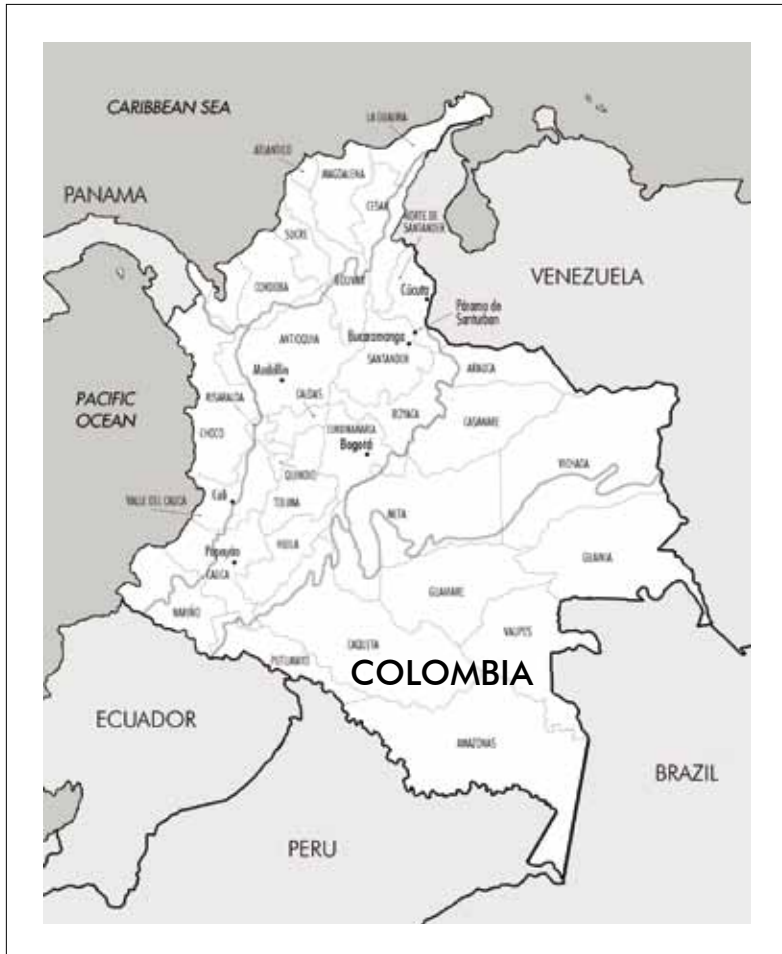
Some ten or so peoples live in the Andes and inter-Andean valleys and these account for approximately 80% of the country's indigenous population. The Amazon and Orinoco regions have a much lower population density, with highly dispersed settlements but they are home to the greatest number of peoples (70), some of these comprising 500 individuals or less and thus on the verge of extinction.

Sixty-five Amerindian languages are spoken within the country, along with two Creole languages spoken by the Afro-Colombians. Five Amerindian languages now have too few speakers to be revived: Pisamira (22 speakers), Carijona (27), Totoró (4), Nonuya (3) and Tinigua (1). Another 19 languages are in "serious danger" of disappearing.

Almost a third of the national territory is titled as "Indigenous Reserves", owned collectively by the indigenous communities.

The 1991 Political Constitution recognised the fundamental rights of indigenous peoples. ILO Convention 169 was ratified that same year and is now law (Law 21 of 1991). Under Álvaro Uribe Vélez' leadership, Colombia initially abstained from approving the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) but, at the end of his second term in office, he was compelled to support the Declaration under pressure from the Constitutional Court, which three months earlier had ordered the government to take urgent measures to protect the most vulnerable indigenous groups (Ruling 004 of 26 January 2009).

2011, the first year of Juan Manuel Santos' government, was full of contrasts and uncertainty. On the one hand, the economy grew by more than 5% but, on the



other, a harsh winter, exacerbated by climate change, damaged nearly 1,000,000 hectares of crops and a similar area of pastureland, causing the ruin of almost 2 million peasant farmers in around 500 of the country's municipalities. The cost of rehabilitating the areas affected by the flooding is likely to absorb a large chunk of the economic growth. With the agricultural and livestock sector diminished due to this winter chaos, the rising cost of food has triggered inflation, weakening the government's efforts to reduce poverty and perpetuating Colombia's position as

the third most unequal country in Latin America, after Honduras and Guatemala. Poverty and inequality continue to be Colombia's two great failings and, until they are resolved, it will not be possible to forge the country's democratic reorganisation.

In 2011, Colombia also signed Free Trade Agreements (FTAs) with the United States of America, Canada and Switzerland, thus opening the door to imported foodstuffs, discouraging the reconstruction of the agricultural sector and increasing poverty in rural Colombia, which already stands at around 64%.

The neoliberal doctrine that has guided the economic policy of recent governments maintains that the solution to poverty and inequality must be put on hold because "growth comes before redistribution". This neoliberal aphorism is a contradiction not only because of the commitment made by Santos to the Colombian population¹ of "*democratic prosperity for all*" but also because inequality diminishes the effectiveness economic growth can have on reducing poverty.² And also because these two failings – inequality and poverty – are an incentive to the now unbearable internal war that the country continues to suffer.³

The rewards being reaped from foreign investment continue to be meagre as foreign companies persist in repatriating their profits without paying taxes. The privileges Uribe granted foreign capital in the context of his policy of "investor confidence", aimed at attracting foreign capital into the country, have thus far not been repealed.⁴ The royalties the state receives from multinational companies are somewhat disheartening, and well below the international average. As an economist, Santos should know that, under these conditions, it is a demagogic sham to suggest that they will provide the necessary resources with which to consolidate "democratic security", rebuild a country devastated by the war, restore road infrastructure and continue to pay the victims compensation, all of which are, along with the restitution of land to those displaced by the violence and agricultural modernisation, central government policies without which it will be impossible to consolidate democracy or establish a peace process and human rights guarantees.

The government no longer talks of land distribution⁵ but of returning that which was taken from four million peasant farmers. And although the passing of the "Law on reparation for victims of the armed conflict"⁶ in May marked an historic milestone, it remains unclear as to how the government proposes taking whole territories out of the hands of the paramilitary armies; these are the very paramilitary armies that, according to the Attorney General's Office, in taking

these lands caused the deaths of no less than 173,183 Colombians and the disappearances of 34,467 more, between 2006 and 2010 alone. To this difficulty must be added the fact that the peasant farmers have their reasons for not returning to the lands that were taken. According to the Human Rights and Displacements Consultancy Service (CODHES), 39 leaders of displaced communities that were claiming their lands have now been murdered and, in 2011, 300 death threats were made against people demanding the return of their farms.

To give some idea of the power these paramilitary groups hold, at the time of writing this article, an “armed strike” was taking place in whole regions of the departments of Antioquia, Córdoba, Chocó, Magdalena and Sucre. This strike was called by the “Los Urabeños” paramilitary group in response to the death of its leader, Juan de Dios Úsuga, alias “Geovanny”, at the hands of the police. Suffice to say, these regions of the country were at a complete standstill for 48 hours. And the issue becomes more complicated still if one considers that this paramilitary armed strike was supported by the north-western block of the Colombian Revolutionary Armed Forces (FARC), given that Luis Carlos Úsuga Restrepo, alias “Isaías Trujillo”, a legendary FARC guerrilla and current head of the FARC’s north-western block, is the first cousin of the dead paramilitary chief and of the other members of the Úsuga family who head up the “Los Urabeños” paramilitary group.⁷

There are, nonetheless, some reasons for hope. At the end of the year, the first Peasant Reserve Zone (ZRC) of Montes de María (south of Bolívar) was approved. Uribe had discredited this legal concept, leading to the suspension of the ZRCs.⁸ The fight for the ZRCs marks an important milestone in the peasant struggle for land. With this, peasant farmers are not simply seeking a “land distribution” in the context of an agrarian reform of a reformist ilk (given that it does not question the logic of capital and the land can return into the hands of the large landowners). With the ZRCs, they are instead seeking “recognition of peasant territories” which, as collective property, would remain outside of the land market, thus contributing to building an inter-ethnic view through which to develop their own forms of spatial domination: a kind of “interethnic geopolitics” aimed at raising the political level of the territorial rights of indigenous, black and peasant groups and shielding their territories from cattle ranchers, plantation owners and extraction activities. It is perhaps in this direction that the World Bank’s reasoning goes when it states on its website that “Ethnicity can be a powerful tool in the creation

of human and social capital but if, politicized, ethnicity can destroy capital...Ethnic diversity is dysfunctional when it generates conflict.”

There were, however, other events that also offer a glimmer of hope as they demonstrate the essential changes that are taking place among the Colombian people. The first was the great mobilisations of people in Santander which forced the state to reconsider its decision to exploit the gold deposits in the Santurbán uplands, a rich aquiferous region in the Eastern Mountains that supplies water to various towns in the area, including the administrative capitals of Bucaramanga and Cúcuta. This defeat, inflicted on transnational mining by the social, environmental and academic organisations, along with the citizens of 22 municipalities, was an encouragement to the indigenous and black communities of Marmato (Caldos) and the peasant communities of Cajamarca (Tolima) who have been affected by extraction activities.

The second was an appreciable turnaround in the rule of law, which was manifested in a number of ways:

- a. Senior civil servants in the Uribe government are now being prosecuted for the illegal phone tapping of politicians and senior court officials, and also for the corruption scandal relating to the illegal granting of substantial agricultural subsidies; civil servants and politicians close to former president Álvaro Uribe have been linked to the investigations being conducted by the General Attorney's Office and the Supreme Court of Justice in this regard.⁹
- b. Praiseworthy actions have been taken by investigation and control bodies, such as the Comptroller General which indicted the Colombian government because its economic model was not sustainable and was in violation of the constitution, and because there was no appropriate institutional structure in Colombia to support the powerhouse of mining. There was also the action of the new comptroller, Sandra Morelli, who uncovered the mess that the national mining authority (INGEOMINAS) was in, revealing that it had granted more than 9,000 mining titles, favouring pro-government individuals, companies and politicians.¹⁰ She also blamed the government for the winter tragedy that had paralysed the country because, rather than a mere natural disaster, it reflected a failure in public environmental policies, in particular the inadequate management of the

country's wetlands which, in 2001, were estimated at 20 million hectares but which today are reduced to 3 million.

- c. The Attorney-General's Office has been uncovering a whole web of complicity between the Armed Forces, members of parliament, government representatives and private armies incorporating landowners and other private interests; these investigations have made it possible for the Supreme Court of Justice to indict more than one half of the Uribe administration's Congressmen and women for their links to the paramilitary forces.

The third was the fact that, from 30 September to 3 October, indigenous, peasant and Afro-Colombian people converged on Cali to attend the "Congress of the Peoples". Almost 7,000 members attended, and were supported by a similar number of students and indigenous and peasant social movement sympathisers. This meeting set itself the task of legislating on land, territory and sovereignty in Colombia, as the central logo of the event was, *"Because this land is ours. We peoples will build the territory"*. The National Lands, Territories and Sovereignty Congress was an important moment of encounter and agreement on the part of the social, political and popular movements, who need to remain on their territories for their physical and cultural survival. This is why it is essential to legislate, or as the Congress put it "to mandate" with regard to nature's common assets in order to protect the territories from the mining "locomotive" and the use of the land from the driving force behind plantation agriculture in response to the demand for "biofuels".¹¹ It was undoubtedly a call to the Santos government, stating that the collective territories of the indigenous, black and peasant communities are sacred and intangible, "not for sale", and so, in contrast, they had to remain safe from transnational interests.

Contrasts and uncertainty for indigenous and Afro-Colombian peoples

By means of Ruling No. 004 of 26 January 2009, the Constitutional Court ordered the national government to design and implement a Programme to Guarantee the Rights of Indigenous Peoples Affected by Displacement, for which it was essential to produce, with the effective participation of the indigenous peoples' legitimate authorities, ethnic Safeguard Plans with which to face up to the armed con-

flict and forced displacement of 34 indigenous peoples. By the end of 2011, and despite many studies and local and regional assessments undertaken by indigenous organisations and many meetings of the Permanent Consultative Committee of indigenous peoples and the government, the truth remains, however, that 117 indigenous people were assassinated in 2011, as denounced by the National Indigenous Organisation of Colombia (ONIC). Most of these were leaders involved in land restitution work in Cauca, Antioquia and Tolima.¹²

Santos showed his talent for scheming in this regard. On the one hand, he undertook to comply with the Court ruling but, on the other, he paralysed the process from within the Consultative Committee by setting the indigenous representatives the task of producing strategic proposals and policy outlines for the National Programme to Guarantee the Rights of Indigenous Peoples, for the Ethnic Safeguard Plans and for the Prior Consultation Process. These proposals must, according to the Constitutional Court, be the result of a process of consultation with the indigenous authorities at local, then regional and, finally, national level. The state provided the resources with which to carry out this work. A number of peoples are now “bogged down” in producing their safeguard plans and, as the resources begin to run out, the process is slowing down while new resources are sought. If the process is postponed or the results are not satisfactory and the state objects to them in the Consultative Committee, then the indigenous leaders and organisations that are heading the process will be considered responsible. The government is therefore “complying with” the Constitutional Court ruling but delaying the process in order to “postpone” its fulfilment. It prefers, given that it is cheaper, to continue to provide resources for the organisations’ leaders and advisors to plough on, researching and deepening the studies in the communities. Meanwhile, the situation in the regions is becoming increasingly dire, as can be seen from ONIC’s complaint above.¹³

Similarly, the Constitutional Court also indicated in its Ruling 005 of January 2009 that the displacement of Afro-Colombian communities was having a disproportionate but neglected impact. It therefore ordered the national government to include the implementation of a general plan for the care and protection of the Afro-Colombian population. Three years on, just as is the case with the indigenous peoples, this Constitutional Court ruling has not been complied with.

The Constitutional Court explicitly stated that one of the rights of the Afro-Colombian communities was the right to participation and to prior and informed consultation aimed at reaching a consensus, which meant that the implementa-

tion of Ruling 005 had to be undertaken in cooperation with the communities affected. The government's strategy for avoiding prior consultation was to resort to the High Level Consultative Meeting, which is a mixed structure under the responsibility of the Ministry of the Interior which includes representatives of the Afro-Colombian communities elected by the Community Councils, and the role of which is to ensure that the policies developed by the Colombian state are put out for consultation and the peoples' rights guaranteed. As various Afro-Colombian organisations have stated, however, their representatives to this High Level Meeting were co-opted by the government. Consequently, three years on, the design of mechanisms with which to implement Ruling 005 has not yet commenced, making it ineffectual and perpetuating the Afro-Colombian communities' status as "victims", which was precisely what the Court wanted to avoid. Worse still, according to the Afro-Colombian organisations, some community councils of the Afro-Colombian communities' collective territories have been used to legalise the plundering of natural assets – timber, gold, oil – in exchange for derisory payments. Some consultation processes are "bought" by the extraction companies, with the approval of the state entities responsible for protecting the natural assets of the collective territories. It is thus not rare to see the mining "locomotive" steaming full speed ahead in these regions.

Locomotives and poverty

Economic stagnation is a phenomenon that goes hand in hand with the expansion of the plantation (palm oil, banana, coca) and resource extraction (timber, gold and oil) economy, a result of a return to the production of primary commodities, exploiting such resources in response to international demand.¹⁴ This impoverishment is more widely and increasingly felt in the indigenous and Afro-Colombian regions¹⁵ as it is there that the consequences of natural resource extraction have a devastating effect: first because it destroys natural living systems and second because it concentrates land ownership in the hands of a few. Both these factors lead to an impoverishment of nature and create a process of productive alienation, increasing the exclusion of the indigenous, black and peasant population. According to official figures for 2011, 40.5% of Colombians live in poverty and 14.4% in extreme poverty; this figure is greater in rural areas, however: "To

our shame,” says President Santos, “64% and 29.1% of indigenous peasant farmers live in poverty and extreme poverty respectively.”

Yet again, however there are “reasons for hope”. The “ethno-territorial” peoples are now more aware that the greatest obstacle to their inclusion, to the well-being of their communities and to less inequality, is the exploitation of natural resources and a change in land use for commercial purposes. One reason for this awareness is that the United Nations Development Programme’s National Human Development Report 2011, “*Reasons for Hope*”, has opened their eyes to this: we now know that one in every three Colombians is a peasant, black or indigenous person that depends on the land. In other words, these almost 15 million poor, miserable peasant, black and indigenous farmers not only call the National Planning figures into question but are the bearers of a warning: that there will be no modernization if the country continues to turn its back on the countryside and the government continues to sign Free Trade Agreements. The report indicates that 52% of rural property is in the hands of just 1.15% of the population and that there are some 6.6 million hectares of plundered lands.

Presented by the Minister of Agriculture and President Santos, the report proposes democratising land ownership, breaking up landholdings and returning the plundered land to the peasants.¹⁶ Will Santos be able to fulfil these goals and go peacefully to his grave having kept his promise to the Colombian people? Will the rural people, along with the environmentalists, manage to put a cog in the wheel of the mining and agrofuel locomotives, as happened in the protests to defend the Santurbán uplands and in the student protests in defence of education?

The indigenous, peasant and Afro-Colombian peoples are now more aware that the production activities that put down territorial roots are those related to food production. Plantation agriculture and mining are completely unable to satisfy the needs of the native population; they do however, dehumanise the territories and spur on a process of cultural breakdown. Worse still, this pillaging of natural resources is a cause of violence as the ensuing incomes attract armed players who, while they may differ in their political or ideological outlook, share the same economic interests and thus compete for the income from illicit economies, for mastery of the territories and control of the population, inflicting a barbaric conflict on the regions.

The peoples have also understood that their ills are a result of the economic, political and social conditions that perpetuate poverty, inequality and exclusion,

and not a result of terrorism, as Uribe claimed. Above all, they are clear that the conflict will not end with the elimination or demobilisation of the illegal armed groups, as the war made those behind it rich, changed the land ownership system by displacing four million peasants and encouraged a political environment in which their mentors were able to seize control of regional governments through fraudulent elections.

2011 was thus a year full of contrasts and uncertainty but it was also a year in which a glimmer of hope appeared to the effect that, from such misfortune, “angry” communities may emerge to take control of their lives and continue to mobilise for democracy. ○

Notes and references

- 1 Juan Manuel Santos said on the day he took office that he wanted to be remembered for having achieved prosperity not for a few but for all Colombians.
- 2 Gabriel Gonzalo Gómez, lecturer at the EAFIT University in Medellín, maintains that poverty in Colombia is due more to the unequal distribution of wealth than to an incapacity to produce such wealth (quoted by Cristina de la Torre: “Prosperidad, ¿para pocos?” *El Espectador.com*, 23 January 2012).
- 3 Over the last decade, as a product of the dirty war between the different armed groups, more people have been killed each year than in all 17 years of the military dictatorship in Chile put together.
- 4 During eight years of the Uribe government, “foreign investors expatriated funds of the same capital value as they had invested in Colombia” (De la Torre, *Ibidem*).
- 5 In Colombia, 4.9 million hectares are put to agricultural use when the land suitable for such use totals 21.5 million hectares. Meanwhile, 38.6 million hectares are used for livestock farming when scarcely 20 million hectares is suitable for this activity.
- 6 This law is important as it is the first in the country that was enacted for the victims. Until then there had only been laws favouring the demobilisation of the killers (2005 Law on Justice and Peace).
- 7 “Alianza ‘Urabeños’ y Farc no es más que un negocio de familia”, *El Tiempo.com*, Sunday 29 January 2012.
- 8 The ZRCs were created by means of Law 160 of 1994, and brought in in El Pato (Huila), Cabrera (Cundinamarca), Calamar (Guaviare), Valle del Cimitarra (Antioquia) and Morales (Bolívar). Many other peasant regions in Boyacá, Santanderes region, Cesar, Nariño and Tolima also called for their implementation.
- 9 Actions on the part of Uribe himself are also being investigated as, with the support of Co-dechocó, he gave his backing to the Canadian company, REM Forest Productions, to log more than 44,596 hectares in a collective territory in the Chocó.
- 10 Those recently granted will have their title frozen, those already issued will be reviewed and more than 20 civil servants remain under investigation for selling confidential information and peddling political favour, among other unlawful activities.

- 11 The term “bio” has a strange connotation as it conceals the fact that, to produce these plant-based fuels, natural forests are being torn up, destroying the livelihood systems of the ancestral populations of the Pacific. It would be more appropriate, as proposed in a committee, to call them “death fuels”.
- 12 According to the President of ONIC, “all these brothers participated in the consultation process for the law on victims”.
- 13 The statement by the indigenous authorities of the Caño Mochuelo indigenous territory, where nine indigenous peoples live, the survivors of the massacres that took place during the colonisation of the Eastern Plains, also says much the same thing: *“We call on the Colombian state to ensure consistency in its policies towards the indigenous peoples of Caño Mochuelo. We do not understand how, on the one hand, the vulnerability of our peoples can be recognised – Ruling 004 – and yet, on the other, the solution to our fundamental territorial problems can be postponed while at the same time promoting oil projects on our territory as if nothing would happen in Caño Mochuelo; we therefore do not understand where the Colombian state’s priorities lie.”*
- 14 See: **Jaramillo, Efraín, 2011:** “La maldición de los recursos naturales” in: *“Los indígenas colombianos y el Estado...”*, Copenhagen: IWGIA.
- 15 In the case of the Pacific, never before had there been such great uprooting as that which took place with the appearance of mining, coca and palm oil cultivation. The inter-ethnic school proposed signing a declaration to the effect that, given their environmental devastation, the destruction of exceptional living systems and the violence they create in the region, these economic activities had to be considered not only as illegal activities but also as crimes against humanity.
- 16 To date, the state has returned 800,000 hectares. The goal, says Santos, is 3 million during his term in office.

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VENEZUELA

Venezuela is a multicultural country that recognises more than 40 indigenous peoples. Of a total population of around 27 millions, indigenous peoples represent 2.8% and comprise: the Akawayo, Amorúa, Añú, Arawak, Arutani, Ayamán, Baniva, Baré, Barí, Caquetío, Cumanagoto, Chaima, E'ñepá, Gayón, Guanano, Hoti, Inga, Japreria, Jirajara, Jivi, Kari'ña, Kubeo, Kuiva, Kurripako, Mako, Makushi, Ñengatú, Pemón, Pipoko, Píritu, Puinave, Pumé, Sáliva, Sánema, Sapé, Timoto-Cuica, Waikerí, Wanai, Wapishana, Warao, Warekena, Wayuu, Wotjuja, Yanomami, Yavarana, Ye'kuana and Yukpa.

The 1999 Constitution recognised the country's multi-ethnic and multicultural nature for the first time and included a chapter specifically dedicated to indigenous peoples' rights, opening up indigenous spaces for political participation at national, state and local level. The Organic Law on Demarcation and Guarantees for the Habitat and Lands of the Indigenous Peoples came into force in 2001; ILO Convention 169 was ratified in 2002; and the Organic Law on Indigenous Peoples and Communities (LOPCI) was developed in 2005, broadly consolidating this framework of rights. Venezuela voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007.

The lack of progress in implementing indigenous rights, particularly the application of territorial rights, has been creating a climate of discontent amongst indigenous peoples and their organisations. For its part, the national government has been engaging in a paternalistic policy of welfare provision, epitomised by the way in which the Ministry for Indigenous Peoples is run. Established as the governing body for public policy related to indigenous affairs, it has become a vertical and hierarchical apparatus with an artificial and alien organisational structure. The policy it is promoting ignores the communities' vision and capacity to resolve their own problems, runs counter to the indigenous organisations and their traditional authorities, imposes decisions without any consultation, minimises local

leadership and causes division and conflict. The national indigenous movement is consequently mobilising once more and unifying around a common agenda in which the demarcation of the indigenous territories, with effective community participation, takes centre stage.

Release of Yukpa leaders

On 4 January 2011, a case was heard in Trujillo state that continued the criminal proceedings in relation to events that occurred on 13 October 2009 in the Yaza River basin (Sierra de Perijá, Zulia state), when two groups of indigenous Yukpa from the Chaktapa and Guamo Pamocha communities clashed violently, resulting in the deaths of two people and injury to five more.

Representatives of *Sociedad Homo et Natura* denounced the fact that the trial was being staged by the government, with the support of local cattle ranchers, in order to convict and crush Yukpa leaders committed to defending their ancestral territory. Moreover, the defence lawyers stated that the case should be resolved through the Yukpa's own justice system, as established in Article 260 of the Constitution governing the right of indigenous peoples to administer their own systems of justice.¹

Held in Trujillo Prison since July 2010, the Yukpa defendants had been subjected to compulsory religious indoctrination, physical and psychological aggression and death threats. On 22 February, the defence lawyers called for the accused to be transferred to Maracaibo so that they could be closer to their families. This request was based on the right that establishes that criminal proceedings involving indigenous people should endeavour to secure punishments other than imprisonment, and that "special spaces" should be provided for their detention.² This request was refused by the judge. Some days later, the lawyers requested that the prisoners' remand in custody be replaced with "other less costly measures", namely, their release in order to complete their trial in freedom.

On 15 March, in response to instructions from the national government, bail was granted authorising the release of the three indigenous individuals while their trial continued.



Yukpa justice administration

On 12 April, the indigenous Yukpa, Sabino Romero and Alexander Fernández, took a decision to refuse to abide by the ordinary justice system, stating as follows:

We are publicly stating our decision not to return to the National Trujillo Prison and the sham trial being conducted against us as we consider that by doing so we would be accepting the violation of our rights and those of all indigenous peoples of Venezuela and the world. We are indigenous and, as

such, have to be tried by our own laws, as we have always done, without requesting permission from anyone. It would show a lack of respect for the Yukpa people and for all the world's indigenous peoples if I allowed this trial to incarcerate me and thus silence the struggle for the Yukpa territory.³

On 9 May, the judge presented his conclusions. He declared the defendants not guilty, given the impossibility of reliably determining their individual criminal responsibility for the events under investigation and, consequently, acquitted them.

On 12 and 13 June, the Yukpa trial of Sabino Romero, Alexander Fernández and Olegario Romero took place in the community of Tukuko, led by the Paramount Chief of the Reina Ubirichi sector and his assistant, the elder Adolfo Maiquichi. Both the accused and the victims were present, along with their families, seven chiefs, the lawyers of Sabino and Alexander and various activists from social movements acting as observers.

All those involved and their families spoke to explain how the events of 13 October 2009 had occurred. Responsibility for the deaths and injuries was determined and compensation paid to the families. The Yukpa had passed judgment in 18 hours when the Venezuelan state had been unable to resolve the case in more than 18 months.⁴

Struggle of the Yukpa people for recovery of their ancestral territory

On 23 February, a group of indigenous Yukpa from Toromo de la Sierra de Perijá community blocked the Machiques-Colón highway in protest at the Toromo military security base and the violent situation it was creating.⁵

On 8 August, various Yukpa families from Toromo sector occupied the premises of El Rincón farm, in Machiques municipality. This – along with another 14 estates – is located on lands that the Yukpa claim as their ancestral territory. This occupation was aimed at putting pressure on the national government, given its failure to demarcate the lands and provide basic services.⁶ The tense situation turned violent on 20 August when around 200 cattle ranchers and peasant farmers violently evicted the indigenous people, resulting in eight people with firearms wounds, almost all of them indigenous women and children.⁷ The military were sent in the following day to guard the estates.

Restructuring of the National Commission for Indigenous Land Demarcation (CND)

Decree 7,855 was issued on 25 February with the aim of restructuring the CND (originally created by Decree 1,392 of 3 August 2001) in order to bring the appointment of its members up-to-date and provide continuity to the demarcation process.

Despite the government's apparent goodwill, on 15 March the indigenous organisations in Amazonas state issued a statement of concern regarding the lack of prior consultation and participation in the approval of the new decree. They indicated that "it limits direct participation" by omitting indigenous representation from the CND's executive secretariat and by changing the status of "indigenous representatives" with full rights to simple "spokespersons". In addition, the organisations regretted the fact that the Minister for Indigenous Peoples "has not managed to create the necessary consensus and participation to bring the implementation of indigenous rights to fruition and has devoted herself to promoting division, conflict and the delegitimisation of indigenous peoples and their organisations."⁸

Meeting with the Vice-president of the Republic

Following the hunger strike by the Jesuit José María Korta and the submission – in November 2010 – of a proposed "road map" for ensuring the implementation of indigenous rights, no government response was forthcoming until 10 March 2011, when Vice-President Elías Jaua agreed to meet with a group of intellectuals and activists headed by Korta.

The meeting focused on a critical assessment of Venezuela's indigenist policy which, in the opinion of those present, needed to change. Jaua recognised that the government's responses to indigenous demands had been based on welfare provision and that the demarcation process had been relegated to the back burner. This, he explained, was due to the active presence of a military sector with influence over the bodies responsible for indigenous issues; this military sector was maintaining a conservative position based on the belief that the self-demar-

cation of indigenous territories represented a danger to national sovereignty, due to the threat of secession.

On 18 March, the group that had participated in the meeting handed over a document to Jaua entitled “For recognition of the rights of indigenous peoples as established in the Constitution of the Bolivarian Republic of Venezuela”; in this they stated that “the government’s indigenous policy is moving in the opposite direction to the Bolivarian Constitution and could result in ethnocide within the next few years”. It also made alternative proposals for a new and different institutional set-up.

When no response was forthcoming from Elías Jaua, a press conference was held on 2 June to make the document public. Esteban Emilio Mosonyi said, “An excellent opportunity is being lost to discuss and even rectify many things, given that the situation is more delicate than it might initially appear. The future of Perijá is at stake, not to mention the future of all indigenous peoples and communities who, by luck, still exist in the country”.⁹

Questioning of the Minister for Indigenous Peoples

On 29 March, the Federation of Indigenous Peoples of Bolívar State (FIEB), the Kuyujani organisation and the indigenous parliamentary member in the National Assembly, José Luis González, rejected the parallel actions of the Ministry for Indigenous Peoples in the election of indigenous representatives to the CND, which were “dividing the indigenous peoples”. Álvaro Fernández explained, “The organisations have already done a great deal of work, we already have our mental maps, we already have our history of each territory, what we want is to follow the direction of the law and for the communities themselves take their decisions in consultation, in an assembly, according to custom and tradition”.¹⁰

On 1 April, a group of indigenous representatives provided feedback on a meeting held the previous day with the Minister for Indigenous Peoples, Nicia Maldonado. This was the first time the minister had met the indigenous organisations and traditional authorities. The main aim of the meeting was for the representatives to request the organisations’ and communities’ proactive involvement in the decision-making for the demarcation process. They questioned the decisions that the minister had imposed without any consultation and the fact that the CND’s spokespersons had been chosen by the Ministry.

On 3 May Decree 8,188 was published, partially reforming Decree 7,855. This gives the Vice-President of the Republic the responsibility of supervising and guiding the National Demarcation Process, as President of the CND. Following this new decree, the Amazonian indigenous organisations issued a second declaration stating their concern at the fact that this reform had yet again been implemented without any consultation of the indigenous peoples or their organisations.¹¹

On 13 May, the FIEB agreed in plenary “to raise a vote of censure against Minister Nicia Maldonado”. This decision was based on an analysis that “the actions of the minister, characterised by a repeated divisionist attitude, ignore the legitimate traditional authorities in order to replace them with people sympathetic to her, and disrespect customs and tradition by establishing a parallel group to the indigenous peoples’ organisations called the *Frente Indígena Antiimperialista Guaicaipuro*, which has today created severe division and confusion within our communities”.¹²

On 26 September, the Amazonian indigenous organisations demanded that “the national and regional spokespersons appointed by the *Frente Indígena Guaicaipuro* be set aside and the grassroots indigenous organisations be respected and recognised to carry out the demarcation process”.¹³

Announcement of handover of land to indigenous communities

On 12 October - “Day of Indigenous Resistance” - Elías Jaua announced that 25 plots of land – totalling 15,808 hectares in all – had been occupied in the Perijá mountains, thus commencing the recovery of lands in order to return them to Yukpa, Barí and Japreria communities.¹⁴ The Vice-President stated that the aim was to achieve peaceful co-existence between “*criollos*” and indigenous groups “so that everyone who wants to can live in peace”. He explained that the government was not trying to create conflict with the cattle farmers and he guaranteed to compensate them and relocate them so that they could continue their production activities elsewhere.¹⁵

The paramount chief of the pilot centre of Neremu, Jesús Terán, stated, “We want the demarcation process to progress with speed, in dialogue with the government, and peacefully; we want them to pay the ranch owners for the lands and then return them to us”.¹⁶

In a ceremony on 12 October, information was provided regarding the timetable for demarcation of indigenous lands approved by the President of the Republic. According to this timetable, lands would be handed over on 15 December to the Yukpa and Barí people in Zulia; to the Kariña people in Anzoátegui; and to six Warao communities in Monagas. Land would be handed over in April 2012 to 40 communities in Monagas; 22 Kariña communities in Anzoátegui; 32 sectors in Sucre; and 11 communities in Apure. In August 2012, lands would be demarcated in Amazonas, Delta Amacuro and Bolívar.¹⁷

The new CND was established on 21 November, comprising a President (Vice-President of the Republic) and Executive Secretary (Ministry of Indigenous Peoples), a Technical Secretariat (Ministry for the Environment), High-Level Institutional Representation (Ministries of Indigenous Peoples, Environment, Education, Defence, Culture, Agriculture and Lands, Communes and Social Protection, Basic Industries and Mining) and 20 indigenous representatives as spokespersons, members and alternates from the states with indigenous populations. The indigenous representatives were chosen by the Ministry for Indigenous Peoples, however, and no indigenous organisations were present at the inaugural ceremony.

Provision of titles for indigenous lands

On 15 December, President Chávez handed over three collective property titles for the lands of the Barí, Yukpa and Kariña people. The Karañakaek community, of the Barí people, received title to a total of 231,570 hectares and the Toromo community received title to 143,610 hectares. Both plots of land are located in the Perijá mountains, Zulia state. In turn, the Kariña community of Macapaima received title to 3,129 hectares in the south of Anzoátegui state.¹⁸

“This is an act of justice, I would say a somewhat late one; late justice but justice all the same...” stated Chávez on exhibiting the documents.¹⁹ In addition, he stated that 50 farms had been recovered in the area, totalling some 25,000 hectares,²⁰ and announced the allocation of 212 million Bolívars to pay for improvements, 6,370 head of dairy cattle and other cattle ranches and land to be provided to the indigenous communities as direct social property.

This action would pay off the historic debt owed to the Yukpa and Barí peoples. However, once the Yukpa land document had been analysed, the *Sociedad Homo et Natura* denounced the fact that “behind these titles lies a defence of the

interests of non-indigenous parties, the so-called 'third-party rights' (cattle farmers and smallholders, among others), and of the mining companies",²¹ over and above the original rights of the indigenous peoples, as the document explicitly recognises "rights legitimately acquired by third parties prior to the start of the Demarcation Procedure and (...) the exploitation and use of minerals and resources in the subsoil, which is owned by the state".²²

According to Lusbi Portillo, the document was prepared behind the backs of the Yukpa people, who were unaware of the area or boundaries of the land to be provided, and no physical map or any documentation was given to them.²³

Vladimir Aguilar,²⁴ for his part, indicates that "the supposed collective property titles granted by the national executive form a new affront to the country's indigenous peoples and communities. These are titles in which there is no collective ownership as the rights are shared with third parties which, in the 'best' of cases, constitutes a threat to indigenous rights. The Venezuelan state is thus defaulting on its debt to the country's indigenous peoples and communities."²⁵

Conflicts over illegal mining

On 23 August, by means of Decree 8,413, President Chávez approved an Organic Law giving the state rights over all gold exploration and exploitation activities. This measure was taken "with the aim of reversing the serious effects of the capitalist mining model, characterised by environmental degradation, lack of respect for territorial organisation, attacks on the dignity and health of miners and of communities living near the mining areas." The President denounced the fact that "tens of thousand of people are involved in illegal mining, millions of tonnes of gold (sic) leave Venezuela illegally" and called for a war on illegal mining.²⁶

In previous years, the national government had unsuccessfully implemented various plans to control illegal mining in the south of the country, in addition to successive violent military operations. With this "gold nationalisation" (Decree 8,413), the elimination and criminalisation of small-scale mining has now been established. Following this presidential announcement, the Armed Forces began further evictions of miners from the Paragua River basin, an indigenous territory inhabited by Pemón and Shirian communities in addition to mining camps and communities.

In the Amanaimü sector of Alto Paragua, a mine being operated by Pemón indigenous peoples was cleared and a military post installed in its place, whose soldiers took control of the mine for their own benefit. Two months later, 500 indigenous people from 13 communities disarmed and detained 19 soldiers for several days. The events caused a national commotion and once again revealed what was obvious to all: the Armed Forces, supposedly responsible for controlling illegal mining, were in fact the main people involved in its perpetuation. Jorge Pérez, captain general of Sector 5 of Gran Sabana, denounced the fact that soldiers “use their uniforms and arms to ride roughshod over the indigenous peoples and demand payment of ‘protection’ of around 30 grams of gold a week.”²⁷

In November, the Ye'kuana del Alto Ventuari (Kuyunü) Organisation complained to the District Attorney's Office, the Ombudsman and the Armed Forces about the presence of dredgers in the Caño Asita del Alto Ventuari, Amazonas state. A military operation took place in December, with the involvement of the District Attorney's Office, resulting in the removal of the miners. There is now a military control post in their place but some miners are still in the area, threatening the communities and members of Kuyunü who are defending their territory.

Warao children die in Cambalache

At the beginning of April, six Warao children from Cambalache community, located on the edges of the landfill site of Ciudad Guayana, Bolívar state, died from acute diarrhoea, pneumonia and meningitis associated with serious symptoms of malnutrition. Two further deaths occurred in July and September, bringing the death toll to eight infants during 2011, most of them aged between 0 and 2 years.

There are 86 Warao families living in Cambalache, all of whom work collecting rubbish from the landfill site, and they have no access to drinking water or adequate food.²⁸ Pedro La Rosa, sector captain, noted the lack of medical health-care. “We are frustrated because the doctor (Manuel Maurera, Head of Health District N° 2) said the deaths of these children was the community's fault, because of how we live, but this is not the case, they have to help us, we are humans just like everyone else, not the animals they appear to treat us as, and all we are asking is that we are treated as we should be, because our children are dying, because we are ill”.²⁹



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SURINAME

Indigenous peoples in Suriname number 18,200 people, or approximately 3.7% of the total population of 492,000¹ (census 2004/2007), while an additional 2-3,000 live in neighboring French Guiana after fleeing the “Interior War” in the late 1980s. 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-west and south of Suriname, including the Akurio, Wai-Wai, Katuena/Tunayana, Mawayana, Pireuyana, Sikiyana, Okomoyana, Alamayana, Maraso, Sirewu and Sakêta. The Kali’ña and Lokono live mainly in the northern part of the country and are sometimes referred to as “lowland” indigenous peoples, whereas the Trio, Wayana and other Amazonian peoples live in the south and are referred to as “highland” peoples.

The legislative system of Suriname, based on colonial legislation, does not recognize indigenous or tribal peoples. Suriname has no legislation on indigenous peoples’ land and other rights. This forms a major threat to the survival and well-being and respect for the rights of indigenous and tribal peoples, particularly with the rapidly increasing focus that is being placed on Suriname’s many natural resources (including bauxite, gold, water, forests and biodiversity).

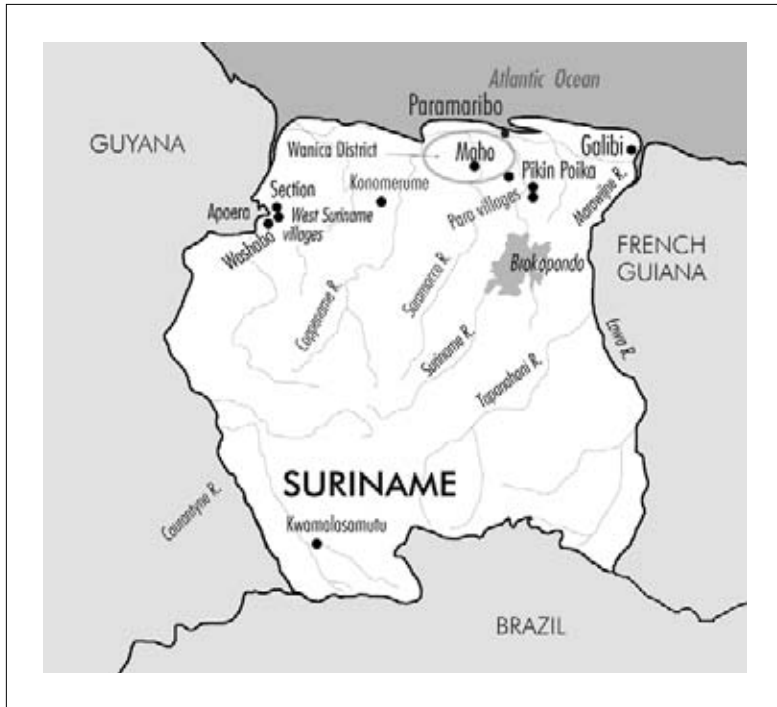
Legislative and political developments

Hopes were high in 2011 for a faster process towards legal recognition of indigenous and tribal peoples’ rights in Suriname, the only country in the Western hemisphere where these rights are not formally recognized in spite of being home to significant numbers of indigenous (almost 4% of the total population) and tribal maroon (almost 15%) peoples. In its Government Declaration, the government (in office since August 2010) undertook to effectively address long-standing

land rights and related issues, and also publicly announced that it would comply with the judgment of the Inter-American Court of Human Rights in the Saramaka case,² which had an implementation deadline of mid-December 2010. This judgment obliges Suriname, among other things, to adopt national legislation and standards to demarcate and legally recognize the collective ownership of the Saramaka maroon people over their traditional tribal lands, and to respect their right to free, prior and informed consent. Such legal recognition would obviously have implications for all indigenous and maroon peoples in Suriname. Two other similar cases are under consideration by the Inter-American Commission on Human Rights, submitted by the indigenous peoples of the Lower Marowijne River area in East Suriname and the Maho indigenous community in Central-West Suriname.

To confirm its intentions, the government requested the UN Special Rapporteur on the rights of indigenous peoples, Prof. James Anaya, to provide technical and advisory assistance on further steps towards legal recognition of the rights of indigenous and tribal peoples in Suriname. James Anaya made an orientation visit to Suriname from 13 to 16 March 2011, during which time he held discussions with the government, indigenous and maroon representatives and various other actors. In his mission report,³ he outlined a process for moving towards developing legislation and related administrative measures to secure these rights. The Special Rapporteur also included suggestions about the basic content of the legislation, while emphasizing that this legislation should be the outcome of a participatory process, assisted by relevant international institutions, in which indigenous and tribal peoples are themselves involved.

A large national conference on land rights was organized by the government, planned initially for June and then postponed until October 2011, to serve as a platform for making concrete proposals, building national awareness on the need for recognition of land rights, and designing the way forward in this recognition process. However, after hearing the joint position and proposals of the indigenous and tribal peoples on the second day of the conference, who were making clear demands for recognition of land and other rights, the government abruptly decided to put an end to the conference.⁴ According to a statement from the President of Suriname, the position of the indigenous and tribal peoples was too far-reaching and this matter would need to be discussed in the National Assembly (parliament) of Suriname. Over the coming days, the president and the organizing governmental committee of the conference made quite negative remarks about



the indigenous and tribal leaders, and the situation remained tense for several weeks, without a view to further structured talks. Only in December 2011 were some renewed efforts made to reconvene the parties for further dialogue, resulting in a small working group that is tasked with drafting a joint statement and outline of a roadmap to get the process back on track.

Continued threats to indigenous peoples' rights

In the absence of any legal protection, violations of and threats against indigenous peoples' rights continue in Suriname. One very disturbing development last year was the blatant interference of party-political and governmental officials in the traditional authorities of indigenous villages in West Suriname. An "election" was organized to elect a "head chief" for the three villages there (Apoera, Section

and Washabo), disregarding the usual procedures for changing the traditional leadership of indigenous villages and also introducing a new position of “head chief” that had not even been agreed upon by the villages. The turn-out for these elections was less than a quarter of the total population eligible to vote and included non-eligible voters. In spite of strong protests from the three villages and the formal rejection of this process and its results by the Association of Indigenous Village Leaders in Suriname, VIDS, the national traditional authority structure, the government pushed this through and appointed the new “head chief” while “dismissing” the existing chiefs. VIDS made formal complaints to the government and parliament, denouncing this interference in internal matters and violation of the right to self-determination and autonomous governance. Protests have since continued and the villages are still shrouded in uncertainty and divisiveness.

The village of Pikin Poika in the district of Wanica was the scene of another protest, this time against the activities of a city-based agriculture association. This organization had begun to conduct land development activities and sell land plots in a land title concession that is within the traditional territory of the village. The concession was received in the 1970s without the knowledge and consent of the village. As the village became aware of these activities, the villagers blocked the road through their village. The police intervened and the matter was brought to the district commissioner, as regional government representative, who ruled that the association should cease activities for which it did not have permission, given that this was not considered “agriculture” as stated in their land title. Although the situation has now calmed down, this incident made it clear once again how vulnerable the indigenous communities are in the absence of legal protection of their land rights.

The government has also not complied with the precautionary measures that the Inter-American Commission on Human Rights issued against Suriname in December 2010⁵ in the case of the indigenous Maho community versus the State of Suriname with regard to “tak[ing] the necessary measures to ensure that the Maho community can survive on the 65 hectares that have been reserved for it free from incursions from persons alien to the community until the Commission has decided on the merits of the petition”. Encroachment on the traditional lands of this community by third parties thus continued unabated in 2011.

Threats related to large infrastructure developments that are planned without the participation and consultation of indigenous peoples are also increasing. In

particular, studies are being carried out, without any meaningful participation of the indigenous and tribal peoples, for the diversion of the Tapanahony River and Jai Creek in South Suriname towards the Suriname River in order to increase the water volume for the existing hydroelectric plant in Brokopondo in Central Suriname. This intervention would affect many indigenous and maroon communities, including the displacement of at least one indigenous community and the disturbance of various river flows. Similarly, gold mining companies are fast increasing their production in the light of favorable world prices. There are several national and multinational mining companies operating or planning to operate in Suriname (e.g. Iamgold Canada and Newmont USA in East Suriname) plus the various illegal and nameless small and medium-sized *garimpeiro* operations, all of which can form a threat to the rights and environment of indigenous and maroon communities. The bauxite mining company Suralco (from Alcoa USA) is also expanding its mining operations to the Nassau mountain area in southeast Suriname, which includes substantial infrastructure development, in spite of strong concerns from affected communities and environmentalists⁶. With regard to the emerging carbon market, a yet unknown organization is apparently planning to start a carbon credit project in South Suriname, in the traditional territory of the Trio community of Kwamalasamutu, without providing full information to or obtaining the consent of the involved communities. The absence of legal recognition and protection of indigenous peoples' rights in Suriname makes these threats very hard to counter.

Cultural heritage resurfaces

In April 2011, an important finding was announced⁷ by the Museum of Ethnology (*Museum Volkenkunde*) in Leiden, the Netherlands, namely of an extensive collection of manuscripts by the two Penard brothers who lived in Suriname in the late 1800s/early 1900s, and containing many ancestral and spiritual tales and symbolic drawings from members of the Kali'na people. These manuscripts were apparently lost for many years, to be found again only while the museum was being renovated last year. The museum has since contacted the Association of Indigenous Village Leaders in Suriname (VIDS) to set up a joint project for further investigating this important cultural heritage.

Trans-boundary meeting of indigenous peoples of the Guyana Shield

A large delegation of indigenous chiefs and other delegates from Suriname traveled overland to participate in the trans-boundary meeting of indigenous peoples from Suriname, French Guiana and northern Brazil from 22–24 November in Oiapoque, Brazil. This was part of a series of meetings in a Guyana Shield project being run by Iepé, an indigenous support NGO in northern Brazil. The meeting continued to focus on the recognition of indigenous peoples' rights and the impacts of gold mining, in particular, on indigenous communities in all countries of the Guyana Shield.⁸ ○

Notes and references

- 1 The population is ethnically and religiously highly diverse, consisting of Hindustani (27.4%), Creoles (17.7%), Maroons ("Bush negroes", 14.7%), Javanese (14.6%), mixed (12.5%), indigenous peoples ("Amerindians", 3.7%) and Chinese (1.8%). At least 15 different languages are spoken on a daily basis in Suriname but the official language is Dutch, while the *lingua franca* used in informal conversations is *Sranan Tongo* (Surinamese).
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ECUADOR

There are 14 indigenous nationalities or peoples and Afro-descendent peoples in Ecuador, grouped into a number of local, regional and national organisations that represent more than 1.5 million of the country's 13,406,270 inhabitants. Two peoples live in voluntary isolation within the borders of the Yasuní National Park in the Central North Amazon: the Tagaeri and Taramenane.

The 2008 Constitution defines the country as intercultural and multi-national. Ecuador ratified ILO Convention 169 in 1998 and voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007.

The criminalisation of indigenous demands

Although the indigenous movement at one point formed Rafael Correa's core area of support, it is now suffering government persecution and accusations of serious charges in an attempt to bring social protest under control in the country. During Correa's term in office, some 200 Ecuadorian indigenous leaders have thus far been accused of terrorism, sabotage or other security-related crimes. In effect, the authorities have criminalised the social movement's long-used methods of protest, such as shutting down public services or establishing road blockades.

This situation was exposed by the President of the Confederation of Indigenous Nationalities of Ecuador (CONAIE), Humberto Cholango, in October during a public hearing before the Inter-American Commission on Human Rights (IA-CHR). The head of the indigenous organisation stated that many leaders "are persecuted, subjected to tortuous legal processes, imprisoned and or in hiding following sentencing" and that the state "has no appropriate mechanisms with which to dialogue or to resolve the presence of mining, oil or transnational companies".

CONAIE's lawyer, Mario Melo, mentioned one case that was symbolic of this criminalisation of social protest, that of José Acacho, the organisation's vice-president who was sent to prison in February "for having led his people's resistance to mining, and who has been persecuted and imprisoned but, thanks to a *habeas corpus* appeal, has now been released".

Apart from Acacho's case, he also cited that of Marco Guatemal, President of the Chijallta-FICI organisation, who was arrested in October for "obstructing the public highway" while protesting at the Water Law (in April 2010).

A further case is that of seven indigenous people from Nabón, in Azuay, who led a popular uprising on 23 March 2008 against the mining being conducted by the Explosor company. For this they were sentenced to eight years in prison, convicted of sabotage and terrorism.

After listening to Cholango's presentation, José de Jesús Orozco, first vice-president of the IACHR, requested that the issue be considered in further depth and monitored by the Rapporteur.

In addition, in a press release, CONAIE called on "all the nationalities, peoples and social organisations to be alert to the national government's onslaught against the Ecuadorian people and to be united and organised in the face of the civil dictatorship we are suffering in Ecuador, which comes couched in the guise of democracy and civic participation".¹

The conviction of Chevron-Texaco²

In February, the judge of the Nueva Loja Court, Nicolás Zembrano, found the North American company, Chevron-Texaco, guilty of the environmental and social destruction of the Ecuadorian Amazon following its 26 years of operations there. He ruled that the company had to pay at least eight billion dollars in damages. In the judgment, he also ruled that the North American transnational had to publicly apologise, both in Ecuador and in the USA, to the victims of the crime it had committed.

The arguments against Chevron-Texaco were decisive: the company was directly responsible for the environmental impacts caused by oil exploitation, which not only affected the natural environment but also had clear consequences for the health of the local population. In addition to its outcome, this case has set a precedent by taking one of the most powerful oil companies on the planet to



court for its operations in the Ecuadorian Amazon from 1964 to 1990. During this time, the company drilled 339 wells over an area of 430,000 hectares. It dumped billions of barrels of production and waste water and burnt billions of cubic feet of gas with the aim of extracting some 1,500 million barrels of crude oil. The contamination was primarily caused by Texaco's inadequate practices and environmental policies during its exploration and exploitation operations. There were no environmental checks. It incorrectly handled waste from the production wells, discharged 100% of the formation (salty) water into the rivers and streams, burnt gases into the atmosphere and was responsible for dozens of spills caused by a variety of reasons. These are the conclusions that were presented by the numerous expert witnesses called to testify in the case.

In psychosocial terms, the complaints were many: sexual violence by the company staff against *mestizo* and indigenous women and girls, miscarriages, discrimination and racism, forced displacements, harmful cultural impacts and a breakdown in social cohesion. The territoriality, food and traditional cultures of the

indigenous peoples in the concession area were fundamentally affected. Moreover, Texaco was also responsible for the demise of native peoples such as the Tetete and Sansahuari, and for the economic, social and cultural harm caused to the indigenous Siona, Secoya, Cofán, Kichwa and Waorani people, as well as to white-*mestizo* settlers.

This ruling therefore represents an opportunity to penalise and put a stop to the contamination caused by oil and mining activity, an activity which is sustained by a combination of political and transnational power that results in a rhetoric of promoting oil exploitation (and, now, in Ecuador, large-scale mining) as a basis for the country's development; this rhetoric conceals the truth, intimidates anyone that opposes it, and humiliates and neglects its victims.

Elections in CONAIE

From 31 March to 2 April, CONAIE held its 4th Congress in Puyo, Pastaza, in the presence of 1,050 delegates from the nations, peoples and nationalities of Ecuador. Humberto Cholango, from the Kichwa Confederation of Ecuador (ECUARUNARI) was elected as CONAIE's new president for the 2011-2014 period, in a secret vote in which he obtained 472 votes. In second place, with 353 votes, was Auki Tituaña, former mayor of Cotacachi and leader of the Federation of Indigenous and Peasant Farmers of Imbabura (FICI), followed by the Amazonian Shuar leader, Pepe Acacho, with 205 votes.

The new president stated that they were "struggling against this racist state and this arrogant government", and called for the construction of "the country's political alternative, because we Ecuadorians want real change in our homeland"... "We want territories in which our peoples can have the capacity for self-determination and, above all, the capacity for a true relationship with the Ecuadorian state on the basis of our own governments, in order to continue building the Plurinational State with true *Sumak Kawsay*".³

Sarakayu before the Inter-American Court

On 6 and 7 July 2011, a hearing was held in the Inter-American Court of Human Rights at which the Ecuadorian state was tried for granting an oil concession on

the ancestral lands of the indigenous Kichwa people of Sarayaku in the Amazonian province of Pastaza.

The case refers to a 200,000-hectare concession which the government granted to the Argentine oil company, *Compañía General de Combustibles* (CGC), in 1996. There have been a number of attempts to explore for oil without the knowledge of the communities and so, at the start of 2003, the people of Sarayaku approached the Inter-American Commission on Human Rights to request precautionary measures in order to safeguard their territory. These were granted by the Commission but not taken on board by the Ecuadorian state. The precautionary measures were ratified by the Inter-American Commission, and accepted in part by Ecuador in 2007. In 2009, however, the Ministry of Mining and Oil once more authorised a resumption of activities, and even expanded the area in question, without the consent of the indigenous peoples and without even informing them. In 2010, the Inter-American Commission referred the case to the Inter-American Court of Human Rights.

The indigenous people of Sarayaku's main argument to the Court focused on the fact that the Ecuadorian state's granting of the concession was illegal because it was within an ancestral territory and because there had been no prior consultation of the communities affected. The indigenous leaders noted that the company was protected by the armed forces and that police, and that the indigenous communities were suffering threats and assaults.⁴

Faced with this situation, the indigenous people of Sarayaku called for compensation for the damage caused, and particularly the removal of all explosives that had been placed in the area in 2003 when the state violently entered the zone with the armed forces.

Some of these explosives have been detonated but, to date, most of them remain buried in an area of 20 square kilometres, posing a danger to the inhabitants of the village and to the biodiversity. A total of 1,433 kg of explosives at a depth of 12 metres was laid without the communities' knowledge, placed according to the Ministry of Energy at a total of 476 different points in the Amazonian rainforest.⁵

Among the people's other demands was that they should be consulted before any project affecting their territory or their culture is implemented.⁶ "We call on the Court to protect us so that we can live in peace, so that we are consulted if they want to implement any development project and so that, if we say no, they respect our decision," stated Patricia Gualinga during the hearing.

For its part, the state called David Gualinga, an indigenous person, as a witness. He stated that the company had held consultations with different Ecuadorian indigenous communities and that most of them had agreed to the oil exploration. Moreover, he alleged that the Sarayaku community had violently turned on other nearby communities who supported the oil exploration.

Because of the Sarayaku people's opposition, the CGC company did not complete its exploration work and, in 2010, the government cancelled its contract.

The UN Special Rapporteur on the rights of indigenous peoples, James Anaya, also took the stand as an expert witness. He explained that the duty to consult indigenous peoples was "a key element of a new model relationship between states and indigenous peoples", and that this also meant a new model of development since "the history of repression and exclusion that has characterised this relationship thus far, very often with disastrous consequences, cannot be forgotten ... behind this lies the desire to profit from indigenous lands." Anaya indicated that the indigenous peoples should be consulted from the very moment of project conception and that people should not arrive at "the territories with contracts already signed, the workers hired and the works designed and then present this to the peoples. This is not how it should be."⁷

In defence of the "free" peoples

On 15 July, a group of civil society organisations denounced the call for tenders, put out the previous 16 June, for hydrocarbon exploration and exploitation in the so-called Armadillo Block that borders the Tagaeri Taromenane Untouchable Zone, where the "free" Tagaeri and Taromenane people, or people in voluntary isolation, live. The existence of indigenous peoples in isolation in the so-called Armadillo Block has been corroborated by reports from the Ministry of the Environment and the Ministry of Justice and Human Rights through their Precautionary Measures Plan. In its final conclusions, the report produced on 27 January 2010 within the context of the "Precautionary Measures Plan for the Protection of Peoples in Isolation" of the Ministry of the Environment, recommends that the Armadillo Block should not be entered and it states that "(...) commencement of oil activities under the current conditions would put at risk not only the lives and human rights of the indigenous peoples that live there in isolation but also those of the oil workers, settlers and Waorani of the area (...)".

In addition, the press release notes that the size of this untouchable zone and its buffer area is insufficient and does “not take into account the dynamics of mobility of the free indigenous peoples”.⁸

The press release warns that by entering the restricted area and affecting these peoples, those responsible could be committing crimes of genocide and ethnocide, as classified in the Criminal Code. For this reason, it warns the authorities and oil companies participating in the tender to bear in mind the legal consequences that any impact on the lives of indigenous peoples in isolation may imply.

It should be recalled that, in 2006, the Inter-American Commission on Human Rights granted precautionary measures in favour of the free indigenous peoples and called on the Ecuadorian state to adopt effective measures to protect the lives and personal integrity of the Tagaeri and Taromenane peoples. ○

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This article has been written by IWGIA staff

PERU

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

Peru has ratified ILO Convention 169 on Indigenous and Tribal Peoples and has voted in favour of the UN Declaration on the Rights of Indigenous Peoples

The first months of 2011 were marked by presidential elections. Ollanta Humala took over office from Alan Garcia in late July after being successfully elected, having amended his plans for the “Great Transformation” into the less ambitious “Road Map”, which perpetuates the economic model of his predecessor.

In just five months, two very different sides to the new government have become apparent. The current cabinet’s direction has been described as a “complete U turn to the right” and “authoritarian”. The economist Óscar Ugarteche considered it a “political massacre”³ when on 9 December, the left-wing bureaucrats that had headed some ministries and public bodies since July were removed from post following the political crisis created by the Conga mining project.



Right to consultation and consent

In August, the new Congress unanimously approved Law 29785 on Prior Consultation of Indigenous Peoples. Ollanta Humala promulgated this law in Im-

azita, Bagua, and it was published on 7 September in the Official Journal *El Peruano*.⁴ Although the Law was welcomed by different indigenous and social sectors, it was also criticised for failing to observe a number of international standards. One observation is that it does not specify when free, prior and informed consent must be obtained and, to all intents and purposes, the final decision in this regard falls to the relevant state body.

A Multisectoral Commission made up of 18 vice-ministers and six indigenous representatives has been given responsibility for drafting the law's implementing regulations. It is chaired by the head of the Conflicts Unit of the Presidency of the Council of Ministers. The Vice-ministry for Interculturality, under the direction of Iván Lanegra Quispe, holds the Technical Secretariat.

On 22 November, during the establishment of this commission, the government distributed draft regulations. As agreed with the indigenous organisations, six macro-regional and one national meeting are planned for January 2012 in order to collate comments.

Minimum non-negotiable principles

2011 saw the consolidation of the Unity Pact, made up of five indigenous and peasant organisations: *Asociación Interétnica de Desarrollo de la Selva Peruana* (Aidesepe), *Confederación Campesina del Perú* (CCP), *Confederación Nacional Agraria* (CNA), *Confederación Nacional de Comunidades Afectadas por la Minería* (Conacami) and the *Organización Nacional de Mujeres Indígenas Andinas y Amazónicas del Perú* (Onamiap). These five organisations, along with the *Confederación de Nacionalidades Amazónicas del Perú* (Conap), are all members of the Multisectoral Commission. The *Unión de Comunidades Aymaras* (UNCA) was not invited to join, despite being a valid and dynamic organisation with a long history.

The Unity Pact published the document *Minimum non-negotiable principles for the application of rights to participation, prior consultation and free, prior and informed consent*⁵ with a view to the discussions on the implementing regulations. The text was written by Raquel Yrigoyen Fajardo, a specialist in legal pluralism and one of the first people to state that the Law on Prior Consultation had to be interpreted in line with international standards (ILO Convention 169, the UN

Declaration on the Rights of Indigenous Peoples and the doctrine and case history of the Inter-American Commission and Court of Human Rights).

In September, Yrigoyen Fajardo briefly took over as head of the National Institute for Andean, Amazonian and Afro-Peruvian Peoples' Development (Indepa), leading indigenous people to place some trust in the state; there was even talk of a "radical reform of state/indigenous peoples' relations". However she was later removed from post without any reasonable explanation, despite having initiated some intense activity with the indigenous organisations. Her last action was to overrule a report issued at the start of the year giving Pluspetrol (Camisea Consortium) the go-ahead to expand its exploratory work on the Kugapakori Nahua Nanti territorial reserve⁶ for indigenous peoples in voluntary isolation and initial contact.

Indepa is the public body responsible for promoting the indigenous agenda but, during Alan García's government, it lost much of its functional autonomy and transectoral nature.⁷ It was finally absorbed into the recently-created Ministry of Culture (Mincu) as one of its Implementation Units by Law 29565 of 22 July 2010.

The Unity Pact is demanding the reinstatement of Indepa's tasks and responsibilities as stipulated in the law that created it, and the recovery of its autonomy and ministerial rank. This issue is an outstanding debt on the part of the state given that successive governments have proved incapable of creating a public institutional structure able to deal appropriately with indigenous issues.

Mining vs. communities

Conflicts over concessions granted to the extraction industry on indigenous peoples' and communities' territories and in natural protected areas were the focus of the country's social agenda last year. The environmental impacts have led many communities, indigenous and *mestizo* alike, to protest, forming a sword of Damocles hanging over governments which, on the one hand, want to maintain economic growth on the basis of extractivism but, on the other, cannot control or mitigate the impacts of this activity.

At the start of 2011, President García was juggling 239 different social conflicts, of which 116 were socio-environmental. Despite criticism, he issued emergency decrees 001 and 002 in January deferring the need for environmental

certifications in the process of issuing mining and hydrocarbon infrastructure projects.

Ban Ki-moon, UN Secretary-General, arrived in the country amidst the controversy surrounding the decrees and expressed his concern for indigenous peoples' right of participation and consultation throughout the whole region. Nine months later, both decrees were declared unconstitutional by the Constitutional Court.

Another important setback for Alan García's government was having to declare the EIA from the Tía María open pit mining project (Islay, Arequipa) of the Southern Peru Cooper Corporation inadmissible following a protest on the part of the farmers in relation to concerns that the water volume in the Tambo River would decline and that possible damage would be done to the ecosystem, along with the conclusive report of the United Nations Office for Project Services (UNOPS), which raised 138 points requiring rectification.

The altiplano region of Puno was also the setting for fierce and massive protests. Aymara from the southern part and Quechua from the north led various protests in defence of their water resources, Lake Titicaca, the environment, the right to consultation, and against contamination of the Ramis River and mining activity. After 21 days of strike action, on 1 June, the government suspended requests for mining concessions for one year in the provinces of Chucuito, Yunguyo, El Collao and Puno. It also declared one of the Aymara's guardian hills as the "Cerro Khapia Landscape Reserve". However, the population's indignation increased following the distribution of two videos in which a supposed police officer can be heard ordering: "Anyone with a slingshot, anyone with a slingshot, kill them, kill them, kill the shits".⁸ On 25 June, Alan García's government was forced to issue further regulations in order to calm the protests.⁹

The Conga Mining project

The Humala government's U-turn to the right took place following the country's most significant social and environmental conflict of the year, the struggle of the Cajamarca people against the Conga Mines megaproject of the Yanacocha Mining Company, the biggest gold mining company in South America, the majority shareholder of which is the Newmont Mining Corp, from the United States, and the Buenaventura Group.¹⁰

Conga Mines is planning to invest US\$ 4,800 million, the largest investment in the country's history, in order to obtain around 9 million ounces of gold over the 19 years of the project's lifecycle.

The social and environmental costs of this project will be enormous as it involves the destruction of four headwater lakes. Two of them - El Perol and Mala - will be drained to extract the gold and the other two - Azul and Chica - will be used to deposit the cleared soil. The open pit mine will affect not the 8,000 people indicated in the environmental impact assessment (EIA) but 100,000 inhabitants of six districts and 697 settlements.¹¹

An internal report on the project's EIA, written by the Ministry for the Environment, admits that the Conga project, as it stands, "will significantly and irreversibly transform the basin headwaters, leading to the disappearance of various ecosystems and fragmenting the remainder in such a way that environmental processes, functions, interactions and services will be irreversibly affected". Moreover, "the assessment of the wetlands (high Andean lakes, wetlands) failed to take sufficient account of the fragility of the ecosystem that would be affected".¹²

The rural population of Cajamarca, organised into traditional peasant militia groups and coordinated in environmental defence fronts, are not prepared to give up their water, a scarce resource in other areas of Cajamarca where Yanacocha has undertaken operations in the last 20 years. They are therefore suspicious of and have rejected the four reservoirs which the company claim would store more than twice the amount of water of the lakes in question and provide year-round availability to cover the needs of farmers who currently suffer from an unreliable supply in times of drought.

In September 2011, the population of Cajamarca poured onto the streets in a mass protest of tens of thousands of people in defence of water and the environment, headed by the Regional President, Gregorio Santos, and other social leaders.

The breaking point in the conflict came, however, when President Ollanta Humala openly pronounced himself in favour of the project, stating that: "Conga will go ahead". In an attempt to reconcile the opposing positions, he said, "Let me show you that it is possible to have both gold and water at the same time", asking Yanacocha for not "concrete reservoirs" but "cutting edge artificial lakes".

An indefinite regional strike commenced on 24 November but was stifled after 11 days by a declaration of a state of emergency in four provinces of Cajamarca and their occupation by army troops. In an unusual attempt to put pressure on the

region, the central government blocked the regional government's bank accounts. The members of the Unity Pact called on the Inter-American Commission on Human Rights (IACHR) to grant relief measures with regard to the state of emergency and the arrests of leaders.

Faced with national and international reaction at its repressive measures, the government lifted the state of emergency on 16 December in the midst of a ministerial crisis. Gregorio Salas issued a regional ordinance¹³ declaring the Conga project unviable but, at the end of the year, the government lodged an appeal claiming that this ordinance was unconstitutional.

The struggle continues

Conflicts between mining and agriculture also affected the peasant communities of the provinces of Andahuaylas and Chincheros (Apurímac), who in October called for mining exclusion zones to be declared. After strikes and protests, the conflict died down following the ministerial resolution of 2 December, which establishes a "Sectoral Working Committee".

Conacami held the National Peoples' Forum in Arequipa at which the *Misti Declaration* was signed, including the innovative agreement to establish a Truth Commission on Mining and other extractive industries.¹⁴ This request, however, has still not been acted upon.

The "struggle for water" lies at the root of these conflicts and was this year raised by the indigenous peoples as a banner in defence of their rights. This conflict will continue throughout 2012. At the time of going to press, the Great National March for Water had been announced from Cajamarca to Lima, a ten-day route picking up people from other regions along the way.

Peruvian Amazon

For the very first time, the Congress of the Republic has an indigenous representative from an Amazonian ethnic group. His name is Eduardo Nayap Kinin, from the Awajún people, and he supports the government's parliamentary group. Nayap had to fight to avoid his election being over-ruled for supposed electoral fraud. Under his auspices, it has been possible to get the Peoples' Commission to hold a decentralised hearing in his department, Amazonas, and for an agree-

ment to be reached to investigate the case of the Afrodita mining company, whose presence in the Condor Mountains has led to conflict with the indigenous peoples as the areas it has been granted have been carved out of the territory of the Ichigkat Muja National Park, on the border with Ecuador (*see the Indigenous World 2010*).

Aidesepe denounced an agreement between Afrodita and the Sixth Reserves of the Peruvian Army to provide medical care, energy and the payment of PEN 20,000 a month to the military in exchange for transport, security and communication.¹⁵

One visible case of criminalisation was the arrest warrant issued for the Awajún Wampís leader, Zebelio Kayap Jempekit, president of the *Organización de Desarrollo de los Pueblos Fronterizos del Cenepa* (Odecofroc), for detaining workers from Afrodita when they entered the Cenepa communities (January 2009). The warrant was lifted at the end of the year.

Law 29760 declaring the diversion of the Marañón River,¹⁶ a tributary of the Amazon, to be in the national interest, along with the damming and diversion of the Huallaga River for hydro-electrical and farming purposes, was cancelled in October after indigenous and *mestizo* protests in Loreto and San Martín. Complaints regarding contamination of the Malinowski, Inambari, Tambopata and Madre de Dios rivers by illegal mining forced the government to remove around 100 dredger rafts, *carrancheras* and *chupadoras* (boats equipped with various suction mechanisms to retrieve the gold) by means of operation Aurum 1.

The Peru-Brazil energy agreement (*see the Indigenous World 2011*) was signed without any discussion in the Congress of the Republic. The problem was raised by environmental NGOs who emphasised the impacts that would ensue from the construction of the various dams. The *Central Asháninka del Río Ene* (CARE) launched an activity entitled "Asháninka October" to demonstrate the meaning of *Kametza Asaike* (Asháninka Good Living) and to illustrate the incompatibility between their development vision and the displacement that would be forced on them should the Tambo 40 and Paquitzapango hydroelectric power station megaproject go ahead. At the end of November, the Brazilian company Odebrecht announced it would be withdrawing from the Tambo 40 concession. The strong indigenous opposition to the Tambo 60, Mainique 1 and Paquitzapango projects has led to concern among other Brazilian construction companies such as Electrobrás, Andrade Gutiérrez and Engevix. There is speculation that they could also abandon these projects. The Inambari dam project also led to

negotiations between various regional leaders and the government in an attempt to reverse the concession granted in Amazonas Sur.¹⁷

In terms of the indigenous organisations, the Asháninka leader, Miqueas Mishari Mofaf, founder and former president of AIDSESEP, passed away on 30 March from complications caused by severe anaemia. He was much loved and respected by the grassroots. In December, the organisation's Congress re-elected Segundo Pizango Chota, from the Shawi people, as its president for a third term.

Prospects for 2012

The conflicts inherited from the previous government have not been resolved and are continuing, albeit most of them in a latent rather than an active manner. The lack of agreement between the state and indigenous peoples with regard to applying the Law on Prior Consultation in line with international standards, as demanded by the organisations, may undermine the path to social inclusion and rights and could lead to renewed confrontation between an increasingly authoritarian government and the indigenous peoples, whose legitimate expectations with regard to this law may be frustrated. ○

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BOLIVIA

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

The 8th Indigenous March

On 3 June, in San Ignacio de Mojos, President Evo Morales inaugurated the works for the Villa Tunari highway, the central stretch of which will cut right through the middle of the Isiboro Sécuré Indigenous Territory and National Park (TIPNIS). In so doing, he stated that the government intended to build the highway, whether the indigenous peoples “liked it or not”. When the three peoples who live in TIPNIS and their representative organisations¹ heard that the decision was irreversible, they decided to resort once more to the last line of defence of the indigenous peoples of the Bolivian lowlands: the March.

This highway is intended to link the Cochabamba tropics, where most of the surplus coca² is grown, with the regions of the former Mojos Jesuit missions, crossing the main ecological reference point of the indigenous territory and land of the Yuracaré, Tsimane and Mojeño peoples. It is being financed by a grant from the Brazilian Social and Economic Development Bank (BANDES), and constructed by a company from the same country, OAS.³



Faced with the government's stance of pressing on with the highway's construction, the national indigenous organisation (CIDOB) and the TIPNIS organisations decided to organise the 8th Indigenous March.⁴ From the very beginning, the National Council of Ayllus and Markas of Qollasuyu (*Concejo Nacional de Ayllus y Markas del Qollasuyu*/CONAMAQ), an organisation from the country's highlands, supported the action, along with a number of its regional member organisations. The central demand of the March was that TIPNIS should be protected, and it therefore called on the Plurinational State to reverse its decision to run the highway through the territory. An alternative route was proposed that would avoid it. The reason stated was that it would

irreversibly affect the rights to territory, life and cultural identity of the indigenous peoples living there.

The “kidnapping” of Foreign Minister David Choquehuanca

As soon as the March began, the President and his ministers launched a systematic smear campaign against the indigenous leaders, accusing them and the support NGOs of being linked to US cooperation, given its presence on the March. From 30 August to the day of the intervention against the March, 25 September, a road blockade was set up in Yucumo, a settlement located on the Trinidad-La Paz road, by the pro-Morales Settlers Federation (*Federación de Colonizadores*). The organisers of this road blockade were making similar demands of the government: open negotiations, albeit this time with the aim of maintaining the decision to build the highway through TIPNIS. This blockade was also supported by a large contingent of more than 700 police officers, who were instructed not to open the road nor to allow the indigenous peoples to continue on their route to La Paz. On 23 September, Foreign Minister David Choquehuanca visited the March to try and establish a possible dialogue between the government and the indigenous protesters. Given that the Foreign Minister is himself an Aymara, he was considered the last hope for reaching an understanding with the government. The protesters, however, were in a desperate situation because the blockade and the police force were preventing them from continuing on their way. Their access to clean water and food was severely limited and, furthermore, the weather was not in their favour. The Foreign Minister defended the Yucumo blockade and accused the protesters of being against “the process of change”. This caused widespread indignation among the women, mothers to hundreds of children who were now without food or water.⁵ The women overwhelmed the cordon of government officials and police, opening up a passage to the masses who stood in front of the Foreign Minister thus in effect breaking the blockade. The government presented these actions as a “kidnapping” of the Foreign Minister, despite the fact that Choquehuanca subsequently denied this.⁶

Repression of the 8th Indigenous March

On 25 September, the protesters were eating lunch and discussing a note sent by the government when approximately 1,000 heavily-armed police officers began a fierce crackdown. Tear gas and rubber bullets were fired at families who, in the midst of the chaos, scattered in all directions to find somewhere safe to hide. The police proceeded to detain the main leaders, men and women, along with indigenous deputies and human rights defenders who were present. Despite offering no resistance to arrest, they were repeatedly knocked to the ground, gagged with plastic tape, insulted and forcibly led to vehicles to be taken away. This repression, however, had consequences that the government had not bargained for. In a gesture of solidarity, as the caravan of police vehicles returned to Trinidad, the people of San Borja refused to let the convoy pass. The police therefore decided to take the road to Rurrenabaque, 150 kms to the north-west of San Borja, and from there evacuate the prisoners by air. The military aircraft chartered by the security forces were also intercepted by the local people, who took over the airport. The result was that 74 people sustained physical injuries of different kinds, not to mention the psychological trauma suffered by those who were ill-treated and separated from their families for several days.

The widespread condemnation that was forthcoming from all sectors of Bolivian society, including those closest to the government, along with the negative international repercussions caused by the unjustified and violent intervention against the March, resulted in a government crisis. On the morning of Monday 26 September, with the TV images and victims' statements scarcely broadcast, Defence Minister Cecilia Chacón handed in her resignation, giving her reason as being her round rejection of the intervention. On Tuesday 27, given the overwhelming evidence of where responsibility lay for the police repression, Vice-Minister of the Interior, Marcos Farfán, and the Minister of Government, Sacha Llorenti, paradoxically a former President of the Bolivian Permanent Assembly for Human Rights (APDHB) and a known former human rights activist, both resigned. President Evo Morales condemned the intervention and, in particular, the way in which the indigenous protesters had been treated and even "apologised", blaming the police for the action and distancing himself from any responsibility in the decision to intervene.

Arrival in La Paz and approval of Law 180

Back on the road following the crackdown, the 8th March reached La Paz on 19 October and was welcomed to the city by more than 500,000 people, all of whom accompanied the protestors to the seat of government, where they voiced the nationwide demand that the decision of the indigenous peoples living in TIPNIS should be respected as they had exercised their self-determination in deciding to prevent a highway from passing through their territory.

On 20 October, in the face of public pressure, President Evo Morales announced at a press conference that he would present Congress with a number of observations on the previously approved bill of law so that a provision could be incorporated into its text to the effect that neither the Villa Tunari-San Ignacio de Mojos highway, nor indeed any other highway, would pass through TIPNIS. On 24 October, Law No. 180 on the Protection of TIPNIS was promulgated.

Once the decision resolving the March's main demand was made known, it was agreed to commence negotiations on the other 15 points in its Platform of Demands.⁷ Agreement was rapidly reached on these issues once the peoples' main demand had been complied with.

The Law on the Protection of TIPNIS introduced two fundamental amendments: a) Article 3, by which "...neither the Villa Tunari-San Ignacio de Mojos highway, nor any other highway, shall cross TIPNIS", the main demand of the 8th March; and b) a declaration of the inviolability of the territory which, according to Article 4, means that "...Given the inviolable nature of TIPNIS, the corresponding legal measures will need to be taken to enable the reversal, cancellation or setting aside of any acts that contravene this legal status". Such a definition of the concept of inviolability, in total contradiction to the meaning proposed by the March, was justified by the government as being "in full response to indigenous requests". On this basis, resource-use authorisations and permits granted by the state itself to operators external to TIPNIS, and from which the indigenous organisations were receiving economic benefits, will be cancelled. Furthermore, this article provides a completely arbitrary and exaggerated interpretation of *inviolability* because, in practice, it prohibits virtually all economic activity in TIPNIS, even that being undertaken by the indigenous peoples themselves.

Once Law No. 180 had been approved and agreements bringing the protest to an end signed, a team of delegates from the 8th March remained in La Paz to

work together with government officials on the implementing regulations for the Law, as had been agreed. The discussions dragged on and began to be linked to the new tensions being fomented by pro-government sectors in the country, challenging the recently approved Law. Finally, and after a month of waiting, an agreement and draft implementing regulations for Law No. 180 were produced and signed in consensus between the March's delegates and the government ministers.

The election of judges

The public revulsion at the crackdown against the indigenous defenders of TIPNIS had a knock-on effect in terms of the judicial elections scheduled for 16 October.⁸ On the eve of these elections, the government accused the 8th March of having political aims⁹ and of trying to damage the electoral process. Against this backdrop, the government organised a large rally of more than 100,000 people in La Paz, primarily MAS (government party) activists and public officials. The indigenous peoples' decision not to march on the days running up to the elections and to delay their entry into La Paz was viewed highly positively by the general public, who roundly rejected the government in the elections, with the majority of votes cast being spoilt (44.03%) or left blank (13.8%). Only 42.09% of the votes cast were valid, in addition to which 20% of people did not bother to vote at all.¹⁰

Pro-government demonstrations

On 28 October 2011, just a few days following approval of Law No. 180, and in apparent contradiction with the decision he had just adopted, the president held a meeting with party activists and other social leaders in Cochabamba. At this meeting, the president accused his grassroots supporters of having "abandoned" him in the conflict surrounding the 8th March and that they had never mobilised to prevent the passage of Law No. 180.¹¹ This led to a reaction within the peasant movement, particularly the coca growers, and protests rapidly emerged calling for Law No. 180 to be quashed. The government began to get the whole apparatus of the pro-government social sectors moving with the aim of demonstrating that the 8th March had been a protest manipulated solely by its leaders and financed

by NGOs. In this context, the government fomented its own march, made up of coca growers and some indigenous peoples living in one sector of TIPNIS that has been colonised by coca-producing peasants, all of whom are organised within the Indigenous Council of the South (*Concejo Indígena del Sur/Conisur*). These indigenous families abandoned the indigenous organisations some time ago and renounced collective ownership of the territory. As private owners, they now devote their time to coca growing. The Conisur march set off from Chapare, President Morales' home town and main support base, on 20 December, headed for the seat of government. By the end of the year, the protest was gaining little media coverage as all interest had been lost in its illegitimate and unpopular demand, namely that the government should reconsider its decision to amend Law No. 180 and allow the now notorious highway to pass through the territory as planned.

The political growth of the indigenous movement

The 8th March has resulted in some interesting outcomes for the indigenous movement as it has now become a major player on the political scene given the current lack of opposition from right-wing sectors. The government itself has created an enemy within, and done itself significant strategic damage given that the indigenous peoples are one of the main social sectors from which the government derives its national and international legitimacy. It has been proven that the "Process of Change" will come about neither through Evo Morales nor through the government but through those who demand that they keep to their manifesto and who mobilise in an attempt to deepen the transformations that a restructuring of the Plurinational State requires, demands that the government has temporarily abandoned. The huge social impact that the March has had in the towns, particularly among the young people who used social networking to organise in the town squares along the Santa Cruz-Cochabamba-La Paz route, suggests that a new urban social reference point may be about to emerge, one that will promote a new political agenda.

The perception the lowlands now have of the National Constitution as a unifying agent of this embryonic social movement suggests that the arrival of the Plurinational State to these regions is no longer merely a party slogan but a reality in which the unorganised urban public can be involved.

The dangers of failing to define a clear agenda

There is still, however, no clear programme or agenda with which to coordinate the seeds of this emerging movement. The temporary rift between the government and its natural political ally in the indigenous movement has led to a dangerous *rapprochement* between the indigenous leaders and representatives of the displaced conservative political class which, with no political options currently open to it nationally, has taken up an indigenist and environmental discourse in order to try and gain political influence. Indigenous peoples currently enjoy a very positive image among the vast majority of Bolivians, and they represent the only political player that can cause serious difficulties for Evo Morales. Without a clear proposal, however, there is a risk that more powerful sectors will end up imposing their agenda on the indigenous movement, exploiting the substantial social legitimacy it has achieved. ○

Notes and references

- 1 There are 64 communities living in TIPNIS, represented by the *Subcentral* for the Yuracaré, Tsimané and Mojeño-Trinitario Peoples of the Isiboro Sécuré Indigenous Territory and National Park.
- 2 In other words, intended for cocaine production.
- 3 One of the main reasons behind this conflict is that Brazil is pushing for construction of the highway so that it can create a link to the Pacific through Bolivia, in the context of the IIRSA megaprojects. In addition, the highway will promote the expansion of coca growing, extending the territorial dominion of the coca-growing peasant farmers, the government's main source of support.
- 4 The indigenous peoples of the lowlands have raised their demands through various social protests. The first march was led precisely by the TIPNIS peoples in 1990. A march is the social action of choice for indigenous peoples to raise their visibility within Bolivian society as a distinct social grouping. The 2nd March was in 1996, by which the indigenous peoples achieved approval of the Land Law (INRA). The 3rd March was in 2000, activating the land titling process. The 4th was in 2002, by which the indigenous peoples called for the organisation of a Constituent National Assembly. The 5th was in 2006, to amend the INRA Law, the 6th in 2007, by which they managed to get indigenous autonomy included in the draft Constitution of the Constituent Assembly and the 7th in 2010, to gain visibility for indigenous autonomy.
- 5 Foreign Minister David Choquehuanca also insinuated that some of the people on the March were armed, belonging to sectors of the right, which was absolutely untrue.
- 6 The text of Choquehuanca's statement refers to the fact that he was "forced to march by the protesters".

- 7 The platform contained the following points: No to the highway through TIPNIS. Mitigation of the environmental impacts in Aguaragüe National Park. Consultation with the indigenous organisations on the regulatory development of natural resources and autonomies. Promotion of territorial titling. Inclusion of development policies in the National Plan. Reactivation of public policies on education, communication and health.
- 8 The Bolivian Constitution adopted a mixed judicial form, the first stage of which lies with the Plurinational Legislative Assembly, which pre-selects and establishes lists of candidates, who are then elected by a popular vote. Given the government party's parliamentary majority, the opposition denounced the manipulation of candidate lists and campaigned for votes to be spoiled in these elections.
- 9 One of the main themes of the smear campaign aimed at the 8th March was that it was pursuing political objectives, as well as being a tool of the US Embassy, spurred on and financed by NGOs linked to USAID, among other falsehoods, which led to even greater rejection and disrepute.
- 10 **Órgano Electoral Plurinacional, 2011:** *Resultados oficiales elecciones judiciales y del Tribunal Constitucional Plurinacional 2011:* <http://www.oep.org.bo/Resultados2011>.
- 11 "Evo reclama la pasividad de Cochabamba ante presiones" in *Página Siete*, 29 October 2011: <http://www.paginasiete.bo/2011-10-29/Nacional/Destacados/300000329-10-11-P720111029SAB.aspx>

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BRAZIL¹

There are a total of 654 Indigenous Lands (TIs) in Brazil covering 115,499,953 hectares, or 13.56% of the national territory. Most are found in the Legal Amazon: 417 areas totalling 113,822,141 hectares. The remaining TIs are divided between the north-east, south-east, south and centre-west of the country.

The 2010 census gave a figure of 817,000 people identifying as indigenous, or 0.42% of the total Brazilian population, according to data provided by the Brazilian Institute for Geography and Statistics. In absolute terms, the Brazilian state with the greatest number of indigenous persons is Amazonas, with a population of around 168,000 individuals. In relative terms, the state with the greatest indigenous population is Roraima, where the indigenous peoples represent 11% of the total population.²

In terms of the legal framework affecting Brazil's indigenous peoples, the country has signed the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples.³

2011 was marked yet again by the federal government's failure to comply with international agreements such as ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples and even the 1988 Federal Constitution itself. Clear evidence of this can be seen in the implementation of the Growth Acceleration Plan (PAC), which pushes forward with the construction of hydroelectric power stations on Indigenous Lands (TIs), such as the Belo Monte station, previously approved by the government of Luis Ignacio Lula. Dilma Rousseff's government is turning a blind eye to indigenous issues, and to the international agreements Brazil has signed.

Brazil may be the sixth largest economy in the world, with an established social policy focusing on the poorer sectors of society which forms a key element in the struggle against poverty, but the government has overlooked the most vulner-

able group of people in the whole country: its indigenous population, considering them insignificant in the national context.

This lack of attention to indigenous issues is reflected in Provisional Measure (MP) No. 558 of 5 January 2012, which has the standing of a law until such can be approved by the National Congress. This alters the boundaries of seven conservation units, three national parks, three national forests and one environmental protection area, all with the aim of making the creation of the Jirau and Santo Antonio hydroelectric power stations possible on the Madeira River, along with the Tabajara station in Rondonia and the Tapajós Complex in Pará.

Growth Acceleration Plan – PAC

The PAC started out as a plan for Brazil's development under the government of Luis Inácio Lula da Silva and has been continued as a priority by the current administration. Forty-four per cent of the hydroelectric potential anticipated by the government is to be found on Indigenous Lands. There are 83 hydroelectric plants currently operating in the Amazon, 26 are in the construction phase, and another 184 stations have already been designed, with their entry into force anticipated in the coming years. Of these, 198 are so-called Small Hydroelectric Plants and 12 are large power stations. By 2030, the federal government will need to have built around 247 power stations. These will affect the Xingú, Tapajós, Madeira and Caciaporé river basins and around 300,000 indigenous peoples.⁴

Brazil's electricity is largely produced by hydropower, which represents 85% of all energy produced. There are, however, very few potential sources of hydroelectric energy left. In the Paraná basin, which is the closest to the large centres of consumption (south-east and south of Brazil), more than 70% of the hydroelectric potential is already in use, while the other two regions (San Francisco and Tocantins) are already exploiting almost half of their potential. The only area that is only using around 0.7% of its current estimated potential is the Amazonian region (not including the Tocantins basin),⁵ which is where most of the Indigenous Lands are located.



Effects of the PAC on the Indigenous Lands

- The destruction of 1,522 km² of land is considered necessary for the Belo Monte hydroelectric plant: 516 km² will be flooded and another 1,006 km² will dry up following the permanent diversion of the Volta Grande do

Xingú. The project anticipates activities on the Tocantins, Araguaia, Uatumã, Madeira, Xingú, Tapajós and Trombetas rivers.

- The exploitation of the hydroelectric potential of Mato Grosso through the construction of small power plants and hydroelectric stations – many of them on Indigenous Lands – will cause irreversible damage to the environment and will have a direct and indirect impact on the communities and their territories. One such example is the Juruna River complex, which anticipates the construction of eight small power plants and two hydroelectric stations, directly affecting five ethnic groups living in the north-west of the state: the Enawene-nawe, Nambikwara, Pareci, Myky and Rikbaktsa.⁶
- The impact of the works for the Madeira River Complex on the indigenous peoples living in voluntary isolation will be very serious, particularly for those living in the Serra de Tres Irmãos and Mujica Nava ecological reserves and the Jaci Paraná and Candeias river basins. The main threats are the Urucu-Porto Velho gas pipeline, and the effects of logging and soya production, as well as the construction of the Madeira River power station. The Madeira River–Santo Antonio Hydroelectric Complex will directly affect the Karitiana and Karipuna peoples, who are mobilising to protest at the rise in river levels and the impact on the region's flora and fauna.

ILO Convention 169 establishes the fundamental concepts of the right of indigenous peoples to consultation and participation with regard to projects that may affect them and their right to decide on their own development priorities. The political decisions taken in Brasilia that have led to the construction of hydroelectric ventures on indigenous lands may affect their lives, beliefs, institutions, spiritual values and even their human condition itself.

The pressure on indigenous lands is currently very great and will become even greater. The transmission of the energy produced, access roads and other structures will change the landscape appreciably and will clearly alter the environment of and peoples that live in these territories. At the same time, contagious diseases, prostitution and violence always accompany large dam projects and also threaten the destruction and disappearance of indigenous groups.⁷ Apart from the indigenous peoples, there are also other local people who depend on the rivers. What will become of them? There is no relocation plan, and so thousands of people will have little option but to migrate to the nearest urban centres.

Xingú River

The bitter dispute over construction of the Belo Monte power station has marked the indigenous agenda since 2009. The public hearings held to seek authorisation for the construction of the power station have clearly not been democratically organised, and have thus been unconditionally condemned by civil society and the Attorney-General's Office for failing to meet the minimum requirements for civic participation in a democratic state and rule of law. The National Indian Foundation (Funai) was conspicuous in its absence from all of the debates.

The federal government nonetheless authorised the start of the Belo Monte works, ignoring the recommendations made by the Attorney-General's Office and by the Inter-American Commission on Human Rights (IACHR),⁸ justifying its action by stating that "technically and legally" all 40 of the conditions stipulated in the advance licence had been taken into account by the company, *Norte Energía SA*.⁹ Notwithstanding this, in August 2011, the IACHR itself, which five months previously had granted a precautionary measure calling on the Brazilian government to suspend the venture, sent a letter to President Dilma Rousseff backing down and putting an end to the impasse.¹⁰

In the opinion of the Living Xingú Forever Movement (*Movimiento Xingú Vivo para Siempre*), the company failed to meet the conditions established by Funai prior to the advance licence, as only two of the 26 conditions had been fulfilled, the most important of which was that the inhabitants of the Cachoeira Seca and Ararada Volta Grande Indigenous Lands should not be evicted.

According to Marcelo Salazar,¹¹ "The main problem in the whole process is the lack of reliable and available information for society". He maintains that "the Brazilian Institute for the Environment and Renewable Natural Resources (IBAMA) issued the licence on the basis of information that was primarily provided by *Norte Energía* itself, the company responsible for the venture."¹²

Tapajós River

In the Tapajós River region, the Cachorrão hydroelectric power station covers a significant part of the Mundurucu TI, directly affecting the Sai Cinza TI and possibly the Pontal dos Apiakás TI and uncontacted indigenous groups. The indige-

nous Mundurucu, Apiaká and Kaiabi people are denouncing the lack of consideration and prior consultation.

The flooding of the Mudurucu TI caused by the Teles Pires, San Manuel, Foz do Apiacás, Colíder and Cachorrão power stations will lead to the disappearance of archaeological sites and sacred places such as cemeteries and the Salto de Sete Quedas, where the fish most commonly eaten by the region's indigenous and local peoples spawn. The federal government is trying to speed up the construction of six dams on the Teles Pires River, a tributary of the Tapajós River, given that the overall plan is to establish a total of 16 dams. In addition to these hydroelectric projects, there is also a proposal to include the construction of locks at the same time, in order to turn the Tapajós into a fully navigable river. The territory of the Tapajós hydrographic basin is believed to hold what is currently one of the largest deposits of gold in the world. National and international companies have come together, with the backing of the federal government, to prospect for and mine the potential wealth that is to be found on the Indigenous Lands.¹³

It is thought that the impact will affect more than 10,000 Indian Kaiabi, Mundurucu and Apiaká living along the banks of the region's rivers and who depend on these waters for their survival. The indigenous peoples state that they are being forced to participate in meetings on the Basic Environmental Plan to discuss mitigation and compensation measures for damages the extent of which they are as yet unaware of.¹⁴

Madeira River

The Brazilian government hopes to build four large hydroelectric power stations on the Madeira River. Apart from the loss of biodiversity and impact on the local populations, the dams will also flood Bolivian territory.

There is evidence and reports of different indigenous peoples living in isolation in the following areas of Rondonia State: the headwaters of the Formoso River; Candeias River; Karipuninha River; Jaci-Paraná River; Jacundá River; the headwaters of the Marmelo and Maicizinho rivers; Novo River and the Pacaas Novas River falls; Rebio Jaru and Serra Tanarú. There are records of uncontacted people such as the Jurureí less than 5 km from the anticipated route of the asphalt BR 429 road, and reports within Funai of no less than five groups of uncontacted Indians in the area of influence of the Santo Antonio hydroelectric

power station on the Madeira River. The Massaco TI, also inhabited by indigenous peoples in isolation is, at the same time, under threat of invasion and suffering serious land conflicts.

South American Regional Infrastructure Integration Initiative (IIRSA)¹⁵

The South American countries are joining forces around the idea of implementing a set of large infrastructure works in all of the region's countries with the aim of ensuring the exploitation of their natural resources and the free circulation of timber, minerals, fish and water. In terms of energy resources, this involves hydroelectric power stations, transmission lines, ports, airports, roads, waterways, bridges, gas pipelines, railways, border crossings and communications systems (Internet, digital TV, telephony and others). The aim is to make natural resource exploitation and exportation to other countries possible in the shortest possible time and at a price that makes them attractive on the international market. For this to be viable, however, natural obstacles must be overcome by creating roads and tunnels, building and/or extending railways, ports, airports and bridges, and transforming rivers into waterways.

In addition, for this project to go ahead, various obstacles such as the indigenous lands, national parks, extractive reserves and other protected areas will need to be crossed. In order to ensure that all the works anticipated by the IIRSA and the PAC are implemented, governments and their allies are riding roughshod over environmental legislation, human rights and the international agreements that the countries have signed.

Some of the main environmental impacts of the IIRSA and the PAC

- The flooding of small and large areas, which will cause irreversible damage to flora and fauna.
- The declining water flow will create serious problems for human consumption and also navigation.
- The violation of cultural rights: communities that have cultural and spiritual links with the territory will be forced to leave the area.

- The large projects will cause significant in-migration, leading to prostitution, violence, a lack of respect for the local population, alcoholism, contagious diseases and so on.

Gold and precious mineral exploitation in the Amazon

The main rivers and tributaries of the Amazon basin are being affected by mining and deforestation. There are now more than 5,064 mining ventures being undertaken by 400 companies¹⁶ and affecting 125 TIs in the Brazilian Amazon.

This region is full of small deposits of gold, diamonds, amethysts, emeralds, opals, tourmaline and cassiterite, all being legally and illegally mined. These deposits are currently to be found in all of the Amazonian states, with the exception of Acre. The most easily accessible ones are in the south of Pará, Tapajós region, Carajás (Serra Pelada) and Tucumã-Redenção-Cumarú; some still exist in Gurupi, on the border between Pará and Maranhão; Lourenço/Jari in Amapá; Parauari-Amana and Juma River (the largest gold reserve found in recent years, taking the new Serra Pelada into account) in Amazonas; Baixada Cuiabana, Peixoto de Azevedo, Alta Floresta, Guaporé and Nova Xavantina in Mato Grosso; Parima, Santa Rosa, Quino, Maú in Roraima; and Madeira River in Rondonia. Some of these mines may be inactive for short periods of time, or closed due to territorial or environmental disputes, but they are nonetheless areas with potential for small-scale mining activity.

The conflict with the indigenous peoples grew worse in 2004 in the TIs of Cinta Larga, Rondonia and Mato Grosso states where tensions led to the deaths of 29 *gambusinos* (artisanal miners) on the reserve. The situation has been the same in the TIs of the Yanomami, which were invaded by around 40,000 *gambusinos* in search of diamonds and gold, many with the support of government bodies. More than 1,000 indigenous people died through direct conflict with the *gambusinos* or because of diseases carried by them. In 2008, Brazilian mineral production totalled 30 billion dollars, an increase of 11% on 2007, before taking oil and gas into consideration. The actual amount of minerals and iron produced increased by more than 6%. If we take the total mining industry into account, the value of mineral production totalled 89.41 billion dollars, 13% more than in 2007.

Social and environmental factors involved in mining

- Contamination of the waters, rivers, marshes, air and soil. Loss of local wildlife.
- Deforestation, loss of biodiversity and soil erosion. Migration and the opening of roads.
- Cultural clashes with the local population.
- Drastic changes in the local population's customs due to intensive migration.
- Increase in contagious diseases, alcoholism and prostitution.

Gas

One large federal government project is the construction of a gas pipeline linking Urucu with Porto Velho, in Rondonia, to supply natural gas to the Porto Velho power station and the power plants in Amazonas (in towns along the route of the gas pipeline) and Acre states. In all, this gas pipeline would run approximately 520 km from the municipalities of Coari, Tapauá and Canutama in Amazonas to Porto Velho in Rondonia, crossing the Madeira, Açuá, Purus, Coari and Itanhauá rivers, the Trufari stream and the Curá-Curá canal.

A number of different indigenous communities will be affected: Rimã, Deni, Zuruaha, Juma and some uncontacted groups, most of them living in the region known as Medio Río Purús. According to the Organisation of Indigenous Peoples of Medio Río Purus –OPIMP– this region covers 22 Indigenous Lands and ten ethnic groups, representing a population of around 4,000 individuals and seven villages.¹⁷

Conclusion

The unofficial visit to Brazil of the UN Special Rapporteur on the rights of indigenous peoples, James Anaya,¹⁸ at the invitation of the federal government, with the aim of explaining that the government has a duty to consult the peoples directly affected by construction of the Belo Monte power station in Para and the

numerous works involved in the PAC in the Amazon Region, shows that Brazil is ignoring the agreements. In this regard, it should be noted that the Brazilian government initially worked in good faith to overcome its failure to comply with ILO Convention 169 and thus decided to invite specialists so that it could find out more about an agreement that it did not fully understand.

In actual fact, the UN official explained that Brazil could not use ignorance as an excuse and thus had to be considered as acting in bad faith, which is what is happening at this precise moment. Nothing is going to change in favour of the country's indigenous peoples, regardless of whether international agreements or the 1988 Constitution itself are followed or not, because "progress through development", in its most virulent form possible, is now the mantra. ○

Notes and references

- 1 This article will focus solely on the development projects that are affecting the TIs. Various indigenous movements emerged in 2011 but, given the seriousness of government plans affecting indigenous populations, we feel it of most importance to focus on this particular issue.
- 2 http://www.vermelho.org.br/noticia.php?id_noticia=153663&id_secao=1
- 3 Sources from the Socio-environmental Institute: www.socioambiental.com
- 4 See www.socioambiental.org.
- 5 **Carneiro Filho e Braga de Souza, 2009:** "Atlas de Pressões e Ameaças às Terras Indígenas na Amazônia Brasileira." ISA, 2009. p.18
- 6 See www.cimi.org.br
- 7 **Carneiro Filho e Braga de Souza, 2009:** op.cit.
- 8 The document signed by the International Federation for Human Rights (FIDH) and 14 organisations from five American countries condemned the Brazilian position and stated its serious concern at the Brazilian state's lack of respect for the IACHR's protection procedures and mechanisms in the case of precautionary measures: "The Brazilian state's attitude, the pressure being exerted with the apparent intention of undermining the precautionary measures process and the lack of will to enter into a dialogue with the beneficiaries (the communities affected by Belo Monte) are setting a dangerous precedent for the protection of human rights".
- 9 www.socioambiental.org
- 10 <http://www.advivo.com.br/blog/luisnassif/belo-monte-e-a-oea>
- 11 Lawyer from the Socio-environmental Institute - ISA
- 12 Notícias 02/06/2011. www.socioambiental.org
- 13 <http://www.ihu.unisinos.br/noticias/30679-terras-indigenas-ameacadas-na-regiao-do-tapajos>
- 14 www.socioambiental.org/noticias
- 15 **Leroy, P. & Melerba J., 2011:** IIRSA, Energía y Minería. FASE, 2011. The paragraph given is based on this publication.
- 16 www.socioambiental.org
- 17 <http://faor.org.br/?p=leArquivo&chave=a1b5c035a639f71c118637c5917d151c>

- 18 The workshop was held on 9 September 2011. For more information:
<http://unsr.jamesanaya.org/esp/notes/profesor-anaya-participa-en-taller-sobre-consulta-organizado-por-la-fundacion-nacional-del-indio-funai-en-brasilia>

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PARAGUAY

Paraguay's indigenous population numbers an estimated 108,803 people, living for the most part in 603 communities. They represent around 2% of the Paraguayan population. There are 20 recorded indigenous peoples, belonging to 5 different linguistic families: the Guaraní (Aché, Avá Guaraní, Mbya, Pai Tavytera, Guaraní Ñandeva, Guaraní Occidental); the Lengua Maskoy (Toba Maskoy, Enlhet Norte, Enxet Sur, Sanapaná, Toba, Angaité, Guaná); the Mataco Mataguayo (Nivaclé, Maká, Manjui); the Zamuco (Ayoreo, Yvytoso, Tomáraho); and the Guaicurú (Toba Qom).¹

The indigenous peoples of Paraguay suffer from degrading living conditions. The extreme poverty in which they live is a unifying feature of their lives. One of the main reasons for this poverty is a lack of their own land, which jeopardises their access to the natural resources they need to survive, makes it impossible for them to implement development projects and is leading to a gradual loss of their culture. This lack of land is also contributing to their deteriorating rights in other economic, social and cultural spheres. All of the above, added to a lack of public policies and the ineffectiveness of those public policies there are, contributes to high mortality rates and high levels of indigenous migration to the cities.

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

The 200th anniversary of Paraguay's independence began with important progress in budgetary terms, with sufficient resources being allocated to resolving the land claims of two out of the three indigenous communities that have obtained favourable rulings from the Inter-American Court of Human Rights: Yakyé Axa in 2005 and Sawhoyamaxa in 2006.



The rest of the year, however, was marked by the apathy and inability of the Inter-institutional Commission responsible for Implementing International Rulings (CICSI),² which failed to make the most of a unique opportunity to apply these rulings. The state body responsible for indigenist policy, the Paraguayan Indigenous Institute (INDI), limited itself to peripheral actions of assistance and containment despite a worrying backdrop, given that the worst poverty is found in rural areas, where 71% of indigenous peoples live (DGEEC, 2002). This situation is exacerbated by the fact that, according to the General Department for Statistics, Surveys and Census (DGEEC), there are now 135 communities with recorded third-party conflicts over their lands due to wrongful appropriation; 37.5% of these

conflicts are with agribusiness or cattle ranchers and 31.9% with peasant farmers (DGEEC, 2005).

Indigenous lands being taken over

Article 64 of the Paraguayan Constitution establishes that indigenous communal lands are inalienable. And yet both in the Chaco and in Oriental Region, large tracts of indigenous territory are now being used by cattle ranch owners and soya plantation owners³ with the “consent” of the local communities. This consent is clearly mediated by the people’s serious state of need. It is even more alarming given that the Gini coefficient for rural land distribution was at almost perfect inequality in the 1990s, at 0.93 (World Bank, 2007)⁴ and that, according to the DGEEC, a decade later only a little over half, or 54.3%, of the 412 communities covered by the census and recognised in 2002, now have land (DGEEC, 2004).

In the short term, land leasing involves a loss of the communities’ autonomy over that land; in the medium term, it leads to degradation of the land through the use of agrotoxins, alongside increased deforestation. The land gradually becomes desertified and thus not only is the peoples’ means of subsistence lost but also the traditions and knowledge that form a part of their culture. In the long term, the land becomes uninhabitable and the people end up migrating – in the best-case scenario to other communities, in the worst to the cities.

Itakyry: state enslavement and inaction

The violations noted in Itakyry, Alto Paraná department, in the Oriental region of Paraguay, have involved a large number of communities belonging to the Avá Guaraní people, along with some belonging to the Mby’a Guaraní.

The Carrería’í community, located in Itakyry district, is a case in point. Comprising some 93 families, this community’s 576 hectares of land are being occupied by an individual of Brazilian origin, Remilson Maia de Souza, who – under the guise of a clearly illegal court order – has taken control of them. On 25 September 2011, the National Police intervened,⁵ by virtue of a court order issued by the 5th Circuit Judge of the Civil and Commercial Court of the First Instance of the Alto Paraná judicial district, Carlos Balmaceda. However, this was not to return

the indigenous people's property to them but to protect Mr Maia de Souza during the sowing of his soya crop.

This event was not an isolated one given that a mission report presented to the Technical Unit of the Social Cabinet of the Presidency of the Republic by Mr Gregorio Centurión⁶ states that, in addition to Carreria'í, Mr Maia de Souza has also "rented" lands in other indigenous communities.⁷ In all, he now controls a total of 2,480 hectares belonging to the Ava Guaraní people.

The impunity that these "businessmen" enjoy can only be achieved through the existence of highly corrupt institutions,⁸ the acquiescence of the courts, which end up becoming the mere tools of private interests, and the desperate living conditions suffered by the indigenous communities, which are so cleverly exploited.⁹

Paraguayan state "a fugitive from justice"

The judgments of the Inter-American Court of Human Rights that were passed in the cases of Yakye Axa and Sawhoyamaxa continued to be unenforced in 2011 in relation to their main objective: territorial restitution. On 21 November, during a judgment compliance monitoring session at its headquarters in San José de Costa Rica, the Court reproached the Paraguayan state for failing to comply with the rulings, comparing the act of depriving the communities of their lands to a massacre and branding the state "a fugitive from justice".

At the start of the year, a real possibility emerged to reach a definitive solution in the Sawhoyamaxa case when the agent acting for the Kansol S.A. and Roswell & Cia. S.A. companies abandoned its previous intransigent position and agreed to negotiate the lands claimed, offering to sell the plots directly to the state.¹⁰ Inexplicably, the state showed such a lack of interest that it was not until seven months later that it tried to reach an agreement with the landowning company to begin the slow and bureaucratic process which, in the end, was not completed in 2011.

As for the Yakye Axa case, the community has agreed in principle to be relocated to lands other than those claimed. This seems to be the only possible alternative given that the state has done little other than prove the weakness of its land recovery system, which relies on the goodwill of individuals and the political and individual interests of the legislature.¹¹

Following the above stated hearing, however, in December, INDI commenced procedures aimed at ensuring that the necessary funds would be allocated for land purchases to be undertaken in 2012.

Encouraging progress for Kelyenmagategma

The Kelyenmagategma community in Presidente Hayes department of the Chaco region has, in previous years, been the victim of at least two forced displacements and innumerable attacks resulting in the deaths of its members.¹² Despite this, the community has held out and, this year, was able to be relocated to adjacent lands that had already been secured and which, the Paraguayan state undertook on 3 August 2011, in the presence of the President of the Inter-American Commission on Human Rights, Dina Shelton, to transfer to them.

At the start of December, the state and the community signed an “agreement to seek common ground”, on terms agreed between the parties, by which minimum living conditions would be guaranteed for the resettlement of the 52 member families.

Harassments against the Ayoreo people

In September, the invasion of the Ijnapui community’s land, in Boquerón department, Chaco, by employees of the Parsipanny company, was denounced. Under cover of the Attorney-General’s Office, they entered the indigenous property and took it over, erecting gates across a public road and restricting free passage. This action was clearly a serious infringement of the Ayoreo community’s rights, and was roundly denounced by the Iniciativa Amotocodie organisation.¹³

In addition to this, the investigation previously commenced against the Iniciativa Amotocodie (see *The Indigenous World 2011*) continued throughout 2011, the organisation being subjected to this process without any explanation from the Attorney-General’s Office, and without all the documents and instruments taken during the unlawful raid of 2010 even being returned.

The Yvyraijá and other cases

This year, the arrest was announced of one of the people accused of committing the triple murder of indigenous Paĩ Tavyterä in 2010, in the Yvy Ya'ú district of Concepción department, Oriental region. The arrest of David Javier Figueredo Rodríguez,¹⁴ thought to be a member of the unlawful association previously led by Jarvis Chimenes Pavao, now serving a prison sentence for drugs trafficking, offers the possibility of seeing justice done in this case, the details of which were described in last year's report (*The Indigenous World 2011*).

This was not an isolated or unusual event, however; over the course of the year the press noted at least five cases of violence and death involving members of indigenous communities, all in the country's Oriental region. The link between these deaths and the paid assassins hired by the drugs traffickers operating in the country's border regions is becoming increasingly clear. Almost at the end of the year, an indigenous community in the Bella Vista area of Concepción department was terrorised when a light aircraft crashed carrying an extremely large sum of what turned out to be drugs money. The drugs traffickers converged on the community, threatening inhabitants in the search for the lost money and accusing them of hiding it, even killing one member and seriously wounding another. These events have not been elucidated by the relevant authorities.

Human trafficking and smuggling

In Paraguay "*criadazgo*" is an ongoing practice in which young girls are taken, supposedly to be brought up and educated by other families but actually to be sent into unpaid domestic labour. Such was the case last year of two girls from the Guaraní Ñandeva people, from a community in Teniente Enciso, Boquerón department, who were taken across the Argentine border and virtually sold to a brothel. Finally, after many months, they were found and returned home.

Along the same lines, the lack of access to lands of sufficient quality and quantity, against the backdrop of the state's failure to guarantee their rights, forces indigenous peoples to migrate to urban areas where they end up living on the streets. This situation is worse for indigenous boys and girls, and Ciudad del Este, in Alto Paraná department, is where the greatest number of cases of prostitution

and drug addiction are being reported, without any intervention from the government whatsoever.¹⁵

Protection reaches the elderly indigenous population

An interesting and participatory informational and prior consultation process on the content of the implementing regulations for the Law on food pensions¹⁶ was conducted among indigenous peoples by the Ministry of Finances last year.¹⁷ The decree subsequently adopted by the government in this regard¹⁸ took the indigenous viewpoint into consideration, along with specific features necessary for implementing this process in the communities.

This shows that it is possible to hold a serious consultation, in accordance with current standards in this regard, although it is not state practice to do so. In addition, it is important to note the government's express recognition of the indigenous authorities in the decree, reflected in the fact that they are allocated the task of certifying the data required from the beneficiaries, a task specifically undertaken by other formal state bodies for non-indigenous people.

Indigenous peoples and the Bicentenary

On the occasion of the bicentenary of the Republic of Paraguay's independence, various indigenous organisations exercised their right to demonstrate publicly and demand responses to their historic demands. One such action was promoted by MCOI-PY (the Coordinating Body of Indigenous Organisations of Paraguay).¹⁹ Over the space of two weeks, it camped in the centre of the capital to raise awareness of its agenda among the general public and the three branches of state power. The first of its demands was a call for unrestricted compliance with the sentences imposed on Paraguay by the Inter-American Court of Human Rights, along with the resolution of at least 27 unsatisfied land claims cases.²⁰ In addition, a programme of support for indigenous settlements was proposed on the basis of the Good Living principle, which refers to the development of sector policies based on indigenous philosophy, knowledge, traditions and customs.

This mobilisation once again placed the issue of indigenous participation in issues that affect them on the state agenda. Although there has still been no ad-

equate response, participation has also been demanded by other indigenous organisations such as FAPI (the Federation of Indigenous Peoples), which is promoting the adoption of a plan of action²¹ that should be observed when the government is required to ensure free, prior and informed consultation. ○

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Notes

- 1 The indigenous household survey EHI 2008 - see: <http://www.dgeec.gov.py> of the Department for Statistics, Surveys and Census (DGEEC) 2008.
- 2 Commission created by Decree 1595 of 26 February 2009, made up of government Ministers and Secretaries.
- 3 According to the agricultural and livestock census of 2008, of the farms surveyed at national level, 54% are used for pasture and 10% for crops, this distribution obviously varying by region.
- 4 According to this same report "2% of agricultural farms (around 6,400 farms) occupy 82% of the land used for agriculture and livestock farming, or half of Paraguay's total area of 40 million hectares" (World Bank, 2007).
- 5 Cf. <http://www.ultimahora.com/notas/466926-Cuatro-indigenas-quedan-heridos-en-un-enfrentamiento-con-policias-en-Itakyry>
- 6 Cf. Case of the Comunidad Carreria'í of the Avá Guaraní people, Gregorio Gómez Centurión, 30 September 2011 Itakyry, Tierraviva archives.
- 7 Ka'aguy Yvate, 202 hectares and 24 families; Carreria'í 1 and Carreria'í 2, 576 hectares and 93 families; Urukú Poty, 360 hectares and 20 families; Ka'aguy Poty 1 and Ka'aguy Poty 2, 1,900 hectares and 40 families; Mariscal López, 312 hectares and 60 families.
- 8 It should be recalled that Paraguay comes an embarrassing 2nd place on the list of the world's most corrupt countries, the unmistakable legacy of the Stroessner model in a country that is only now demolishing the complex structures of the dictator's party (Colorado or ANR) which, until three years ago, was still in power.
- 9 To give you an idea, an indigenous worker earns on average around Gs. 800,000 (DGEEC, EPHI 2008), a little more than what, in the national-level household survey, an unskilled worker would

- earn in urban areas and much less than an agricultural/livestock worker or fisheries worker would earn in rural areas (DGEEC, EPH 2008). This income “does not cover a third of the basic food shopping basket” (UNICEF, 2011)
- 10 Cf. Note of 25 February 2011 presented by the Kansol S.A. and Roswell S.A., companies, case no. 1353 of the Attorney-General’s Office.
 - 11 The Inter-American Court, as indicated in previous reports, has ordered Paraguay to reform its legal system in order to provide those communities in question with a suitable process for claiming their lands in accordance with the state’s obligation to provide citizens within its jurisdiction with effective recourse, considering in addition the current legal framework for indigenous rights.
 - 12 The most serious crimes against this community took place in 2003. In its long struggle for land, bearing in mind the isolation to which this community is subject, 61 deaths occurred, most of them children, from preventable diseases.
 - 13 <http://www.iniciativa-amotocodie.org/2011/09/se-produjo-violacion-de-derechos-en-la-comunidad-de-ijnapai/>
 - 14 <http://www.abc.com.py/nota/detienen-a-capanga-de-jarvis-pavao-en-yby-yau/>
 - 15 <http://www.abc.com.py/nota/indiferencia-de-las-autoridades-ninas-indigenas-prostitucion-de-ninas-indigenas/>
 - 16 Law 3728/2009 which establishes the right to a food pension for elderly people living in poverty.
 - 17 <http://ns1.hacienda.gov.py/web-hacienda/index.php?c=96&n=3849>
 - 18 Decree No. 6813/2011 and its amendment, Decree No. 7096/2011, issued by the Executive.
 - 19 This comprises the *Federación de Asociaciones del Pueblo Guaraní*, the *Organización Nacional de Aborígenes del Paraguay* (ONAI) and the *Coordinadora de Líderes Indígenas del Bajo Chaco* (CLIBCh).
 - 20 <http://www.abc.com.py/nota/el-estado-no-resuelve-27-casos-de-tierra-reclamada-por-los-indigenas/>
 - 21 <http://www.forestpeoples.org/sites/fpp/files/publication/2011/05/fapi-protocols-fpic.pdf>

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ARGENTINA

Argentina is a federal state comprising 23 provinces with a total population of almost 40 million. The results of the Additional Survey on Indigenous Populations, published by the National Institute for Statistics and Census, gives a total of 600,329 people who recognise themselves as descending from or belonging to an indigenous people.¹ The indigenous organisations do not believe this to be a credible number, however, for various reasons: because the methodology used in the survey was inadequate, because a large number of indigenous people live in urban areas where the survey could not be fully conducted and because there are still many people in the country who hide their indigenous identity for fear of discrimination. It should also be noted that, when the survey was designed in 2001, it was based on the existence of 18 different peoples in the country whereas now there are more than 31. This shows that there has been a notable increase in awareness amongst indigenous people in terms of their ethnic belonging.

Legally, the indigenous peoples have specific constitutional rights at federal level and also in a number of provincial states. ILO Convention 169 and other universal human rights instruments such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are also in force, with constitutional status. Argentina voted in favour of the adoption of the UN Declaration of the Rights of Indigenous Peoples in 2007.

Cristina Fernández de Kirchner commenced her second term in office as the President of Argentina in 2011. Apart from a number of social programmes aimed at the whole population, indigenous demands did not appear in her political manifesto.

Over the two last years, Argentina has experienced significant economic growth linked to agricultural exports, primarily soya. From an indigenous point of view, however, little has changed. On the contrary, the persistent call for high-tech development and “development with value added” in rural areas, at any price,

along with the constant concessions being granted to hydrocarbon and mining companies for the exploitation of non-renewable natural resources, is dangerously competing with indigenous peoples' territorial demands. And the situation is becoming worse because of the state's lack of political will to resolve the conflicts and the local governments' systematic refusal to recognise these demands.

Extractive industries and indigenous rights

The current government has made mining a priority issue. The Canadian company, Barrick Gold, plans to extract 14 million ounces of gold over 14 years from the Pascua Lama mine on the border between Chile and Argentina. As open-cast mining uses vast quantities of water, this will be drawn from the melting glaciers in the area, running the risk of contaminating the rivers and underground aquifers. Faced with this situation, the Congress of the Republic approved the so-called "Glaciers Law" prohibiting mining in the area but this law was vetoed by the government and then, finally, promulgated with some amendments. The law has still not been implemented, however, because the company and the Provincial Governor of San Juan appealed to the courts in this regard. In the south of the country, in Río Negro Province, popular dissent forced the previous government to pass a law banning open-cast mining but, in January 2012, the new governor, from the same political party as the president, overturned the decision and subsequently authorised such mining.

There are more than 1,000 exploration permits in Chubut Province, despite Provincial Law 5001 which bans open-cast mining and the use of cyanide. A symbolic case in this regard is the "*Proyecto Navidad*". This is a mining project being implemented on the Chubut Plateau by the provincial government and the Canadian company, Aquiline Resources. Silver and lead deposits are found here, the latter being one of the most harmful metals to health and the environment. Various local communities and social organisations have denounced the fact that the company and the government have violated their ancestral rights to community possession and ownership of the lands and to consultation and participation. The company entered the indigenous territory and desecrated a 12,00-year-old aboriginal cemetery located right in the very heart of the future mining zone. In their complaint, the communities state that they are concerned at the massive quantities of water being used in this venture and the damage that has been done for the past 15 years to sheep and goat rearing, the main activity of the region's inhabitants.



The communities of Motoco Cárdenas, Cayún (Lago Puelo), Pulgar-Huentuquidél and Quilodrán (El Hoyo), in Chubut, asked last year to be involved in producing the implementing regulations for the National Law on Native Forest Minimum Budgets but their request was ignored so they brought a legal complaint against the province, demanding that the law be overturned. They obtained the precautionary suspension of

the law for 90 days but the Esquel Appeals Court lifted the measure. The communities managed to get the Ministry for the Environment summoned to court. The dispute continues its course and a decision is awaited regarding whether it will continue through the provincial courts or pass to the federal jurisdiction.

Dead-letter laws

There was a constant failure to respect the National Constitution during 2011, along with the international treaties (such as ILO Convention 169, the UN Declaration, the Biodiversity Convention, etc.) signed by Argentina.

Emergency Law 26160 on Indigenous Community Ownership, approved in 2006 and extended to 2013, suspends evictions from the ancestral territories and requires surveys of these to be conducted but, in practice, it has been ignored as dozens of communities have been evicted and surveys have been conducted in very few provinces due to the provincial governments' opposition and the national government's apathy.

Only 48 of the 1,200 communities registered by the National Institute for Indigenous Affairs, INAI, have managed to get this body to pass the corresponding administrative resolution recognising the territorial survey once conducted.

Throughout the country, calls for rights to be respected are answered with court cases and repressive action. According to a report on the "*Human rights situation of the Mapuche people of Neuquén*" published by the Indigenous Rights Observatory of that province, there are currently more than 250 community members being prosecuted through the courts. The slow progress made in complaints and lawsuits instituted by the communities in response to these actions is in stark contrast to the rapid conclusion of cases brought by other parties. This, along with judicial irregularities – which have given rise to requests for impeachment and complaints regarding the lack of impartiality of the judges – means, in practice, that the right to legal protection is being violated.

There have been particularly few rulings with regard to the right to consultation and participation and to self-determination. In Neuquén Province, one of the few judgments passed by the court of first instance on 16 February 2011, recognising the Wenctru Trawel Leufú community's right to consultation, was not only appealed by the *Petrolera Piedra del Águila* company but also led to an appeal

from the District Attorney's Office to the effect that the company's failure to consult was in full accordance with the law.

Obstacles to territorial ownership

Law 26160 does not establish a procedure for demarcating territories or granting property titles and so the situation with regard to the encroachment of third parties, and even the state itself, onto the territories continues to be insecure, even in cases where communities have obtained legal recognition. To counter this lack of legal security, the communities are forced, as a last resort, to consider whatever direct action possible in order to gain the authorities' attention. The Mbya Guaraní community of Alecrin, in Misiones Province, has a ministerial resolution recognising its territory but, despite this, in February 2012, around 80 men – supposedly peasant farmers – entered its territory in vehicles with the aim of settling on the land. The community's authorities denounced this intrusion to the courts but none of the men withdrew until a group of authorities and members from various communities protested by erecting a road blockade, thus forcing the provincial authorities to intervene.

This is the case of just one community which, despite having a resolution from the national state recognising its surveyed territory, is being threatened by third parties who are able to invade with impunity. It was only the defensive action of the Guaraní people, taking the law into their own hands, that managed to halt the illegal encroachment of supposed peasant farmers, because Law 26160 establishes no mechanisms for resolving the conflicts that may arise between communities and third parties, or with the state itself. The situation that occurred in 2010 in *Potae Napocna Navogoh* (La Primavera) community in Formosa is a case in point. This community is calling on the provincial authorities and National Parks Administration to recognise its ancestral territory. To raise awareness of its demand, the community set up camps and road blocks in 2010 but these were met with brutal police repression, resulting in the deaths of one community member and one police officer.

Another emblematic example of the lack of access to land ownership is the case of the Lhaka Honhat Association of Aboriginal Communities, which has been claiming a single title for more than 47 communities for over 28 years. Despite being one of the first indigenous organisations to denounce the violation of their territorial rights to the Inter-American Commission on Human Rights, these communities have still not obtained the title to their property after 13 years of liti-

gation. Their ancestral territory is registered as Fiscal Plots 55 and 14. The slow procedure within the Inter-American system, linked to the lack of any will on the part of the national or Salta provincial authorities to deal with the claim and resolve the conflict the communities are suffering with the non-indigenous livestock farmers settled on their land, has led to increased environmental deterioration and rising violence between the two communities. In 2011, two indigenous youths were beaten to death and a young girl was raped. The authorities have done nothing to put a stop to the wire fences being erected by the non-indigenous settlers in an attempt to demonstrate that they own the enclosed lands and nor has there been any action to prevent the illegal felling of trees, which leaves the communities without vital resources for their sustenance and their development.

The law has not prevented evictions which, paradoxically, are occurring in the very presence of the judges who are supposed to respect and ensure respect for the provisions of Law 26160. In Neuquén Province, the eviction of Currumil community was recently confirmed by the Provincial Higher Court of Justice. The same judge has also ordered other evictions, and these are often accompanied by violent repression, as was the case in Currumil and in Puel community.

During 2009, 40 families from the Indian community of Quilmes in Colalao del Valle (Tucumán Province) were twice violently evicted on the orders of the Justice of the Peace and with the authorisation of the civil court judge. Appeals were immediately lodged with the Provincial Supreme Court but, in April 2011, a further violent eviction took place, with the police using tear gas and rubber bullets. In August, the community managed to obtain a precautionary measure to prevent further eviction attempts and, in retaliation, the state institutions revived the criminal cases against community members.

The law is not being upheld, the justice system is ineffective and, meanwhile, commercial undertakings of all kinds are encroaching onto the indigenous territories. The most common are tourism companies, agribusiness, hydrocarbon and mining projects. A luxury hotel was built in Tucumán Province on the site of the sacred city venerated by the Indian community of Quilmes; in Salta Province, communities have been displaced by land clearances that are seeking to extend the agricultural frontier for soya plantations; La Chirola community, which some decades ago had thousand of hectares under traditional use, now finds itself trapped on 11 hectares; the Tecpetrol and Petrobras companies, which received a concession of 6,555 km for oil exploration, are causing serious harm to and displacement of people from the communities of Embarcación municipality.

Disregard for autonomy and organisation

Many of these crimes occur through a failure to respect the indigenous autonomies and their leadership, which continue to be excluded from the political system.

In October 2011, INAI invited representatives of the Indigenous Participation Council (*Consejo de Participación Indígena*) to discuss the draft bill of law on the Instrumentation of Community Ownership, which was to be sent to the Congress of the Nation for its consideration. The indigenous peoples tried to make use of their right to consultation on issues that affect them in order to propose amendments but their requests for substantive changes were not accepted; in the end, the draft was sent without major amendment and it has not, to date, been considered by Congress.

This is a clear example of the way in which the indigenous authorities are politically excluded: INAI formalised this internal council of representatives without giving it sufficient power to influence government decisions on indigenous affairs. It is the government officials themselves who propose, design and decide, according to their own criteria, without respect for autonomy or self-determination, as can be seen from the case of the *Potae Napocna Navogoh* (La Primavera) community which, in June 2008, chose Mr. Félix Díaz as its leader, according to its own mechanisms. Formosa Province subsequently nullified the community's assembly, thus preventing the elected leader from exercising his right. In June 2011, and in the context of negotiations following an election via secret ballot (imposed by the province), the community again chose Mr. Díaz, registering his legal status with INAI. The province, however, continued not to recognise him, with the sole argument that it had not been "informed" of this situation by INAI.

Reports and recommendations of international bodies

In November 2011, the UN Special Rapporteur on the rights of indigenous peoples, James Anaya, visited Argentina at the request of the indigenous organisations because of the rights violations they were suffering and the Argentine state's growing failure to respond to their demands. His visit included the provinces of Neuquén, Río Negro, Salta, Jujuy and Formosa, which is where most of the violations are taking place. At a press conference in Buenos Aires, he expressed his concern at the Argentine state's policy on the extractive industry and the lack of

protection afforded to the ancestral rights of native peoples.² At the same time, the UN Committee on Economic, Social and Cultural Rights was also questioning the Argentine state with regard to the evictions of and violence against indigenous communities. This committee denounced the violation of the National Constitution, the encroachment of mining ventures onto indigenous territories, the clearing of land, the GM soya and the use of agrottoxins on indigenous territories. In a highly-critical document, several pages long, the committee urged the Argentine state to reverse these policies as a matter of urgency.³

Key laws unexpectedly approved

At the end of the year, the Congress of the Nation approved two legal initiatives that were placed before it by the executive. The Land Law supposedly limits foreign ownership of fertile lands to 1,000 hectares although it says nothing about the stockpiling and use of land by Argentinians or foreigners that has taken place in recent decades, to the detriment of the indigenous peoples. It also says nothing with regard to indigenous lands and freezes the current and future situation by legalising the fraudulent evictions and appropriations of indigenous communal territories.

The so-called Anti-terrorist Law, approved without public knowledge of its text or its intentions, caused quite some surprise as there are no terrorist activities in Argentina. It has been approved under pressure from the Financial Action Task Force (FATF), which states that this is a condition for “considering Argentina a safe destination for Direct Foreign Investment.”

The Criminal Code was amended to this end in order to enable the “rule of Law to repress attempted acts of terrorism or those who fund them”, and “includes a new aggravating factor for any crime committed with the aim of creating terror among the population or of forcing the government to refrain from taking any particular decision” (...)

Although some legislators tried to explain that this law did not apply to social protests, the human rights organisations and social organisations, which denounced the law, believe it will mean a greater threat of criminal prosecution for people struggling for their rights, creating the conditions for a criminalisation of their protest (...). ○

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- 1 **Instituto Nacional de Estadística y Censos (INDEC), 2004:** *Resultados de la Encuesta Complementaria de Pueblos Indígenas*—ECPI— surveyed in 2004.
http://www.indec.mecon.ar/webcenso/ECPI/index_ecpi.asp
- 2 **James Anaya, 7 December 2011:** “Declaración a los medios del Relator Especial de las Naciones Unidas sobre los derechos de los pueblos indígenas al concluir su visita a Argentina” At: <http://unsr.jamesanaya.org/esp/declaraciones/declaracion-a-los-medios-del-relator-especial-de-las-naciones-unidas-sobre-los-derechos-de-los-pueblos-indigenas-al-concluir-su-visita-a-argentina>
- 3 In: Informe sobre la Situación de los Pueblos Indígenas en Argentina: La agenda pendiente. Para el Relator Especial de Naciones Unidas, James Anaya, December 2011. Centro de Estudios Legales y Sociales (CELS), Observatorio de Derechos Humanos de los Pueblos Indígenas (ODHPI), Servicio de Paz y Justicia (SERPAJ), Centro de Políticas Públicas para el Socialismo (CEPPAS), Grupo de Apoyo Jurídico para el Acceso a la Tierra (GAJAT), Abogados y Abogadas del Noroeste Argentino en Derechos Humanos y Estudios Sociales (ANDHES), Equipo Patagónico de Abogados y Abogadas en Derechos Humanos y Estudios Sociales (EPHADES), Secretaría con relación de Pueblos Originarios de la CTA, Equipo Nacional de Pastoral Aborígen (ENDEPA), Movimiento de Profesionales para los Pueblos (MPP), Organización de Comunidades de Pueblos Originarios (ORCOPO), Comisión de Juristas Indígenas en la Rep. Argentina (CJIRA), Comisión Provincial por la Memoria, Fundación para el Desarrollo en Justicia y Paz (FUNDAPAZ), Defensoría General de la Nación, Cátedra Libre de Pueblos Originarios (UNPSJB), Comisión de Pueblos Originario e Inmigraciones de la Secretaría de Extensión de la Facultad de Trabajo Social de la UNLP, Comisión de Derechos de los Pueblos Originarios y neo-constitucionalismo de la UBA y Asociación de Abogados de Derechos Indígena (AADI).

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The Human Rights Observatory of the Indigenous Peoples of Neuquen (Observatorio de Derechos Humanos de los pueblos Indígenas de Neuquén)

CHILE

According to data from the 2009 National Socio-economic Survey (CASEN), 1,188,340 people in Chile identify as belonging to one of the nine indigenous peoples recognised by law, or 7% of the national population. 85.2% of these identify as Mapuche, 8.1% as Aymara and 2.6% as Atacameño. The remaining percentage belong to the Rapa Nui, Quechua, Coya, Diaguita, Kaweskar and Yagan peoples. Levels of indigenous poverty and extreme poverty are 5% higher than among the non-indigenous population and, whilst still relatively low, illiteracy rates are double that of the rest of the population.

Indigenous rights are regulated by *Ley Indígena* (Law No. 19,253 of 1993 on indigenous promotion, protection and development) although this law does not incorporate the relevant international standards. To this must be added Law No. 20,249 creating the coastal marine space for native peoples, which was promulgated in 2008, and ILO Convention 169, ratified by the Chilean state in 2008 and which came into force in September 2009. Chile also voted for the UN Declaration on the Rights of Indigenous Peoples in 2007.

The Chilean Constitution, which dates from the military dictatorship (1980) recognises neither indigenous peoples nor their rights. This is despite a series of initiatives presented to Congress since 1991 aimed at rectifying this situation, although indigenous peoples' representative organisations were not consulted with regard to any of them.

Duty to consult indigenous peoples

Because it has ratified ILO Convention 169, the Chilean state has a duty to consult indigenous peoples and so, in March 2011, the government unilaterally called the indigenous peoples to a national consultation on institutional and legal reforms. At this meeting, they were to give their opinion on five proposals



related to exercise of their rights. These proposals included: planned constitutional recognition; the creation of an indigenous development agency; the creation of an Indigenous Peoples' Council; the definition of a consultation mechanism to govern future processes; and modification of the regulation on the Environmen-

tal Impact Assessment System (IAES) to include a duty to consult communities affected by projects.

It should be noted that, apart from the two proposals related to consultation mechanisms, the remaining three proposals had already been put out for consultation by the previous government during the first half of 2009,¹ and had then become legislative bills introduced to Congress at the end of that same year.² This meant that the current government was failing to comply with the principle that all consultations have to be held before bills begin their legislative passage and not after.

Numerous indigenous peoples' organisations severely criticised the meeting and refused to participate in the consultation process, claiming that it was not in line with a prior agreement between the government and indigenous peoples. In addition, the meeting was aimed at obtaining opinions on the consultation mechanism itself while at the same time consulting on other serious issues. Furthermore, the government was showing no will to bring the right to consultation in line with international standards, proof of which could be seen from the fact that Decree 124 of the Ministry of Planning (2009), which provides flawed regulations regarding the duty of public bodies to consult indigenous peoples before promoting measures that could affect them, was still in force.

The government acknowledged the organisations' criticisms in September 2011 and decided to postpone the consultation process, giving a committee established within Conadi's National Council the responsibility for producing a proposal on mechanisms and procedures by which to conduct these processes. Indigenous leaders were not, however, invited to be a part of this committee. Also in September, the Congressional Human Rights Committee came out in favour of the indigenous leaders' call for repeal of Decree 124. The Conadi committee was due to make its proposals known at the end of the year but, at the time of writing this article, no information had yet been forthcoming.

Public policy: land

During 2011, indigenous peoples continued to demand that the budget allocated to land acquisition be increased, a requirement that had, moreover, been previously expressed by the Special Rapporteur, James Anaya, in his 2009 report on Chile, in which he recommended that the government and Congress ensure that

Conadi “has sufficient resources” to deal with the outstanding land claims of indigenous peoples.³

Despite this, the USD 68 million⁴ requested by the government and approved by Congress in the Budget Law for Conadi’s Land and Waters Fund during 2011⁵ was 16% less than the budget for the same fund in 2010.⁶ And, for 2012, the budget will have the same USD 68 million as 2011,⁷ despite the fact that demands for land and their associated conflicts have not diminished.

Not only has there been a lack of increased funding for land, implementation of the allocated resources has also been deficient. In 2010, Conadi returned the sum of USD 62 million in unspent Land Fund allocations to the Treasury, a full 76% of the budget allocated for that year. In 2011, cumulative expenditure by the end of the third quarter totalled 24%, as compared with the same period over the last 10 years when it varied between 61% and 87%.⁸ Finally, the government stated that 100% implementation of the procurements budget was focused on the last quarter of 2011, without clarifying whether this planning was aimed at resolving demands in any particular order or not. According to official data for 2011, the purchase of lands “in conflict”, by means of Article 20 (b) of the Indigenous Law, required an investment of USD 42,811,846. This enabled 54 pieces of land (farms, plots and strips) totalling 10,334.81 hectares to be purchased for 1,230 indigenous families.⁹

Since September 2011, the priority purchases for plots in conflict, submitted by the communities by means of Article 20 (b) of the Indigenous Law, are decided exclusively by Conadi’s director, without the involvement of Conadi’s National Council or the indigenous advisors. This is by virtue of Ruling No. 61,011 of the Office of the National Comptroller–General, which re-established the criteria given in Article 6 of Supreme Decree No. 395 of 1993 for governing the purchase of lands in cases of conflict.

Concentrating this power solely in the hands of the director runs counter to Chile’s obligations by virtue of ILO Convention 169, particularly Article 2 (1) which indicates that governments, with indigenous involvement, must take “coordinated and systematic action with a view to protecting the rights of these peoples and to guarantee respect for their integrity”. This is particularly valid for decisions related to indigenous lands and territories.

The lack of a budgetary policy aimed at restoring indigenous peoples’ right to lands which they have lost involuntarily or which they have traditionally occupied albeit without title, combined with the negligent management of the available re-

sources, and their exclusion from participating in the decisions regarding the design and management of the land policy is creating frustration among the indigenous peoples and provoking social protest which, in turn, is being violently put down by the security forces on the orders of the Ministry of the Interior.

Criminalisation of indigenous social protest

On 22 February 2011, the Cañete Oral Criminal Court issued a verdict in the case against 17 Mapuche community members charged with aggravated robbery, attempted murder, grievous bodily harm and unlawful common association, in addition to the terrorist crimes of threatening behaviour, unlawful association and arson, as categorised by the Attorney-General's Office, the government and the private plaintiff, the Mininco Forestry company. In the context of the closing pleadings, the government changed its classification from terrorist crimes to crimes covered by common criminal law, keeping its commitment made the previous year to the defendants when they were in the middle of a protracted hunger strike in protest at their procedural situation.¹⁰

When the sentence was read out on 22 March, 13 of the 17 Mapuche defendants were absolved of all charges and eight of these who were still being held on remand in prison were released. The following were found guilty: Héctor Llaitul (25 years), and Jonathan Huillical, José Huenuche and Víctor Llanquileo (20 years each) for the crimes of aggravated robbery, in addition to attempted murder and grievous bodily harm, none of them of a terrorist nature. While the convicted men began a hunger strike, their lawyers presented an appeal for annulment to the Supreme Court by virtue of the fact that the convictions were based on the testimony of a witness with protected identity (permissible only under the anti-terrorist law) and the confession of a defendant that was later denounced as having been obtained by torture.

On 3 June 2011, the Supreme Court passed judgment, partially admitting the appeal against the ruling of the Cañete Oral Criminal Court, and reducing the crime of attempted murder of a district attorney and police officers to actual bodily harm in the case of the former and grievous bodily harm in the case of the latter. The final sentences were thus Llaitul (14 years) and Huillical, Huenuche and Llanquileo (8 years). Many observers who had followed the case felt that the Supreme Court's position was, however, supportive of evidence obtained from

faceless witnesses and statements obtained under duress, thus violating guarantees of due process.

At the same time, during 2011, the policy of criminalising the Mapuche social protest continued, there being seven open criminal cases accusing 54 Mapuche of participating in crimes of a terrorist nature. Of the three cases in which judgment has already been passed, two of these refuted the allegations of the Attorney-General's Office. The third case – described in detail above – resulted in heavy prison sentences for common law crimes.

In addition, in August 2011, the Supreme Court rejected the appeal for reversal presented by the lawyers representing the family of the young Mapuche activist, Matías Catrileo, in relation to the ruling of the Court Martial that sentenced Corporal Walter Ramírez to 3 years and 1 day's conditional discharge for the murder of the young Mapuche in an act of social protest that took place in January 2008. Despite the Supreme Court ruling, which ratified the sentence passed by the Military Court, the police high command has allegedly still not processed the officer's discharge, and he apparently remains on active duty in the Aysen region.

This has led to an increased sense of impunity or indulgence given that military court rulings are passed on uniformed officers being prosecuted for crimes against civilians. This is exacerbated by the tolerance shown by the government authorities in the face of the police high command's unwillingness to discharge those officers who are convicted. The Mapuche organisations have contrasted the low sentences dealt out to officers, even for murder, with those handed down to Mapuche activists for acts against property that do not target people.

On 7 August, the Inter-American Commission on Human Rights (IACHR) filed Case No. 12,576 with the Inter-American Court of Human Rights. This is the case of Norín Catrیمان *et al*, and relates to violations of the human rights enshrined in the American Convention to the detriment of Segundo Aniceto Norín, Pascual Pichún, Jaime Marileo, José Huenchunao, Juan Marileo, Juan Millacheo, Patricia Troncoso and Víctor Ancalaf, *lonkos*, leaders and activists of the Mapuche people, all of whom have been prosecuted and convicted of crimes classified as terrorism.

In the opinion of the IACHR, the convictions were obtained by applying “a criminal law that ran contrary to the principle of legality – *the Antiterrorist Law* – with a series of irregularities that affected due process, and took into consideration the victims' ethnic origin in a way that was unjustified and discriminatory”.¹¹ This seems to have come about by the judicial authority's failure to distinguish

between the more general context of legitimate demands, expressed in the form of indigenous social protest, and acts of violence that minority groups have undertaken in this context.

Rapa Nui people

At the start of the year, a heavy police contingent was still present on Easter Island, sent by the government following incidents in which numerous members of the Rapa Nui people were injured when their protests for recognition of their rights to their ancestral lands in Hanga Roa were repressed.¹² It should be noted that despite the Rapa Nui's demands for the return of their ancestral lands, on the basis of a memorandum of understanding (treaty) signed by their forefathers with the Chilean state in 1888, only 13% of the lands of the island are under the control of the Rapa Nui, while more than 70% remain state property.¹³ A significant part of the lands held by the state form part of the Rapa Nui National Park. It is here that much of the physical heritage of these people is to be found and it is administered by the National Forestry Corporation (CONAF) to the exclusion of the native population.

The disproportionate use of force and the intimidating police presence led, in January, to a statement from the UN Special Rapporteur on the rights of indigenous peoples, James Anaya, in which he stated his concern at the violent evictions undertaken by the police in response to the territorial demands made by the Rapa Nui clans, repression which in his opinion did not help to create a climate conducive to dialogue.¹⁴

On 7 February, the Inter-American Commission on Human Rights (IACHR) decided to issue protective measures in favour of the Rapa Nui, given that the life and integrity of this people were at risk due to alleged acts of violence and intimidation on the part of the forces of law and order, in the context of demonstrations and eviction processes. At the same time, the IACHR called on the Chilean state to immediately cease using armed violence against members of the Rapa Nui people when undertaking state administrative or judicial actions, including their removal from public spaces or from public or private property.¹⁵

An international observation mission on the situation of the Rapa Nui's rights visited the island in August.¹⁶ It was noted in numerous conversations and interviews with indigenous Rapa Nui, government authorities and residents in general

that the majority of the inhabitants believe that the whole of the island is ancestral territory on the basis of their customs and laws. In this respect, the land and territory claims they have made under the legal concepts of “self-determination” and “rights to land” are supported on the basis of their original occupation and ancestral rights which were, in any case, in existence prior to the 1888 Treaty on which they are basing the validity of their claims. This treaty would not have involved the cession of sovereignty in the way that the Chilean state understands it.

In his January note, the Special Rapporteur, James Anaya, urged the government to make the greatest efforts to embark in good faith on a dialogue to resolve the basic problems, which were directly linked “with recognition and effective guarantee of the right of the Rapa Nui clans to their ancestral lands, based on their own customary possession, in accordance with ILO Convention 169, to which Chile is a party.”¹⁷

Case law

During 2011, indigenous peoples continued to turn to the courts as a way of gaining protection from the decisions of the administrative and environmental authorities which, in general, have authorised projects that threaten their territories and natural resources without due consultation of the communities affected. The need to resort to the courts in such cases is the direct result of a failure to implement Convention 169.

In contrast to previous years, the courts’ responses during 2011 gradually moved towards a position of recognising the rights enshrined in the Convention. It should be noted that although the Court of Appeals has pronounced in favour of the indigenous right of consultation, in line with the standards set out in the Convention, ever since it came into force, the Supreme Court, in contrast, has erred in favour of interpreting the right of consultation in Chile as being sufficiently regulated by the Environmental Impact Assessment system, thus satisfying, from its point of view, the standard for indigenous consultation set by Convention 169.

Two judgments passed by the Supreme Court in 2011 bore witness to the fact that this initial position has now been qualified. In the first of these,¹⁸ the Supreme Court confirmed the ruling issued by the Valdivia Court of Appeal¹⁹ which admitted an appeal for protection lodged by Mapuche communities from Lanco commune, Los Ríos region, against a resolution of the environmental authority authorising

the dumping of waste in the area surrounding their communities. Among other aspects, the judgment established that the administrative authority not only had to consider the procedures for civic participation envisaged in the Environmental Law but also the standards of Convention 169.²⁰

In the second of the two cases,²¹ the Supreme Court overruled the Antofagasta Court of Appeal's²² rejection of an appeal for protection submitted by the Toconao community and the Council of Atacameño Peoples, who were challenging the failure to consult on changes made to the San Pedro de Atacama regulatory plan, and calling for its environmental classification to be conducted through an environmental impact study. The Supreme Court invalidated the Resolution on Environmental Classification that was favourable to amending the San Pedro regulatory plan, considering that the lack of consultation rendered it unlawful and because it was in violation of the principle of equality before the law. It moreover specified – repeating the jurisprudence from the Lanco case – that an Environmental Impact Study needed to be conducted with public participation in line with the standards of Convention 169, and stating moreover that the project's public presentation meetings, conducted within the context of the Environmental Impact Assessment system, could not be endorsed as consultation.²³ ○

Notes and references

- 1 Reports on indigenous consultation processes held since 2009 can be found at: <http://bit.ly/nNGrvQ> [accessed: 24-10-2011]
- 2 The planned constitutional recognition submitted for consultation both in 2009 and in 2011 was introduced to Congress in November 2007 and merged with a parliamentary proposal in April 2009. <http://bit.ly/ozEw8w> For its part, the Draft Law creating the Ministry of Indigenous Affairs and the Indigenous Development Agency was introduced on 6 October 2009: <http://bit.ly/dKT9lX> and the Draft Law creating the Indigenous Peoples' Council on 28 October 2009: <http://bit.ly/hoDfXC> [accessed: 24-10-2011]
- 3 Op. cit. paras 53 and 63
- 4 USD 1 = Ch\$ 600
- 5 Budget Law 2011: Conadi. Available from: <http://bit.ly/tx5p0k> (accessed: 11-12-2012)
- 6 Quarterly Implementation Report 2010, Conadi. Available from: <http://bit.ly/tGEyT9> (accessed: 11-12-2011)
- 7 Draft Budget Law 2012, Conadi: Available from: <http://bit.ly/v9jswX> (accessed: 11-12-2011)
- 8 Trends in the budget and expenditure of Conadi over the last 10 years are available on the website of the Budgets Department (DIPRES): <http://bit.ly/rpgKlI>
- 9 Conadi. *Subsidio a la Aplicación Artículo 20 letra b) de la Ley Indígena*. Available from: <http://bit.ly/ztQak6> [accessed: 22-02-2012]

- 10 See IWGIA's Yearbook, *The Indigenous World 2011*
- 11 "IDH presenta caso sobre Chile ante la Corte IDH". Press release. Available at: <http://bit.ly/ykY-Oqe> [accessed: 20-12-2012]
- 12 See IWGIA's Yearbook, *The Indigenous World 2011*
- 13 See: **RIVAS, Antonia, 2011**: "The Power of the Law. Land Rights on Rapa Nui", p. 18-19, Paper delivered to the Law and Society Association conference. San Francisco, June 2011.
- 14 "Declaración del Relator Especial de la ONU sobre los derechos de los pueblos indígenas, James Anaya, ante los desalojos de indígenas rapa nui". Available from: <http://bit.ly/yDtN26> [accessed: 20-02-2012]
- 15 OEA-CIDH. MC321/10. Medida Cautelar Pueblo Indígena Rapa Nui, Chile, Nota informativa. Available from; <http://bit.ly/xmOend> [accessed: 20-02-2012]
- 16 The mission comprised Clem Charté, President of the National Métis Council, Canada; Alberto Chirif, anthropologist and researcher, IWGIA, Peru; and Nin Tomas, Adjunct Professor of Law at the University of Auckland in Aotearoa-New Zealand and researcher on the area of indigenous peoples' rights. The mission visited the island of Rapa Nui from 1 to 3 August 2011 and Santiago from 4 to 8 of the same month.
- 17 "Declaración del Relator..." Ibid
- 18 Supreme Court. Role: 6062-2010
- 19 Valdivia Court of Appeal. Role 243-2010
- 20 Third Recital
- 21 Supreme Court. Role 258-2011
- 22 Antofagasta Court of Appeal. Role: 782-2010
- 23 Recitals Nine and Eight respectively

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THE PACIFIC

AUSTRALIA

Indigenous peoples hold a long and complex connection with the Australian landscape, including marine and coastal areas. Some estimates maintain that this relationship has endured for at least 40,000 years.¹ At colonisation in 1788, there may have been 1.5 million people in Australia.² In June 2006, indigenous people made up 2.5% of the Australian population, or 520,000 individuals.³ In 1788 indigenous peoples lived in all parts of Australia. Today the majority live in regional centres (43%) or cities (32%), although some still live on traditional lands.

Despite recent improvements, the health status of indigenous Australians remains below that of other Australians. Rates of infant mortality amongst indigenous Australians remain unacceptably high at 10-15%, and life expectancy for indigenous Australians (59 for males and 65 for females) is 17 years less than that of others.

The 1975 Racial Discrimination Act has proven a key law for Aboriginal people but was overridden without demur by the previous Howard government in 2007 when introducing the Northern Territory Emergency Intervention (see *The Indigenous World, 2008*). States and Territories also have legislative power on rights issues, including Indigenous rights, where they choose to use them and where these do not conflict with national laws.

Australia has not ratified ILO Convention 169 but, although it voted against the UN Declaration on the Rights of Indigenous Peoples in 2007, it went on to endorse the UNDRIP in 2009 (AHRC 2009).

The Constitution

A potentially significant policy development in 2011 was the national government's consultations on possible Aboriginal and Torres Strait Islander recognition and related changes to the Australian Constitution. The new *Expert Panel*



on *Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples* is heading an ambitious consultation and engagement program to initiate a nationwide discussion on constitutional reform. The consultation panel includes Aboriginal notables Les Malezer, Marcia Langton and Megan Davis, persons well known in international Indigenous contexts. The panel is chaired by Patrick Dodson and non-Indigenous lawyer, Mark Leibler, both of whom have, at different times, headed the government's Indigenous Reconciliation process. The panel's report and proposals will be published early in 2012.

Another entity was formed in 2011, the *National Congress of Australia's First Peoples*. The Congress is a peak body for Indigenous peoples created independent of government. The most important role for the congress will be to advocate for the recognition of Aboriginal and Torres Strait Islander peoples' rights (NCAFP

2011). While a strong consensus on a range of Indigenous issues is lacking among Indigenous leaders at present, such developments give hope for progressive constitutional changes and provide opportunities for improved Indigenous engagement in the development of Indigenous policies.

Torres Strait Islands autonomy

The issue of political autonomy for the Torres Strait (TS) was raised and promoted by Queensland Premier Anna Bligh in October when it was revealed that she had proposed that the Prime Minister look into the Torres Strait Islanders' calls for a "self-governing territory" within the Australian federation.

Extending from the top of Cape York Peninsula to Papua New Guinea and made up of more than 270 islands, TS is seen as a corner of Melanesia under Australian jurisdiction. Torres Strait Islanders form the majority of the population, with their own unique culture and history that is distinct from that of Aboriginal Australia. They have been seeking some form of regional autonomy and recognition of their marine rights for decades, their food and livelihoods being mainly derived from the reefs and seas surrounding them. Despite both Left and Right of Australian politics being generally accommodating of Islander aspirations, the question of autonomy has stalled in recent decades.

While this highlighting of the issue by the Queensland Premier created much excitement at the prospect of progressive change in this area, the Prime Minister only cautiously and tentatively agreed to continue to look into the matter (Statham 2011).

Shades of blackness

Nine Aboriginal people whom the tabloid columnist Andrew Bolt deemed too light-skinned to be really Aboriginal won a Federal Court case under the Racial Discrimination Act in late September. A class-action was brought against Bolt for his writings in the newspaper *The Herald and Weekly Times*, in which he claimed that they were seeking professional advantage from the colour of their skin. The nine people involved in the case sought an apology from *The Herald and Weekly Times* and an order against republishing. For many, Bolt's apparent abuse of members of the most disadvantaged minority in the country was bad enough, but

to accuse them of using disadvantage to their profit was something else (Marr 2011). The case highlights current racist and discriminatory tendencies present in popular media in Australia.

Northern Territory Emergency Response (NTER) to become “Stronger Futures”

The Federal Government’s Northern Territory National Emergency Response (NTER - see *The Indigenous World, 2008*), established in 2007, continues to take effect in Northern Territory Aboriginal communities.

The NTER has had little measurable effect on the residents of its target communities in terms of addressing its apparent goals – that of protecting children in the communities and addressing the socio-economic disadvantage between Indigenous and non-Indigenous peoples. The government’s own monitoring report for the intervention, released in October 2011, *Closing the Gap in the Northern Territory Monitoring Report January – June 2011*, found a measurable decline in school enrolment, an increase in income support recipients, increases in both reports of child abuse and domestic violence, and an increase in the number of confirmed attempted suicide/self-harm incidents in NTER communities (NTER 2011). Further, as UN Special Rapporteur James Anaya pointed out in his 2010 report, the NTER measures effectively undermine indigenous self-determination, limit control over property, inhibit cultural integrity and restrict individual autonomy (see UNHRC Report).

Following widespread criticism of the interventionist framework of NTER, the discriminatory nature of its policies and the lack of Indigenous engagement in its formulation and implementation, a series of narrowly focused “community consultations” took place across the Northern Territory. The Federal Government subsequently announced in 2011 that it would roll NTER out in 2012 in the form of the renamed “Stronger Futures” package.

The package contains a number of “special measures”, including the withdrawal of income support from parents whose children do not attend school as a measure to *encourage* school attendance in Aboriginal communities. This policy has attracted criticism for the lack of evidence either in Australia or internationally that such punitive measures lead to school attendance, as well as its negative effect on families that are already severely disadvantaged in remote communities (Altman 2011).

Blue Mud Bay negotiations continue

Under the *Aboriginal Lands Rights (Northern Territory) Act 1976* (ALRA), Aboriginal freehold land extends to the low watermark only. In the Blue Mud Bay decision of 2009, the High Court of Australia ruled on appeal that the ALRA also applies to the inter-tidal zone. Following the ruling, the major parties involved in the decision agreed to a moratorium - maintaining the existing government-issued permits-based system of management - while long-term arrangements are negotiated (see *The Indigenous World 2009*).

The decision gives significant property and management rights to the Indigenous people of Arnhem Land and sets a clear precedent whereby Aboriginal communities have effective control over commercially valuable marine resources. The decision also creates the potential to generate economic opportunities, including financial returns for negotiated access rights, direct involvement and employment in fisheries management, and employment in Sea Country management through local ranger groups.

The major parties involved in this historic decision – the Northern Territory government, the Northern Land Council and recreational and commercial fishing interests, agreed in 2011 to extend the one-year moratorium to mid-2012 while long-term arrangements are negotiated.

Mining and Aboriginal people

The *Native Title Act 1993* creates the potential for Indigenous communities to share the wealth created when their lands are developed, particularly by mining. In 2011, negotiations continued between Indigenous communities, governments and mining companies for the use of land subject to Native Title, particularly in the north of the country. Woodside Petroleum's AUD\$30 billion Browse liquefied natural gas (LNG) project at James Price Point, 60 kms north of Broome in Western Australia, brought considerable national attention to the divisive nature of such negotiations for Aboriginal communities, and the tendency of governments to align closely with mining interests in securing such projects. Despite this, and a string of significant environmental concerns, on paper such deals have the potential to create significant economic opportunities and provide much needed

services to severely disadvantaged Aboriginal communities – key features largely neglected by State and Federal Government policy in remote Australia. Significant questions remain with regards to the capacity of both indigenous and non-indigenous parties to effectively implement and manage such services and opportunities over the long term.

Negotiations between the representative body for traditional owners, the Kimberley Land Council, and the government broke down in 2010 following a legal challenge by a traditional owner. This prompted Western Australian Premier Colin Barnett to attempt a “compulsory acquisition” of the land to ensure the future of the project, a move that many viewed as anything but an “act of good faith” in Native Title negotiations. The Premier’s move to compulsory acquisition was widely criticized, including by the Aboriginal Reconciliation scholar and activist Mick Dodson, labelling the attempt as the “theft” of Aboriginal lands (ABC 2011).

Following considerable negotiation and court decisions, ruling both the initial legal challenges and the attempted compulsory acquisition by the Premier invalid, Indigenous people in the Kimberley region approved the deal in May 2011. As part of the deal, the community is expected to receive over AUD\$1 billion in benefits in the form of business opportunities, housing, education and funds to address social issues. In December, Woodside Petroleum indicated that it would defer its final investment decision on the project until 2013, leading many to question whether the possibility of a scaled-down project at a less contentious site was being considered (SMH 2011).

Remote Australia in film

A number of important films were released in 2011 which highlight the realities and complex dynamics of remote Indigenous communities in Australia. *The Tall Man*, directed by Tony Krawitz and based on the award winning book by Chloe Hooper, examines a tragic Aboriginal death in custody on Palm Island in the north of Queensland in 2004. Brendan Fletcher’s film *Mad Bastards*, set in the Kimberley region of north Australia, provides a brutally honest depiction of the distinct characters and complex dynamics of the region. The documentary *Our Generation*, produced by Sinem Saban and Damien Curtis, gives voice to the Yolngu people of North East Arnhem Land, in the

Northern Territory, and their struggle against the previously mentioned Northern Territory Emergency Response. These recent works are important as they raise much needed awareness among the wider Australian public as to the complex issues and often disturbing realities of contemporary remote Indigenous Australia. ○

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Notes

- 1 Many Aboriginal people maintain that they were created when distinct Creator Beings formed the land at the beginning of time (often termed “the Dreaming”). It is now widely accepted among archaeologists that the earliest undisputed age for the occupation of Australia by human beings is 40,000 to 50,000 years ago. **O’Connell J.F. and Allen F.J., 1998:** When did humans first arrive in greater Australia and why is it important to know? *Evolutionary Anthropology*, 6:132–146.
- 2 The actual numbers are highly disputed because of the difficulty in estimating a population so very much changed by colonisation. Numbers range from 300,000 to 1.5 million, the latter being widely accepted nowadays. **Butlin, N., 1993:** *Economics and the Dreamtime*. Cambridge, Cambridge University Press; **Reynolds, H. 2001:** *An indelible stain? The question of genocide in Australia’s history*. Ringwood Victoria: Penguin; **Gray, A., 2001:** Indigenous Australian: Demographic and Social History in J. Jupp (ed.) *The Australian People: an Encyclopaedia of the nation, its people and their origins*. Cambridge; Cambridge University Press, pp.88-93.
- 3 **Australian Bureau of Statistics, 2007:** *Population Distribution, Aboriginal and Torres Strait Islander Australians, 2006*. Available from: [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/377284127F903297CA25733700241AC0/\\$File/47050_2006.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/377284127F903297CA25733700241AC0/$File/47050_2006.pdf) Accessed on 27 January 2012.

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AOTEAROA (NEW ZEALAND)

Māori, the indigenous people of Aotearoa, represent 17% of the 4.3 million population. The gap between Māori and non-Māori is pervasive: Māori life expectancy is almost 10 years less than non-Māori; household income is 72% of the national average; half of Māori males leave secondary school with no qualifications and 50% of the prison population is Māori.¹

The Treaty of Waitangi was signed between the British and Māori 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 (see *The Indigenous World 2011*). New Zealand has not ratified ILO Convention 169.

The national election, and the devastating Christchurch earthquake, dominated the agenda in Aotearoa in 2011. For Māori, there were few positive developments. The election produced a mixed result: state asset sales that may push up utility prices are planned, discriminatory marine legislation was passed, petroleum surveying was carried out without adequate consultation, four of the 17 “terror” accused are still awaiting trial and the Special Rapporteur on the rights of indigenous peoples’ 2011 recommendations went largely ignored. More positively, Treaty settlements continued and the Wai262 report was released, although both attracted controversy.



National election mixed for Māori

New Zealand's general election was held on 26 November 2011. The centre-right National Party obtained 59 of the 121 seats and secured a second three-year term by entering into coalition agreements with the rightist ACT New Zealand and United Future parties, each of which obtained one seat. The Labour Party received 34 seats, the Green Party 14 and New Zealand First 8. The two parties with an explicit Māori *kaupapa* (vision) – the Māori Party and Mana – did not fare

well. The Māori Party saw a reduction in its number of seats to three (Pita Sharples, Tariana Turia and Te Ururoa Flavell retained their seats), and the newly-formed leftist Mana party obtained only one seat (for its leader Hone Harawira).² In December, the Māori Party entered into a relationship accord and confidence and supply agreement with the National Party (Confidence Agreement). It was seen as a gesture of goodwill to consolidate the relationship forged with the Māori Party in the previous electoral term and as a means of strengthening the Government's majority. The Confidence Agreement includes a number of social welfare and development commitments by the National Party as well as commitments concerning the environment, the constitutional review, the focus of the Ministry of Māori Development and negotiations over the allocation of high frequency radio channels to Māori. Māori Party co-leaders will again hold ministerial posts outside of cabinet, including the positions of Minister of Māori Affairs and Minister respon-

sible for *Whānau Ora* (the Government's integrated social services delivery programme).

For Māori, the results of the election were mixed. Numbers-wise, Māori retained a relatively good presence in Parliament. Overall, the number of Members of Parliament that self-identify as Māori remains approximately proportionate to the number of Māori living in New Zealand. Māori will also once again hold ministerial posts. In addition to the posts outside of cabinet assumed by members of the Māori Party, National's cabinet also includes, for example, Hekia Parata as Minister of Education and State Owned Enterprises. Further, the Māori Party and Mana are both represented, albeit in low numbers. During the general elections, New Zealanders also voted on whether to retain the current Mixed Member Proportional (MMP) voting system. Fifty-seven per cent voted in favour of retaining MMP.³ This was a positive outcome for Māori, as MMP is credited with improving the representation of Māori and other minority groups within Parliament. However, Māori remain a numerical minority in Parliament and those with seats are constrained by their respective party's policy positions.

State asset sales planned

In January 2011, Prime Minister John Key announced that if the National Party won the general election it would seek to raise up to NZ\$10 billion (around USD 7.8 billion) to help return the Government's budget to surplus through the sale of minority stakes in state-owned power companies and the state-owned coal producer and through the reduction of its shareholding in the national airline.⁴ Despite widespread public opposition, with National's electoral victory, the partial asset sales are set to start in 2012.

Māori reactions to the proposed asset sales have varied. Representatives of some *iwi* (tribes), including the chair of Waikato-Tainui and other members of the Iwi Chairs Forum, have expressed support for the sales and indicated their interest in investing in the assets. The Mana Party opposes the policy. The Māori Party has also expressed opposition but at the same time has indicated that if the sales go ahead it will support those *iwi* that wish to buy shares.⁵ While a few well-financed *iwi* may stand to benefit from investing in the assets, Māori may bear higher prices for essential utilities that many can ill afford and there is real concern that the assets may end up wholly privately owned.

Discriminatory marine legislation passed

The Marine and Coastal Area (Takutai Moana) Act 2011, which removes Māori interests over the foreshore and seabed and vests them in a new construct called a “common space” (see *The Indigenous World 2011*), was passed early in 2011. It was passed with the support of the Māori Party (who acknowledged that the Act did not go as far as it would like), despite opposition to the Act by *iwi* and *hapū* (sub-tribes). The Māori Party’s support for the legislation prompted Hone Harawira to leave the party and form a new political party, Mana, opposed to the Act.⁶

Wai262 report released

The Waitangi Tribunal released its full report on the Wai262 claim, *Ko Aotearoa Tenei*, in July 2011. Wai262 is popularly referred to as “the indigenous flora and fauna claim” but the report’s coverage is in fact far broader. It concerns the place of *mātauranga Māori* (Māori knowledge) in contemporary New Zealand law and government policy and practice. Ultimately, it is concerned with the evolution of the Crown-Māori relationship “from one based on historical grievance to an ongoing partnership based on mutual advantage.”⁷ The report, which took 20 years to complete, is significant in scope. It is over 800 pages long and contains eight substantive chapters concerning cultural heritage, indigenous flora and fauna, the environment, conservation, language, Crown guardianship of *mātauranga Māori*, *rongoā* (traditional Māori healing) and international instruments.

The report contains a suite of recommendations that attempt to balance the interests of the Treaty parties. The recommendations are sweeping. For example, the Tribunal recommends new standards of legal protection for cultural heritage, the establishment of a Māori Committee to advise the Commissioner of Patents, reform of the Resource Management Act regime to provide for enhanced *iwi* development plans and that Department of Conservation policy should accord Māori a “reasonable degree of preference” when decisions are made about commercial activities in the conservation estate.⁸ Some have criticised the breadth and audacity of the report’s recommendations but these are also open to the criticism that, rather than heralding a new Crown-Māori relationship, with their emphasis

on policy changes, the establishment of advisory committees and enhanced consultation, they deviate little from the status quo.⁹

It remains to be seen what, if any, of the Tribunal's non-binding recommendations will be taken up by the Government. The Government has indicated that it will take its time responding to the report. Prominent Māori commentators, such as Moana Jackson, hold out little hope that the Government will fully implement the Tribunal's recommendations.¹⁰

***Iwi* protest against Petrobras petroleum survey**

Conflict concerning the Government's granting of a five-year petroleum exploration permit over the Raukumara Basin to Brazilian company Petrobras International without adequately consulting with *iwi* heated up in 2011. Petrobras carried out a seismic survey of the basin early in 2011. Its ship was met by a flotilla of protest boats, including from local *iwi* Te Whānau ā Apanui and Greenpeace. The captain of a Te Whānau ā Apanui fishing boat was subsequently arrested after allegedly interfering with the ship's survey work. Despite the protests, the Government has refused to revoke or suspend the permit, arguing that it was granted lawfully and that it had no obligation to consult with the *iwi* about the permit. Te Whānau ā Apanui and Greenpeace have secured a judicial review of the Government's granting of the exploration permit on environmental and Treaty of Waitangi grounds. The hearing is scheduled for the High Court in June 2012.¹¹

Treaty settlements progress

Treaty settlements continued apace in 2011. Eight groups signed Deeds of Settlement with the Crown,¹² 17 signed Agreements in Principle¹³ and four *iwi* agreed that their deeds of settlement were ready for presentation to their members for ratification.¹⁴ In another positive development, in July, the Ngāi Tūhoe *iwi* and the Government signed a "relationship agreement" signalling a first step towards rebuilding their relationship after the Prime Minister rejected the possibility of returning lands within Urewera National Park to them as part of their Treaty settlement package in 2010.¹⁵

Issues with the Treaty settlement process are still being worked through. For example, in May the Supreme Court ruled that the Waitangi Tribunal, the commission of inquiry charged with investigating claims of breaches of the Treaty of Waitangi, had to hear a claim for redress by Mr Haronga (representing a small Maori incorporation) whose Treaty claim was about to be extinguished by a large region-wide Treaty settlement.¹⁶ Mr Haronga claimed that the body preparing to conclude the region-wide settlement no longer had a mandate to agree a settlement regarding his claim over the Mangatu State Forest. He sought an urgent hearing before the Waitangi Tribunal to consider remedies regarding his claim, which was declined by the Tribunal. The Supreme Court's decision to overturn that ruling signals a victory for smaller groups who feel sidelined in the Treaty settlement process but may slow the pace of future Treaty settlements.¹⁷

“Terror” accused still await trial

Over four years since police raided a community of the Ngāi Tūhoe *iwi* and the homes of social activists under the Terrorism Suppression Act of 2002 and the Arms Act of 1983, four of the accused are still awaiting trial. After a series of pre-trial legal challenges, in September 2011 the Crown dropped charges against 13 of the 17 accused on the basis that there was not sufficient evidence to justify proceeding. The remaining four, including Tūhoe activist Tame Iti, face charges of allegedly participating in an organised criminal group and firearms offences. The judge-only trial is set to start in February 2012.¹⁸

Little progress on Rapporteur's recommendations

In 2011, the UN Special Rapporteur on the rights of indigenous peoples, James Anaya, released his report on his 2010 country mission to Aotearoa.¹⁹ Anaya's report recognised some positive developments but also identified ongoing concerns, which formed the basis for 17 recommendations to the Government on issues related to the Treaty of Waitangi (concerning partnership and participation, the Waitangi Tribunal and negotiated Treaty settlements), domestic legal security for Māori rights and Māori development. The National-led Government's response to the visit and report was more positive than the Labour-led Govern-

ment's response to previous Special Rapporteur Rodolfo Stavenhagen's 2005 mission to Aotearoa.²⁰ However, the Government has made little progress in implementing Anaya's recommendations. ○

Notes and references

- 1 Most of the population statistics cited here are based on the *New Zealand Census 2006* (the next Census will be held in 2013).
- 2 **New Zealand Electoral Commission** "2011 General Election – Official Result" 22 December 2011 available at http://www.electionresults.govt.nz/electionresults_2011/ (last accessed 4 January 2012).
- 3 **New Zealand Electoral Commission** "Overall Results – 2011 Referendum on the Voting System" 10 December 2011 available at http://www.electionresults.govt.nz/electionresults_2011/referendum.html (last accessed 4 January 2012).
- 4 See, e.g., **Tom Peters** "New Zealand government outlines spending cuts, asset sales" available at <http://www.wsws.org/articles/2011/feb2011/nzea-f14.shtml> (last accessed 5 January 2012).
- 5 See, e.g., **Karla Akuhata** "Iwi chase Key for SOE talks" 30 November 2011 available at <http://www.stuff.co.nz/waikato-times/news/6059868/iwi-chase-Key-for-SOE-talks> (last accessed 5 January 2012) and **Derek Cheng** "Mana, Māori divided on asset sales" 30 October 2011 available at http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10762695 (last accessed 5 January 2012).
- 6 See *The Indigenous World 2011*. A copy of the Act is available from the New Zealand Legislation website <http://www.legislation.govt.nz/act/public/2011/0003/latest/DLM3213131.html> (last accessed 4 January 2012). For a summary of *iwi* and *hap* criticism see Kaitiaki o te Takutai "Summary of Māori submissions on the Marine and Coastal (Takutai Moana) Bill 2010" (22 February 2011) available at Converge < <http://www.converge.org.nz/pma/fs220211.pdf> > (last accessed on 21 March 2011).
- 7 **Waitangi Tribunal Ko Aotearoa Tenei – Factsheet 1: Key Themes** available at <http://www.waitangi-tribunal.govt.nz/reports/summary.asp?reportid={BF981901-5B55-441C-A93E-8E84B-67B76E9}> (last accessed 5 January 2012) 1.
- 8 **Waitangi Tribunal Ko Aotearoa Tenei: Te Taumata Tuarua Volumes 1 and 2** 2011.
- 9 See, e.g., **Yvonne Tahana** "Bold Bid for Common Path for Crown, Māori" 6 July 2011 available at http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10736518 (last accessed 4 January 2012) and **Morgan Godfrey** "Release of the Wai262 report" 3 July 2011 <http://mauistreet.blogspot.com/2011/07/release-of-wai262-report.html> (last accessed 4 January 2012).
- 10 Tahana above n 16.
- 11 See, e.g., **Susan Pepperell, 2011**: "New charge for protest ship's captain" 29 April 2011 available at <http://www.stuff.co.nz/national/4940663/New-charge-for-protest-ships-captain> (last accessed 5 January 2012) and *Gisborne Herald* "Judicial review of East Cape oil, gas exploration" 15 December 2011 available at <http://www.odt.co.nz/source/apnz/190965/judicial-review-east-cape-oil-gas-exploration> (last accessed 5 January 2012).
- 12 Ngāti Whātua Orakei, Rongowhakaata, Waitaha, Ngāti Whātua o Kaipara, Ngāti Manuhiri, Ngāti Māhino, Ngāti Rereahu in respect of the Maraeroa A and B blocks and Ngāi Tāmanuhiri.

- 13 Ngāi Tai ki Tāmaki regarding their Tāmaki Makaurau interests; Maungaharuru Tangitu Hapū; the twelve *iwi* of Hauraki who comprise the Hauraki Collective (note that they signed “Agreement in Principle Equivalents”); Ngāti Rangiwewehi; Tapuika; and Ngāti Rehua-Ngāti Wai ki Aotea.
- 14 Ngāi Takoto, Te Aupōuri, Te Rarawa and Raukawa ki Waikato. For information on the settlement process and settlements reached in 2011, see the Office of Treaty Settlements website available at <http://www.ots.govt.nz/> (last accessed 5 January 2012).
- 15 *Gisborne Herald*. “Tuhoē, Crown move forward” 4 July 2011 available at <http://www.gisborne-herald.co.nz/article/?id=23548> (last accessed 5 January 2012). See *The Indigenous World 2011*. (SC54/2010) [2011] NZSC 53.
- 17 For discussion see **Carwyn Jones, 2011**: “Haronga v Waitangi Tribunal (Supreme Court)” 6 June 2011 available at <http://ahi-ka-roa.blogspot.com/2011/06/haronga-v-waitangi-tribunal-supreme.html> (last accessed 5 January 2012).
- 18 **Jared Savage and Edward Gay, 2011**: “Ureweras case ‘destroyed relationships’” 6 September 2011 available at http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=10749743 (last accessed 5 January 2012). For background see *The Indigenous World 2010* and *The Indigenous World 2009*. Note that one of the original accused has passed away.
- 19 **James Anaya, 2011**: *Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, Addendum: The Situation of Maori People in New Zealand* 31 May 2011, UN Doc A/HRC/18/35/Add.4. For background see *The Indigenous World 2011*.
- 20 See *The Indigenous World 2007* and New Zealand Government, Ms Dell Higgie, Statement by Delegation of Concerned Country, 18th Session UN Human Rights Council, 21 September 2011.

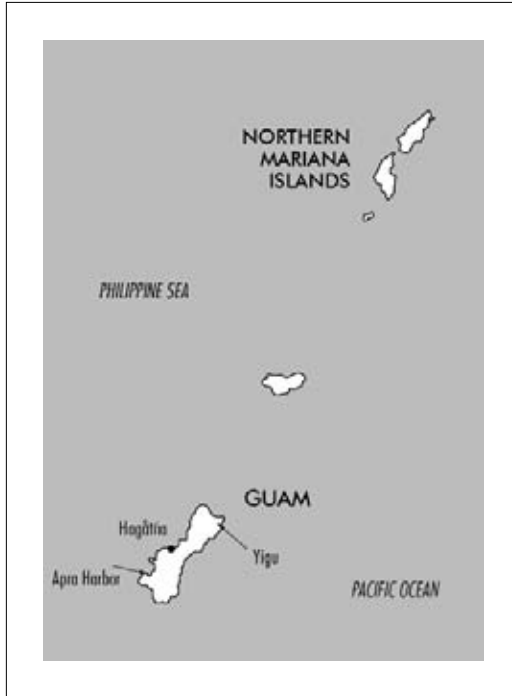
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GUÅHAN (GUAM)

Guåhan (meaning “we have”), more commonly known as Guam, is the largest and southernmost island in the Mariana Islands archipelago, encompassing approximately 212 square miles. The Chamorus¹ came to the Marianas over 4,000 years ago. Since 1521, Guåhan has been under the colonial rule of Spain (1521-1898),² the United States (1898-1941), Japan (1941-1944) and, again, the U.S. (1944-present) and is the longest colonized possession in the world. Currently under the U.S., Guåhan is an unorganized unincorporated territory and does not have its own constitution but does have what is known as the Organic Act, which was created in 1950 and grants U.S. citizenship to the Chamorus of Guåhan. Only part of the U.S. Constitution applies to the Chamorus of Guåhan, however, as the people are not allowed to vote for the U.S. president and do not have a voting delegate in Congress.³ Guåhan has been on the U.N. list of Non-Self-Governing Territories (NSGTs) since 1946, meaning that its indigenous Chamorus have yet to practice their right to self-determination.⁴ The Chamorus of Guåhan make up around 37% of the 175,000-strong population, thus making them the largest ethnic group on the island, albeit still a minority. The Chamorus are currently being challenged by the re-militarization of their islands, what has come to be known as the “military buildup”, a devastating move by the U.S. against the indigenous population and the place they call home.

Self-determination and political status

Community discussion surrounding the Chamoru people’s self-determination and selection of a political status for Guam progressed throughout 2011. The Commission on Decolonization, an entity created in 1996 during the 23rd Guam Legislature to ascertain the intent of the Native Inhabitants of Guam as to their future political relationship with the U.S., held its first meet-



ing in several years in September 2011, followed by another in November to further the discussion of decolonization and self-determination on Guam.⁵

In collaboration with the University of Guam (UOG), the Guam Legislature also conducted a decolonization forum in October 2011 featuring Dr. Carlyle Corbin, an expert on global governance and former Minister of State for External Affairs of the U.S. Virgin Islands government, and Dr. Robert A. Underwood,

former Congressman of Guam and current UOG President. Experts from the legal community also participated in the forum, including Benjamin J. Cruz, former Chief Justice of the Superior Court of Guam and current Vice Speaker of the Guam Legislature, Attorney Therese Terlaje, the Guam Legislature's Majority Legal Counsel, Attorney Julian Aguon, an expert in international law, and Attorney Leevin Camacho from the local organization, We Are Guåhan.⁶

In partnership with the Guåhan Coalition for Peace and Justice, the UOG Division of Social Work also held an educational forum which featured an in-depth look at the Chamoru people's right to self-determination.

While these forums contributed to the necessary and timely ongoing discussion of self-determination for the Chamoru people, they also helped to increase awareness of the issue within the local and international communities.

Military relocation delayed

The discussion surrounding the planned relocation of U.S. marines from Okinawa, Japan, to Guåhan continued throughout 2011, with the first quarter of 2011 involving the signing of the Programmatic Agreement (PA), an agreement required by Section 106 of the National Historic Preservation Act which outlines how the U.S. Department of Defense intends to handle the historic artifacts and properties that its military relocation will affect. The PA was signed by the State Historic Preservation Officer Lynda Aguon in March 2011. The signing of the PA allowed the defense department to commence its projects associated with the military relocation.⁷

The effects of such a movement of U.S. defense forces to Guåhan will greatly affect the environmental health of the island and the socio-cultural well-being of the Chamorus. The military relocation plan included the dredging of almost 70 acres of Guåhan coral reef and a proposal for a firing range on the ancient Chamoru village of Págat, among many other projects.

The initial relocation timeline included completion of the move by 2014.⁸ The timeline for completion of the relocation was officially delayed in June 2011, to the satisfaction and relief of several public officials and business leaders,⁹ due to the fact that the proposed relocation projects could not realistically be completed within the initial time frame.

In addition, with the U.S. government's financial and economic situation deteriorating, discussion at the U.S. congressional level involved the overall cost of the military relocation, which was pegged at USD 23.9 billion by the U.S. Government Accountability Office.¹⁰ In a setting in which the U.S. government was seeking to cut costs and curb its trillions-of-dollars deficit, the military relocation costs were questioned, with U.S. senators requesting a Master Plan before any additional funding could be appropriated for the relocation.

A new timeline has yet to be officially released but a more scaled down military relocation plan appears to be on the horizon.

Protecting Págat

The Guam Preservation Trust, the National Trust for Historic Preservation and We Are Guåhan filed a lawsuit against the U.S. Department of Defense in 2010 in

order to protect Pāgat in Honolulu, Hawai`i. This came to a conclusion during the last quarter of 2011. On June 17, Hawai`i District Court Judge Leslie Kobayashi denied the defense department's request for a stay of the Pāgat lawsuit. In November 2011, *We Are Guåhan* declared: "We Won" when the Joint Guam Program Office Director Joseph Ludovici filed a motion in the Hawai`i District Court stating that, under the National Environmental Policy Act, an additional analysis of the alternatives for the live fire training range complex and their environmental impacts would be necessary and would be conducted by the defense department. This will require a Supplementary Environmental Impact Statement to be prepared by the defense department, which is anticipated during the first half of 2012.¹¹ ○

Notes and references

- 1 The Chamorus are the indigenous people of the Mariana Islands. Chamoru also refers to the indigenous culture and language of the Marianas. In the early 1990s, there was debate over the spelling of Chamoru. The various spellings of Chamoru included the following: Chamoru, Chamorro and CHamoru. The authors have chosen to use "Chamoru".
- 2 Some people say that Guåhan was not formally colonized by the Spanish until the 1600s. However, the first point of contact between the Spanish and the Chamorus was in 1521, when Magellan landed on Guåhan. It was at this time that the Portuguese explorer and his crew killed many Chamorus.
- 3 Chamorus are only able to send a non-voting delegate to the U.S. Congress.
- 4 According to Article 3 of the U.N. Declaration on the Rights of Indigenous Peoples, "Indigenous peoples have the right to self-determination."
- 5 See **Ridgell, Clynt, 2011:** *Governor Calvo convenes Commission on Decolonization for first time in 8 years.* http://www.pacificnewscenter.com/index.php?option=com_content&view=article&id=17340:video-governor-calvo-convenes-commission-on-decolonization-for-first-time-in-8-years&catid=45:guam-news&Itemid=156.
- 6 See **Hart, Therese, 2011:** *Legislature, UOG to hold decolonization forum.* <http://www.mvguam.com/local/news/20501-legislature-uog-to-hold-decolonization-forum.html>.
- 7 See **Matanane, Sabrina Salas, 2011:** *Programmatic Agreement signed.* <http://www.kuam.com/story/14214734/2011/03/09/programmatic-agreement-signed?redirected=true>.
- 8 See **Weaver, Teri, 2010:** *Guam leaders balk at U.S. military buildup.* <http://www.stripes.com/news/guam-leaders-balk-at-u-s-military-buildup-1.99062>.
- 9 See **Walker, Lannie, 2011:** *Guam officials react to buildup delay.* <http://www.kuam.com/story/14953455/2011/06/22/guam-officials-react-to-buildup-delay>.
- 10 See **U.S. Government Accountability Office:** *Costs and challenges in meeting construction timelines.* <http://www.gao.gov/products/GAO-11-459R>.
- 11 See **Ridgell, Clynt, 2011:** *"We won" says Leevin Camacho of We Are Guahan.* http://www.radiopacific.com/index.php?option=com_content&view=article&id=18697:qwe-wonq-said-we-are-guahans-leevin-camacho-on-pagat-lawsuit&catid=45:guam-news&Itemid=156.

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TUVALU

Tuvalu voted to separate from the Gilbert Islands in 1974. On 1 October 1978, the island nation became independent. Tuvalu became a member of the United Nations in 2000. The four reef islands and five atolls, consisting of a mere 26 sq. kilometres, is one of the most densely populated independent states in the UN and the second smallest in terms of population, with 11,000 citizens. No point on Tuvalu is more than 4.5 metres above sea level.

Tuvalu is a constitutional monarchy. The parliament (*Te Fale o Palamene*) consists of 15 members that are popularly elected every four years from eight constituencies. There are no formal political parties.

Subsistence farming and fishing are the primary economic activities. Fishing licences to foreign vessels also provide an important revenue source. Approximately ten per cent of the male workforce are employed as seafarers in the commercial shipping industry, providing households with overseas remittances.

Tuvalu is a party to and has ratified two international human rights treaties – the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). Tuvalu has not ratified ILO Convention No. 169 but it voted in favour of the UN Declaration on the Right of Indigenous Peoples in 2007.

Freedom of speech and assembly

In early 2011, a 14-day ban on gatherings of more than ten people was imposed by the Government of Tuvalu. Activating the Public Order Act for the first time in the country's history, the emergency regulations meant that all public meetings, protest marches and community feasts were banned.

The ban was put in place after community leaders and members of the Nukufetau island community in the capital marched to the home of Nukufetau Member

of Parliament Lotoala Metia in Funafuti on 12 January 2011, calling for his resignation.¹ This peaceful protest was organised after Mr Metia had failed to meet with community elders upon request, which was seen as breaching traditional protocol. The prime minister of Tuvalu, Willie Telavi, activated the Public Order Act in response to alleged threats made in a letter sent to Finance Minister Metia by his constituents in Nukufetau. The prime minister stated that the group had issued Metia with an ultimatum that he should resign immediately. The letter also allegedly stated that they would do everything within their power to remove him if he did not comply. Telavi further stated that there were rumours circulating that the group planned to burn down buildings.

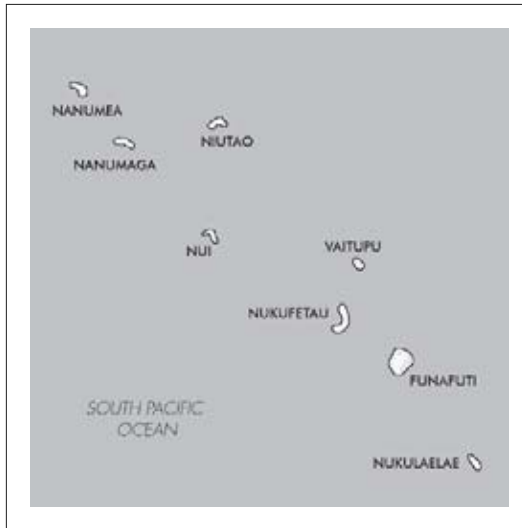
That same day (January 12), the armed Coast Guard vessel *Te Mataili* was deployed off shore in the Funafuti lagoon close to the residences of the Governor General and the Prime Minister of Tuvalu. It is not known why the vessel was moved in. However, the involvement of this vessel and the fact that some of the personnel may have been armed – an unprecedented event in Tuvalu's peaceful history - was a source of grave fear and concern for Tuvalu's population.² The government later denied deploying armed personnel when questioned on the matter by the opposition in parliament.

The events leading up to this action started in mid-December 2010 when a vote of no confidence was passed in relation to the planned budget of Maatia Toafa's government, formed three months earlier following national elections. Three members of Toafa's government crossed the floor and joined the opposition, including Willy Telavi, who was subsequently elected Prime Minister. The Nukufetau community was not happy that one of their two elected members, Mr Lotoala Metia, had joined the Telavi government.

A regional media monitoring group, Pacific Freedom Forum, said that the first use of the law to impose "an historic 14-day ban on public meetings" would have "trickle down impacts on free speech and free expression" in the country.³

Climate change

Predictions about climate change resulting in more serious droughts in Tuvalu seemed to be vindicated when a state of emergency was declared in September following months of well below average rainfall. Two of Tuvalu's nine islands - Funafuti (the capital) and Nukulaelae - were most affected. Most households on



these islands were either out of water by September or running very low on supplies and were dependent upon a free water ration of two buckets of water per family per day, supplied by the government. Agriculture was also being seriously affected.

The sources of fresh water in Tuvalu are groundwater, rainwater, bottled water and

desalinated sea-water. Groundwater is either contaminated by urban run-off or brackish and therefore unsuitable for consumption. Of the five existing desalination plants in Tuvalu, four were not operating during the drought because of a lack of capacity to repair them. Households therefore have to rely largely on rainwater collected in domestic tanks. An Australian aid project had delivered and installed 607 water tanks the year before the drought, reportedly improving access to fresh water for 85% of the population of Funafuti. Nevertheless, considerable hardship was experienced in 2011. In September, emergency desalination equipment, hand sanitisers and water containers were deployed by Australian, New Zealand and Red Cross teams to address the water shortage in the short term. A major health crisis was averted, but many questions remain as to the long-term appropriateness of desalinators, the efficiency and maintenance of household collection systems, and on-going food security.⁴

Related to this, climate change policy moved forward in 2011 with extensive community consultations for a national climate change policy. There is optimism that this policy, when passed by Parliament in early 2012, will provide considerable protection and recognition of traditional land, fishing and cultural rights, which are under threat from climate change. Less optimistically, the head of the Tuvaluan civil society delegation to the international climate negotiations at Durban, Tafue Lusama, stated:

My general feelings about this convention are those of disappointment. There is no sense of urgency in the negotiations and the issue is treated with political mandates and self-interests rather than with urgency and sincere concern for the wellbeing of Mother Earth and the most vulnerable.⁵

Female leadership

Women in Tuvalu have earned places in the traditionally male-dominated workplace and political arena. The second female member of parliament in Tuvalu's history was elected in August 2011. Pelenike Isaia, wife of deceased member of parliament, Isaia Italeli, won the seat vacated by her husband's death in a by-election in Nui. In another significant step forward, the Tuvalu Maritime Training Institute accepted its first ever female cadet, and there is optimism that the traditionally male-dominated seafaring sector will now be more accessible to women. The female cadet joins Tuvalu's first female air pilot to provide young Tuvaluan women with important new role models. ○

Notes

- 1 http://www.nzherald.co.nz/pacific-islands/news/article.cfm?l_id=10&objectid=10700235
- 2 <http://www.tuvaluaislands.com/news/archives/2011/2011-01-13.html>
- 3 <http://www.pacificfreedomforum.org/2011/01/more-dialogue-discussion-needed-for.html>
- 4 Twenty-fifth Annual Report of the Tuvalu Trust Fund Advisory Committee, TTFC Secretariat, 2011.
- 5 Tafue Lusama's REPORT on Durban from a Tuvalu perspective, Pacific Calling Partnership Mailing List pacific.calling.au@erc.org.au.

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HAWAI'I

Ka Pae Aina o Hawaii (the Hawaiian Archipelago) is made up of 137 islands, reefs and shoals, stretching 1,523 miles south-east to north-west and consisting of a total land area of approximately 6,425 square miles. *Kanaka Maoli*, the indigenous people of *Ka Pae Aina o Hawaii*, represent approximately 20% of the total population of 1.2 million.

In 1893, the Government of Hawaii, led by Queen Liliuokalani, was illegally overthrown and a Provisional Government formed without the consent of *Kanaka Maoli* and in violation of treaties and international law. Since 1959, Hawaii has been a state of the USA.

Kanaka Maoli continue to struggle and suffer from the wrongs that were done in the past and continue today. The UN Declaration on the Rights of Indigenous Peoples guides the actions and aspirations of the indigenous peoples of Hawaii, together with local declarations such as the *Palapala Paoakalani*.¹

Hawaii has faced many waves of colonization over the centuries. In November 2011, thousands of CEOs and 20 heads of state came thundering onto the shores of Honolulu to focus on profit and trade in the Asia Pacific Economic Co-operation (APEC) summit.

The APEC summit was a rare opportunity to connect indigenous peoples in Oceania. *Kanaka Maoli* spearheaded a substantive movement uniting indigenous peoples from across the region of Oceania under *Moana Nui*, a coalition of sovereignty advocates, local activists and academics offering an indigenous paradigm for development based on Pacific cultural values and not commodification.

The *Moana Nui* conference and campaign allowed the *ohana* (family) of Oceania to unite. Maori from Aotearoa (NZ), Maohi from Tahiti and Rapa Nui spoke together about the challenges facing Polynesians since colonization and common challenges today, including militarization. The circle of indigenous peoples also

included the Aboriginals of Australia, First Nations of Canada, Ainu from Japan, people from the Cordillera in the Philippines and Khmer Krom from Vietnam.

Before the heads of state arrived and security gated off Waikiki from the world, homeless *Kanaka Maoli* were rounded up by police and moved far away from Waikiki to the ends of the island.

While the APEC agenda divided citizens and denied access, Moana Nui focused on inclusion and interconnectedness. Jon Osorio, a sovereignty leader, professor and musician, welcomed the indigenous leaders thus: “This is not a conference of the native only, but companions and allies that have joined in our work and commitment to restore EA (breath, sovereignty) to the islands in this great sea.”

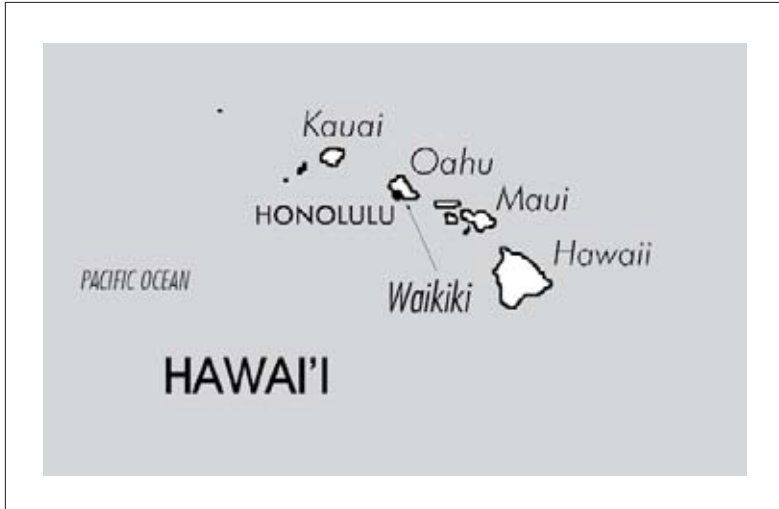
The *Moana Nui Summit* aimed to move beyond talking and towards sharing talent and techniques in order to imagine and initiate a new era of engagement among indigenous peoples of Oceania. As Jon Osorio said: “Imagining all of you here inspired all of us. It is our birth right, *kuleana*, to our islands and the sea. This isn’t a conference for the faint hearted. It will chart a path, we will talk together to end alienation of our lands and ourselves.”

With regard to the companies and countries meeting at APEC Osorio pointed out, “They know nothing about our knowledge of the ocean and care even less.”

Waldon Bello, a member of Congress in the Philippines’ House of Representatives and author, noted, “APEC has been silent for the region’s first peoples. Environmental crisis is also significant. When it comes to climate change and deforestation, APEC has been useless.” (...) “APEC is obsolete and irrelevant. Let’s build a relevant body for our transpacific community.”

Bello concluded, “The concerns of indigenous peoples must be addressed but networks should be pushed with a transpacific basis. The future lies in sustainable economies that are non-globalized. We have to have economies that respond to local dynamics instead of being subordinated to global trends.”

The spirit of self-determination was at the core of the conference. The principle of Free, Prior and Informed Consent as enshrined in the UN Declaration on the Rights of Indigenous Peoples was a common thread throughout the five panels and continued into conversations. Mililani Trask, long-time Kanaka Maoli activist, claimed:



We are the ones winning this struggle. We have not vanished. We are here because we are resilient. We will persevere."

(...)“We are all survivors of genocide. We have to continue to survive and then save the entire world. The aina (land) is what nourishes us. We are cosmic people. We are all united. We have to listen to our ancestors and practice our culture. It will bring serenity and sanity back to our earth. We have an imagination that predates global capitalism; we can see the way forward.

The *Moana Nui* conference did not end with a summary session. Instead, the *Moana Nui Declaration* that emerged from the summit was read in the streets in protest and resistance. The topics of indigenous resources, lands and economies; native rights and governance; demilitarization and indigenous developments provided an indigenous way forward for the world from Hawaii. The *Moana Nui Declaration* proudly claims:

We, the peoples of moana nui, connected by the currents of our ocean home, declare that we will not cooperate with the commodification of life and land as represented by APEC's predatory capitalistic practices, distorted information and secret trade negotiations and agreements. We invoke our rights to

free, prior and informed consent. We choose cooperative trans-Pacific dialogue, action, advocacy and solidarity between and amongst the peoples of the Pacific, rooted in traditional cultural practices and wisdom. E mau ke ea o ka aina i ka pono. A mama. Ua noa.

Next year, APEC will be hosted in Vladivostok and *Kanaka Maoli* hope that a parallel indigenous peoples' summit will continue to be organized. There are many associations in Russia that can continue this tradition of *Moana Nui* commenced by the traditional peoples of the Pacific along with the International Forum on Globalization. ○

Reference

- 1 *The Paoakalani Declaration* <<http://kaahapono.com/PaoakalaniDeclaration05.pdf>>.

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EAST &
SOUTH EAST ASIA

JAPAN

The two indigenous peoples of Japan, the Ainu and the Okinawans, live on the northernmost and southernmost islands of the country's archipelago. The Ainu territory stretches from Sakhalin and the Kurile Islands (now both Russian territories) to the northern part of present-day Japan, including the entire island of Hokkaido. Hokkaido was unilaterally incorporated into the Japanese state in 1869. Although most Ainu still live in Hokkaido, over the second half of the 20th century, tens of thousands migrated to Japan's urban centres for work and to escape the more prevalent discrimination on Hokkaido. Since June 2008, the Ainu have been officially recognized as an indigenous people of Japan. As of 2006, the Ainu population was 23,782 in Hokkaido and roughly 5,000 in the greater Kanto region.¹

Okinawans live in the Ryūkyū Islands, which now make up Japan's present-day Okinawa prefecture. They comprise several indigenous language groups with distinct cultural traits. Japan forcibly annexed the 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, but the US military remained. Currently, 75% of all US forces in Japan are located in Okinawa prefecture, a mere 0.6% of Japan's territory. 50,000 US military personnel, their dependents and civilian contractors occupy 34 military installations on Okinawa Island, the largest and most populated of the archipelago. The island is home to 1.1 million of the 1.3 million people living throughout the Ryūkyūs. Although there has been some migration of ethnic Japanese to the islands, the population is largely indigenous Ryūkyūans.

In 2007, Japan voted in favour of the UN Declaration on the Rights of Indigenous Peoples.



The Ainu

The Great East Japan Earthquake

On March 11, 2011, north-eastern Japan suffered one of the strongest earthquakes in recorded history, a magnitude 9 earthquake followed by a devas-

tating *tsunami*. Approximately 25,000 people were killed and, while few Ainu are known to have lost their lives, their livelihood was affected by the loss of key fisheries in north-eastern Japan. The disaster also crippled the Fukushima Daiichi nuclear power plant, resulting in a triple reactor meltdown and the worst nuclear disaster since Chernobyl. Leakage of radioactive materials into surrounding prefectures led to widespread, ongoing contamination of Japan's food and water supply. Ainu devotion to healing the natural environment in order to restore ancestral practices was compounded by the environmental catastrophe of Fukushima and radiation spreading outward, contaminating air, water and ocean ecosystems. Ainu activists and poets sought ways to respond to the disaster and to reach out to fellow Indigenous peoples in the process.

Progress on government-sponsored Ainu policy

The Council on Ainu Policy Promotion, including four representatives from the Ainu Association of Hokkaido and one Ainu representative from Greater Tokyo, continued work during 2011 to develop policy measures for Ainu nationwide. Two sub-groups, the "Symbolic Space of Ethnic Harmony" working group and the "Survey of Socioeconomic Conditions of Ainu outside Hokkaido" working group, submitted reports in 2011. Neither report addressed Ainu self-determination or calls for rights recovery through an indigenous rights framework. In these negotiations, international standards on indigenous rights have been abandoned in order to preserve the Japanese Constitution.²

The "Ethnic Harmony" working group suggests that Japan may enhance its global reputation as a model multicultural state by developing Ainu culture as a "valuable culture of our nation".³ The "Symbolic Space of Ethnic Harmony" is slated to feature a natural/cultural park with facilities for education, research and displays on Ainu history and culture; an area for traditional arts training; and a memorial ossuary for the thousands of indigenous remains pilfered from Ainu gravesites by researchers. Some Ainu organizations have protested at placing the ossuary together with the research laboratories, due to concerns that the remains of these ancestors may once again be used for research.⁴

The "Survey of Socioeconomic Conditions of Ainu outside Hokkaido" working group conducted the first national survey of Ainu in December 2010. Only 210 survey forms (66% of the total) were returned, however, the majority from Tokyo. The survey defined Ainu identity exclusively by blood ancestry.⁵ Historically, many

ethnic Japanese were adopted into Ainu families. The Ainu have not yet decided how identity should be defined and this idea of identity, as used in the survey, was troubling for many.

The survey revealed significant gaps in education and economic stability between Ainu and the majority *wajin* (Japanese) population. For example, 44.8% of Ainu households nationwide reported an annual income of less than three million yen (approximately \$30,000 Euros, compared with 50.9% of Hokkaido Ainu households, and 33.2% of the general population).⁶ Furthermore, some 9.9% of households are current or previous recipients of government assistance, compared with 7% of Hokkaido Ainu households and 2.3% of the general population.⁷ Regarding education, only 87.9% of Ainu between 18 and 29 years of age had completed high school, compared with 95.2% of Hokkaido Ainu and 97.3% of the general population.⁸ In short, Ainu outside Hokkaido appear to face greater socio-economic challenges, enjoy fewer institutional benefits from state agencies, and lack community support for reconnecting with their ancestors than their counterparts in Hokkaido.

The Okinawans

2012 marks the 40th anniversary of the end of the United States' formal post-war occupation, of the Ryūkyū Islands' reincorporation into Japan and conferral of Japanese citizenship on Okinawans. The anniversary draws attention to two related characteristics of post-1972 Okinawa. The first is Okinawans' ongoing struggle for equal protection and representation as citizens of Japan. The second is the extent to which the United States depends on Japan's systematic discrimination of Okinawans to maintain its military presence on the islands. Both are encapsulated in the long-running struggle over the closure of Marine Corps' Futenma Air Station and the proposed construction of a massive new military complex at Okinawa's Cape Henoko.

The Futenma-Henoko issue: background and recent developments

In the wake of public outcry after three US service members gang-raped a 12-year old Okinawan girl in 1995, the US and Japanese governments promised to “reduce the burden of US military presence” on Okinawans. Central to their agree-

ment was the closure of Futenma base, located in densely populated central Okinawa. However, the US made the base's closure conditional on the construction of a new "replacement facility" within Okinawa that would assume Futenma's military functions. Air operations at the base continue, with training flights circling low over residential and commercial areas from early morning to late at night. In early 2004, former US Secretary of Defense Donald Rumsfeld called Futenma "the most dangerous base in the world". In August of the same year, a large transport helicopter from the base crashed into a nearby college campus.

The same military operations would be moved to the proposed site for the new base, next to the village of Henoko in the city of Nago. The plan involves massive landfill of the sea surrounding Cape Henoko, an area known for its biodiverse coral reef ecosystem. The plan also includes building six large helipads in the forest of nearby Takae village for flight training with the controversial Osprey MV-22 aircraft. Construction of both facilities threatens the habitats of several critically endangered land and marine species (including the Okinawa dugong, or sea manatee), as well as the safety and quality of life of local residents. (For more background information see also previous issues of *The Indigenous World*).

Okinawan opposition to the new base is as strong as ever. The current governor of Okinawa and the mayor of Nago City were elected on platforms opposing the Henoko project. The heads of Okinawa's municipalities and the prefectural assembly passed resolutions against the new base plan, and the latter passed another against the deployment of the Osprey MV-22 to Okinawa.

This message of opposition appeared, briefly, to reach Washington in spring 2011. US senators on the powerful Armed Forces Committee declared the 2006 plan "unrealistic, unworkable and unaffordable".⁹ However, they proposed integrating Futenma's air operations into Kadena Air Base, also located in densely populated central Okinawa. Locally-elected officials immediately voiced their opposition, citing the already intense problems of aircraft noise at Kadena. Indeed, in April, 22,058 residents living around Kadena Air Base filed a lawsuit seeking a ban on night-time flights.

Despite the widespread and democratically expressed opposition to the Henoko project or to integrating air operations into Kadena as a condition of Futenma's closure, Tokyo continues to reaffirm its commitment to the 2006 agreement.

The Futenma-Henoko struggle has dominated base politics for 16 years because of what a new base would mean for Okinawans' future, given the ongoing, day-to-day problems surrounding US military presence and the frequent inability

of Okinawans to achieve genuine redress. This past year saw continued sexual violence and other crimes committed by US servicemen. In January, 21-year-old Koki Yogi died after being struck by a car driven by a civilian employee of the US Air Force. The incident fueled frustrations toward the US-Japan Status of Forces Agreement, which prevents local officials from apprehending or prosecuting US military and civilian personnel who commit crimes. In October, Japan's Supreme Court dismissed an appeal filed by Okinawan plaintiffs after their lawsuit concerning night-time air operations at Futenma Air Station was rejected by a lower court.

Although Okinawans' most pressing problems stem from contemporary US military practices and the Japanese government's support of them, past military policies still impact on everyday life. Excavations over the past year, including in the grounds of a high school and a hospital, revealed over 100 unexploded bombs and smaller ordinance remaining from the Battle of Okinawa in 1945. Also, in September, former US soldiers disclosed that barrels of the toxic defoliant Agent Orange had been buried on the island during the Vietnam War. ○

Notes and references

- 1 Population figures taken from the 2006 Survey of Ainu Livelihood conducted by Hokkaido prefectural government in cooperation with the Ainu Association (Hokkaido Government, Environment and Lifestyle Section. 2007. *Hokkaido Ainu Survey on Livelihood Report*, Accessed 20 March 2011, <http://www.pref.hokkaido.lg.jp/file.jsp?id=56318>). Many with Ainu ancestry do not publicly identify as Ainu due to discrimination and stigma in Japanese society. Ainu observers estimate the actual population of those with Ainu ancestry to be between 100-300,000.
- 2 The 2008-2009 Expert Meeting on Ainu Policy included two constitutional legal experts and the governor of Hokkaido prefecture to ensure policy recommendations would not violate the authority of the Japanese Constitution (Expert Meeting on Ainu Policy Final Report. 2009 <http://www.kantei.go.jp/jp/singi/ainu/index.html>, (Accessed 8 December 2011, page 21-22).
- 3 "Symbolic Space of Ethnic Harmony" Working Group Report. June 2011 <http://www.kantei.go.jp/jp/singi/ainusuishin/shuchou-kukan/houkokusho.pdf>, Accessed 8 December 2011, page 1.
- 4 Formal request to Chief Cabinet Secretary Edano Yukio from the Research Group on Materials Released by Hokkaido University, 12 July 2011, http://pub.ne.jp/ORORON/?monthly_id=201107 (posted 13 July 2011), Accessed 4 January 2012).
- 5 "Survey on Socioeconomic Conditions of Ainu outside Hokkaido" Working Group Report. June 2011 <http://www.kantei.go.jp/jp/singi/ainusuishin/jittaichousa/houkokusho.pdf>, Accessed 7 December 2011, page 7.
- 6 *Ibid.*, p. 9
- 7 *Ibid.*, p. 10
- 8 *Ibid.*, p. 17-18

- 9 "Senators Levin, McCain, Webb Call for Re-Examination of Military Basing Plans in East Asia," Press Release, Senator John McCain, May 11, 2011, <http://bit.ly/vZM8HJ>, Accessed February 1, 2012.

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CHINA

Officially, China proclaims itself a unified country with a multiple ethnic make-up, and all ethnic groups are considered equal by law. Besides the Han Chinese majority, the government recognizes 55 ethnic minority peoples within its borders. According to China's sixth national census of 2010, the population of ethnic minorities is 113,792,211 persons, or 8.49 % of the country's total population.

The national "Ethnic Minority Identification Project", undertaken from 1953 to 1979, settled on official recognition for 55 ethnic minority groups. However, there are still "unrecognized ethnic groups" in China numbering a total of 734,438 persons (2000 census figure). Most of them live in China's south-west regions of Guizhou, Sichuan, Yunnan and Tibet. The officially recognized ethnic minority groups have rights protected by the Constitution. This includes establishing ethnic autonomous regions, setting up their own local administrative governance and the right to practice their own language and culture. "Ethnic autonomous regions" constitute around 60% of China's land area.

The Chinese government does not recognize the term "indigenous peoples", and representatives of China's ethnic minorities have not readily identified themselves as indigenous peoples, and have rarely participated in international meetings related to indigenous peoples' issues. It has therefore not been clearly established which of China's ethnic minority groups are to be considered indigenous peoples. The Chinese government voted in favor of the UNDRIP but, prior to the adoption of the UNDRIP, had already officially stated that there were no indigenous peoples in China, which means that, in their eyes, the UNDRIP does not apply to China.

Increasing social unrest and protests

Throughout 2011, China was rocked by a series of mass protests and major social upheavals in urban centers, small towns, as well as in the rural hinterlands. From an overall perspective, many of the underlying reasons had to do with socio-economic inequalities - the fast growing gap between the rich and the poor, and the unfair distribution of resources.

The transformation of modern China into a thriving economy has also brought about a fundamental change from the past Chinese Communist Party's proletariat, socialist ideology to a wealth-worshipping capitalist system. There is pervasive discontent over the worsening levels of corruption on the part of government officials, the defrauding and theft of private land and properties by local administrators, exploitation by big business and the deterioration in the natural environment. It is against this backdrop that a number of troubling developments of violent communal disturbances and large-scale riots have taken place in the ethnic minority regions of China, and these parallel the rising grievances against the ruling PRC regime in society in general.

Examining the past year's events, the two main conflictive issues in the ethnic minority regions were land and religion. Much of the social unrest and violent protest by ethnic minorities was in response to land-grabbing, shady deals related to land development projects, forced relocation due to infrastructure projects (such as the hydroelectric dams and the resulting pollution of water sources in the Yunnan-Guizhou upland areas) and environmental contamination and pollution (such as the illegal dumping of industrial waste containing toxic chromium in Luliang County, Qujing City in Yunnan Province).

Violent mass protests in Inner Mongolia

The violent mass protests in the Inner Mongolia Autonomous Region¹ in May 2011 received significant international media attention, even though state censors tried to block any information about the biggest unrest by ethnic Mongolians against Han Chinese government rule in over 30 years. The incidents started in the Abag Banner, Xilin Gol League area of Inner Mongolia,² where two Mongolian herders were killed in separate incidents. Both cases involved the development of



a local coal mine, which led to agitation by the area's pastoral community in protest at the extensive pollution of the pastureland and water bodies by mining operations.

The protests have become symbolic of the Mongolians' dissatisfaction with a national development policy that is increasingly marginalising them. In recent decades, the Chinese government has prohibited ethnic Mongolians from practicing their traditional way of pastoralist nomadic herding, citing the need to prevent destruction of the pastureland. However, after this prohibition came into effect, the Chinese government went ahead and allowed companies to exploit the region's coal and mineral resources. The prospecting activities, mining operations and running of coal transport trucks have extensively damaged the pastures and the area's environment. Local Mongolian communities were extremely angry and eventually started protesting.

For the Mongolian people, the Han Chinese are intruders on their traditional territory. The Han Chinese incursion began in the middle of the 19th century. To this day, the Mongolians call on the spirit of *Gada Mairan*, a celebrated hero who

led an armed uprising in the 1930s against the exploitation and political oppression of the Han Chinese settlers and the corrupt government.

During the 1960s, Chinese state propaganda promoted Gada Mairen's story to show that the Communist Party stood by the Mongolian people, and that the traditional pastoralist culture could thrive under the benevolent rule of the Chinese Communist Party (CCP). But times have changed, and the Mongolians are now fighting corrupt officials once more, this time those of the CCP which, decades earlier, had trumpeted its co-operation and binding friendship with ethnic minority peoples.

As the CCP's state ideology turns to embrace capitalism, and profit-making has become the driving force, the Chinese government is gradually losing the trust of the ethnic minority peoples. Rapidly growing social inequalities and discontent among ethnic minorities are bound to result in more violent unrest, and are threatening China's national unity.

Denial of freedom of religion

Officially, the Communist Party follows an "atheist" doctrine, and regards religion as superstition – "the opiate of the masses". The Chinese government severely restricts practices of religious worship. However, this anti-religious doctrine runs counter to the ways of many ethnic minority peoples. For the Tibetans, whose culture is deeply rooted in Tibetan Buddhism, and the Uighurs and Hui Muslims who follow Islam, religion is an integral part of their daily lives and cannot be separated from their culture. Any attempt to restrict their religious practices or to force them to abandon their beliefs will result in conflict and ethnic strife.

In 2011, there were several high-profile cases of violence and protest actions due to religious issues in ethnic minority regions. Many disturbing reports filtered through to the outside world, including self-immolation by Tibetan monks, leading to police arrests and the torture of Tibetans, bomb-blast deaths in Uighur Xinjiang Autonomous Region³ (in Kashgar and Hotan), and the communal violence in Ningxia Hui Autonomous Region (bordering Inner Mongolia).

By the end of 2011, a total of 11 young Tibetan monks had burned themselves to death in Sichuan Province's Aba and Ganzi Tibetan Autonomous Prefectures. News of these self-immolations has led to several such acts of extreme defiance in other Tibetan monasteries. The direct cause of this was state interference and

the forced ideological conversion on the part of the Chinese government. Tibetan monks have been forced to undergo a “re-education program”. Conducted by the state government’s religious affairs department, this “re-education program” is aimed at repudiating the Dalai Lama and indoctrinating the Tibetan monks into Communist Party ideology. If there is any resistance to the program, the monasteries are put under strict confinement, with water and electricity cut off. Consequently, many young monks choose death by self-immolation to protest at the Chinese government’s persecution and to uphold the Tibetan people’s right to religious freedom.

In the traditional Uighur Muslim homeland region of Xinjiang in the western hinterland of China, a number of bomb blasts and violent clashes with police have taken place this past year. State media pointed the finger at the work of Uighur independence movement activists with links to foreign-based organizations. In the aftermath, many hundreds of ethnic Uighur religious teachers and mosque officials have been made to attend re-education classes to “straighten-out their thoughts”. Anyone refusing to undergo these classes has their “Certificate of Religious Work” revoked. More serious cases of defiance can lead to arrest on the charge of “inciting illegal religious activities”. This kind of intimidation by the authorities to force the Uighur Muslims to abandon their religious belief only results in more discontent and social disturbance.

In December, the demolition of a mosque by the local government in Taoshan village, Ningxia Hui Autonomous Region, led to another serious conflict. The mosque was built and financed by the local Hui Muslim villagers themselves, most of whom are impoverished farmers. The destruction of the mosque led to a major clash between the protesting Hui Muslim villagers and the police force, resulting in several deaths and serious injuries. Around 80 people were arrested.

According to government officials, the building of the mosque was not authorized, and was therefore illegal, and it could also become the focal point of community people gathering to express their dissent. Faced with such discrimination, these Hui Muslims chose to defy and fight the authorities, in order to defend the freedom to practice their own religion.

Revealing announcements by the State Ethnic Affairs Commission

Reviewing the major year-end news announcements from the State Ethnic Affairs Commission can be quite enlightening as they reveal the rationale underlying the

government's ethnic minority policy. The first news release announced an overall population growth rate among ethnic minorities of 6.92 % over the past decade. The second major news announcement was the declaration that Yunnan Province was to be developed into a major bridge-link in order to open up access to and co-operation with the neighboring Southeast Asian countries. The third important announcement concerned the pastoral livelihood of ethnic minority peoples. It was a directive to local governments to promote the "healthy development of the pasturelands", with good planning of construction projects, maintaining the proper ecological balance and providing economic means of support for the ethnic minority herders and their livestock. Thus, the announcement continued, social stability and unity could be achieved among the ethnic groups, along with improved economic development of the livestock-dependent traditional herding-lifestyle areas, mainly in the north, west and some south-west regions of China.

The rest of the news and policy announcements from the State Ethnic Affairs Commission consisted mainly of positive pronouncements regarding the success of government programs in the ethnic minority regions. It is particularly interesting to note what is not said in these year-end pronouncements: there was no mention of any of the many violent conflicts and mass protests that had occurred throughout the ethnic minority regions.

Much of the propaganda and publicity campaigns of the Chinese government still focus on economic development to improve the lives of the poor segments of ethnic groups. This kind of positive media reporting, good news about national unity and ethnic harmony, is in sharp contrast to what is happening on the ground: the violent disturbances and social unrest which are the focus of increasing international attention and concern. ○

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China Ethnic Daily Newspaper, Dec. 30, 2011: "Top News and Important Development of Ethnic Minority Peoples in 2011", page 1.

Notes

- 1 It is also called "Southern Mongolia" by the region's activist organizations and exile groups.
- 2 "Banners" are age-old traditional Mongolian political-administrative divisions based on family-clan alliances and their territorial holdings. Several Banner districts make up a "League". A Banner is roughly equivalent to a County in other provinces of China. Inner Mongolia currently has seven Leagues, 49 Banners and three "Autonomous Banners". In addition, Inner Mongolia has twelve major cities with large areas, which also have their own Banners, as city sub-districts, under their administration.
- 3 Xinjiang is also called "East Turkestan" by the region's activist organizations and exile groups.

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TIBET

Tibet was brought under the full control of the People's Republic of China after the Tibetan people's uprising in Tibet's capital Lhasa on 10 March 1959, which led to the flight of Tibet's spiritual and political leader, the 14th Dalai Lama and, with him, thousands of Tibetans, into exile. Tibetans do not consider themselves an indigenous people but share many characteristics. Their rights are severely oppressed and they have no say in the governing and future of Tibet. Chinese campaigns against the Dalai Lama, and growing restrictions on Tibetan religion and economic policies that have led to the loss of their land and livelihoods, have caused deep resentment. The Chinese government clearly does not subscribe to Free, Prior and Informed Consent or to the rights of a people to their own land.

The approximately 127,000 Tibetans-in-exile account for around 3 percent of the total Tibetan population of an estimated six million, of which around half live in the Chinese-labelled Tibet Autonomous Region (TAR), while the other half lives in Eastern Tibetan autonomous regions in a number of Chinese provinces.

The 14th Dalai Lama hands over power

On 11 March, the exiled 76-year-old 14th Dalai Lama handed over temporal power to a democratically-elected leadership. Realising the need for continued democratic reforms and for the exiled Tibetan administration to become self-reliant rather than following the traditional system of a Council of Regency when a Dalai Lama dies, His Holiness announced that the necessary amendments to the Charter must conform to the framework of a democratic system in which the political leadership is elected by the people for a specific term. A new *Kalon Tripa* (prime minister), Lobsang Sangay, took office on 8 August. The Dalai Lama continues to be the spiritual leader of his people.



Unrest and self-immolations in Tibet

The Dalai Lama's handover of power happened amidst protest and self-immolations in Eastern Tibet. In view of the increasing restrictions on the Tibetans' religious and other forms of freedom, 13 Tibetan monks and nuns chose to voice their protest by setting fire to themselves. At least eight died from their injuries. According to reports by the International Campaign for Tibet (ICT)¹ and the Annual Human Rights Report by the Tibetan Centre for Human Rights and Democracy (TCHRD),² the victims included a 17-year-old monk from Kirti monastery in Ngapa who committed suicide by self-immolation in protest at the Chinese oppression, which was stepped up after 2008 and has led to, among other things, a considerable decline in the number of nuns and monks. Kirti was locked down following the incident and the ensuing demonstrations in Ngapa harshly put down. On 15 August, a 29-year-old monk set fire to himself demanding freedom for Tibet. On 26 September, two 18-year-old monks from Ngapa were reported to have set fire to themselves following a peaceful protest at the town market. Two Tibet-

ans died after self-immolation on 7 October. On 17 October, a 20-year-old nun from Mamae nunnery in Ngapa died after self-immolation. On 1 December, self-immolations spread to other areas of Tibet as a former monk set fire to himself in Lhasa.

The Chinese government reacted by stepping up restrictions, closing down monasteries and boosting its military presence in the affected areas. The TCHRD concludes in its Annual Report that the self-immolations are symptomatic of the distressed situation of Tibetans. The Chinese government refuses to admit any responsibility and continues to violate its international human rights obligations.

The unrest in Tibet continued throughout 2011 and spread to other regions, including Lhasa where, on June 22, two monks shouted slogans for the freedom of Tibet. This was the first known demonstration in Lhasa since 2008, and the city was immediately put under lockdown. The demonstration occurred despite rigorous security measures, particularly the ban on foreigners visiting the TAR at that time. The reasons are not known although it was thought to be linked to celebrations of the 60th anniversary of the “peaceful liberation” of Tibet. Responding to the serious situation in Tibet, the international Tibet Network³ initiated the Stand Up for Tibet Campaign in order to raise international awareness and support.

Tibetans have no rights

The THRC annual report provides information on the state of religious freedom, censorship, education and language rights, torture, enforced disappearances, flawed development, environmental destruction, and the consistent violation of civil and political rights of the Tibetan people. It estimates that there are over 830 known political prisoners in Tibet, of which 403 are known to have been legally convicted by the courts. 230 known Tibetans were arrested and detained over the year, indicating an increase compared to the 188 detained for political reasons in 2010. A young monk from Tsetsang monastery was arrested while calling for the release of political prisoners, and referring to the imprisoned lama, Phurbu Rinpoche, who was sentenced to eight and a half years in prison in December 2009 following his arrest shortly after around 80 nuns from Pang Ri had held a peaceful protest. The Deputy Discipline Master of Beri monastery in Kardze staged a solo protest before being detained by armed police. Three young nuns also protested in Kardze before being detained. A female layperson protested

before being beaten by police and driven away to an unknown location. On 15 December, a young Tibetan was beaten to death by the police in Labrang, according to an ICT report. The family was compensated and a monk in exile who knew the family said that this may be an admission by the authorities that this should not have happened. There are serious concerns about two imprisoned Labrang monks, one of whom is said to be in a serious condition after torture.

Chinese security officers arrested a young Kirti monk for not complying with official diktats. Since the self-immolation on 16 March and the ensuing protest, Kirti monastery has been the direct target of measures to bring “order and stability”. Monks defying official diktats demanding loyalty to the “motherland” are arrested for “being brainwashed”. In another unconfirmed report, the whereabouts of most of the 300 monks who were taken away in what has become the biggest case of disappearance in Tibet in a single incident in recent times remains unknown.

“Tibet at its best”

The Chinese government continues to claim that its policies bring development and improved livelihoods to Tibet. On 16 January, the official news agency *Xinhua* announced that: “Tibet is at its best period”. For example, in that last five years, 300,000 families have been provided with new homes and another 185,500 families are expected to move into new homes by 2013, with access to safe drinking water and other facilities. The environment has been protected, tourism has grown, infrastructure has been improved and a total of 2,661 officials and professionals from China have worked in Tibet, bringing their technological and management expertise.⁴ The Tibetan people, however, have another perspective of “Tibet at its best”. *Radio Free Asia* reported on 5 April that Chinese security forces had broken up a mass protest by Tibetans over the redevelopment of their land following the earthquake in 2010. Many protesters had been wounded or detained, according to a local source. Some of the protesters had had their residential plots seized and, although they were the legitimate owners, their land had either been sold by local officials or taken over for unjustifiable reasons. Some fields had been confiscated for road building. The owners have not received the necessary compensation.

China also continues to settle Tibetan nomads in new housing complexes, often in isolated areas and with no possibility of continuing their traditional livelihoods. They cannot keep their animals and there are no jobs to be had. Officially, the idea is to train the Tibetans for city jobs. According to a spokesperson from Human Rights Watch,⁵ the government is seeking to control the nomads. The government knows that they are not loyal to China and sees them as being in the way of Chinese exploitation of Tibet's natural resources.

The appointment of a Tibetan to Party Secretary of Lhasa re-establishes a convention of Tibetans holding this post and does not signal any broader shift in policy.

Tibetans in Nepal continue to face restrictions

The situation of Tibetan refugees in Nepal has become increasingly difficult over the last couple of years. ICT reports that, on 13 February, the Nepalese police shut down local elections for the leadership of a Tibetan community group. This was just one of several incidents in which local Tibetans were prevented from voting.

According to an ICT report, on June 24 12 Tibetans were detained in Kathmandu during a candlelight vigil intended to show solidarity with Tibetan demonstrators in Tibet. The Nepalese government typically carries out preventive detentions of Tibetans prior to significant Tibetan national anniversaries or visits of senior Chinese officials but, since 2008, police harassment and restrictions on Tibetan gatherings have increased. This latest incident took place in an environment in which China has increased its diplomatic pressure to block protests and has stepped up bilateral initiatives targeting "anti-China" activities. Greater cooperation between Chinese and Nepalese security forces raises concerns over Nepal's commitment to ensure the safety of Tibetans transiting through Nepal and increases the threat of forced repatriation. On 23 November, ICT reported that the Nepalese police had forcibly returned a young Tibetan man who was escaping from Tibet to the Chinese authorities in September. The Tibetan is now in detention in Tibet. The many Tibetans without identity cards is a particular concern. The US Special Coordinator for Tibetan Issues, who visited the Tibetan Refugee Transit Center in Kathmandu in February, confirmed that Tibetans remain a key interest in US relations with Nepal.⁶ ○

Notes

- 1 The various ICT reports and briefs cited in this article can be found on the organisation's website: <http://www.savetibet.org/>
- 2 *Human Rights Situation in Tibet – Annual Report 2011*, Tibetan Centre for Human Rights and Democracy
- 3 See www.Tibetnetwork.org
- 4 *Xinhua*, 16 January 2011: http://news.xinhuanet.com/english2010/china/2011-01/16/c_13693159.htm
- 5 10 March 2011 <http://www.information.dk>
- 6 For more information see www.tibetnetwork.org and www.savetibet.org

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TAIWAN

The officially recognized indigenous population of Taiwan numbers 520,440 people (2007), or 2.24% 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.¹ 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. A number of national laws protect their rights, including the Constitutional Amendments (2005) on indigenous representation in the Legislative Assembly, protection of language and culture, political participation, the Indigenous Peoples’ Basic Act (2005), the Education Act for Indigenous Peoples (2004), the Status Act for Indigenous Peoples (2001), the Regulations regarding Recognition of Indigenous Peoples (2002) and the Name Act, which allows indigenous peoples to register their original names in Chinese characters and to annotate them in Romanized script (2003). Unfortunately, serious discrepancies and contradictions in the legislation, coupled with only partial implementation of laws guaranteeing the rights of indigenous peoples, have stymied progress towards self-governance.

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.

Still disagreement over indigenous autonomy

“How best to implement indigenous autonomy?” This question remained a big issue in 2011. A number of indigenous communities and activist organizations, and some lawmakers, have pushed for this issue over the course of the past legislature. The draft



“Indigenous Autonomy Act”, which sets out the legal framework and process for establishing autonomous regions for indigenous peoples (see *The Indigenous World 2011*) has already been tabled but still requires legislative debate and approval by the political parties for its enactment. Even Taiwan’s President Ma Ying-Jeou stated last year that his ruling government (the Chinese Nationalist Party, Kuomintang (KMT)) would see it through, and promised to start up a “trial program” of indigenous autonomy in selected indigenous communities. However, the Indigenous Autonomy Act is still locked in political negotiations and backroom dealings. By the end of 2011, the ruling party and the opposition parties had still not been able to come to an agreement on it. The Act was not passed in the final legislative session of the year and was therefore delayed to next year’s session, after the general elections in January 2012.

The ruling KMT government indicated that it was seeking to pass the “Indigenous Autonomy Act” in its current form, without any amendment. Despite objections and problems with articles in the Act, the KMT government’s official stance is: “Pass the Bill first, then upgrade it later”.

A number of stumbling blocks remain, with disagreement over many items, and the need for clarification of legal interpretations and areas of jurisdiction. There are also differences of opinion over its interpretation and implementation among the major political parties, and divisions among the indigenous legislators themselves. A number of indigenous peoples and activist organizations have objections over contentious items in the Act in its current form, which, they fear, could open the door for interest groups to take advantage of the loopholes. Questions have been raised particularly regarding the government transfer payments, the administrative level and jurisdiction boundary issues. The new Legislative Assembly will convene in February 2012. Most of the indigenous candidates who are participating in the national elections have vowed to support the Act, and to ensure its passage into law through the legislature.

Lawsuit by Ping Pu to demand recognition dismissed

In the courts, the lowland Ping Pu indigenous peoples continued to fight for their recognition. Despite rights protection and much progress gained by other indigenous groups in Taiwan, the lowland Ping Pu indigenous peoples are still denied all their rights, and their very existence. They therefore brought a lawsuit focusing on their legal status and 136 indigenous persons belonging to the Siraya people sued the Council of Indigenous Peoples (CIP), the government agency responsible for indigenous affairs. The objective of the case was to restore their indigenous status (see *The Indigenous World 2011* and previous issues). The case was taken up in 2010, and in June 2011 the Taipei Administrative High Court announced its verdict. To the disappointment of rights activist organizations and all lowland Ping Pu indigenous peoples, the court chose to side with the government's argument, and rejected the lawsuit.² The Administrative High Court ruled in favor of the CIP, citing the court's interpretation that the Siraya people's request for restoration of their indigenous status did not fit the requirements as stipulated in the Indigenous Peoples' Basic Law. The judges specifically cited Article 2, which states that in order to have the status of an indigenous people, the Ping Pu must have been registered (with legal documents) as lowland indigenous people during four official periods of registration in the 1950s and 1960s. During those periods of registration, they should also have been registered in accordance with the categories specified by the government.

As a result, the court argues, the 136 Siraya plaintiffs do not qualify under the government's legal requirements, and the lawsuit was therefore dismissed. The court ruling was a big setback for the lowland Ping Pu indigenous peoples. Representing the Siraya peoples, Ms Uma Talavan expressed much regret over the court's decision to dismiss the case instead of giving a clear ruling on the status of lowland Ping Pu peoples. She said, "It's been a very hard battle for us to fight for something as fundamental as our own ethnic identity."³ She vowed to carry on the fight, and the lowland Ping Pu peoples' campaign to restore their indigenous status will not stop until they have succeeded.

Yamei people protest nuclear waste dump

Nuclear waste dumping on indigenous homelands was again hotly disputed in 2011. For more than 30 years, Taipower (Taiwan Power Corporation, the state electricity producer) has stored low-level radioactive waste drums from its three operating nuclear power plants on Lanyu Island. Located to the south-east of the main island, Lanyu is the homeland of the Yamei indigenous people (also known as the "Tao" people). With a population of only 2,400 or so, the Yamei are among the smallest of Taiwan's indigenous groups, and one of the most threatened. The Yamei have doubts as to the company's assurances of the safety of the storage and are worried about the possible damage already done to their island, to the marine ecosystem and to their own health.

In 2011, Yamei activists launched yet another campaign to declare their opposition to the nuclear waste dumps on their island. Starting the journey by ferry from Lanyu Island, a total of 40 Yamei activists made a much-publicized trip to Taipei City. They were led by Syaman Rapongan, a renowned author and traditional marine navigator. They staged a protest "Against Taipower Nuclear Waste on Lanyu Island" at the Legislative Assembly and the Executive Yuan.⁴ From there, the protest proceeded to the campaign headquarters of the three main political parties, where they handed over a number of documents, including a request for financial compensation, and a lawsuit prepared against Taipower for damages to the environment. The Yamei activists also expressed their determination to go to the international community in order to sue the Taiwan government for violating their rights as an indigenous people.

East coast land disputes

There are also increasing cases of economic conflict in the east coast regions of Taiwan, and these have exacerbated the divisions between indigenous and non-indigenous populations. After the “Regulations for Development of East Region” were approved by the Legislature in June 2011, a number of land holdings (once belonging to indigenous communities) came under the management and jurisdiction of government authorities. The disputed lands were in Takomo, Tabalan, and Paliyalaw district (in the Hualien-Taitung Longitudinal Valley), Sanyuan, Dulanpi, and Shihtiping districts (along the eastern coast). These once indigenous areas are now experiencing protracted disputes between local residents, business groups and government departments. Many of the conflicts are over the construction of hotels and tourism services, which the indigenous Amis communities deem an incursion onto their traditional territory, and in violation of the Indigenous Peoples’ Basic Law.

Popular indigenous film

A Taiwanese film on an indigenous people’s uprising against the Japanese came to high prominence in 2011. The film, entitled “*Sediq Balay*”, was highly anticipated and filled the theaters upon its release in September. It tells the story of the indigenous Sediq people’s uprising, led by the clan chief Mona Rudo, in the mountain villages against Japanese rulers in the 1930s, known as “The Wushe Incident”.

Many indigenous actors were recruited for the roles, and much of the dialogue was in the Sediq language. The film, directed by Wei Te-Shen, generated renewed focus on this nearly-forgotten but important chapter in Taiwan’s history, and led to a popular discourse around and affinity for indigenous history and culture. It broke new ground and set social trends in Taiwan, and is regarded as a rare achievement for a Taiwanese domestic film production.

Director Wei made an earlier movie entitled “Cape No. 7”, which focused on southern Taiwan seacoast of Kenting, its past history tied to the local community identity, and also included indigenous cultural elements. That movie’s popularity helped to revitalize the Taiwanese film industry and generated the needed financial support for the making of “*Sediq Balay*”.

Controversial centenary celebrations

2011 marked the 100th anniversary of the founding of the “Republic of China” (the name coined by the KMT). A series of “Centenary Celebration” programs were presented, a number of which included the participation of indigenous peoples. The Council of Indigenous Peoples organized a number of meetings and cultural programs, such as the “Academic Conference on 100 Years of Indigenous Peoples’ Development”, “The Legend of Deer-Chasers” and the “International Indigenous Music, Dance and Arts Exhibition”.

Some groups and activists, however, were of the opinion that indigenous people should have nothing to do with these celebrations since they are the natives and masters of Taiwan, and the current and past governments rulers are all foreign colonial regimes. ○

Notes

- 1 The officially recognized groups are: the Amis (also known as Pangcah), Atayal (also called Tayal), Paiwan, Bunun, Puyuma (also called Pinuyumayan), Tsou, Rukai, Saisiyat, Sediq (also called Seediq), Yamei (also called Tao), Thao, Kavalan, Truku, and Sakizaya. The nine non-recognized Ping Pu groups are: the Ketagalan, Taokas, Pazeh, Kahabu, Papora, Babuza, Hoanya, Siraya and Makatao.
- 2 *Taipei Times*, “Pingpu recognition lawsuit rejected”, July 22, 2011
- 3 *Ibid.*
- 4 The executive branch of the government in Taiwan.

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PHILIPPINES

Of the country's current projected population of 94.01 million, estimates of the number of indigenous peoples range from 10 to 20%. There has been no accurate comprehensive count of Philippine indigenous peoples since 1916; the national census in 2010 included an ethnicity variable but the results had not yet been released as of the end of 2011. The indigenous groups in the northern mountains of Luzon (Cordillera) are collectively called *Igorot* while the groups on the southern island of Mindanao are collectively known as *Lumad*. There are smaller groups collectively called *Mangyan* in the central islands as well as even smaller, more scattered, groups in the central islands and Luzon.

Indigenous peoples in the Philippines generally live in geographically isolated areas with a lack of access to basic social services and few opportunities for mainstream economic activities. They are the people with the least education and the least meaningful political representation. In contrast, commercially valuable natural resources such as minerals, forests and rivers can mainly be found in their areas, making them continuously vulnerable to development aggression.

The year 2011 commemorated the 14th year of the promulgation of the Republic Act 8371, known as the Indigenous Peoples' Rights Act (IPRA). The law calls for respect for indigenous peoples' cultural integrity, right to their lands and right to self-directed development of these lands. The Philippines voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples; the government has not yet ratified ILO Convention 169.¹

Throughout 2011, indigenous peoples in the Philippines were focused primarily on policy. During a National Indigenous Peoples' Summit from March 21 to 23, 134 representatives of indigenous communities from around the country forged a national Indigenous Peoples' Consensus Policy Agenda. As its name implies, the Agenda lists calls for action that different networks of indigenous



peoples and support groups agreed upon after a series of consultations in the previous year. Towards the end of 2010, these networks came together as the Consultative Group on Indigenous Peoples (CGIP), which spearheaded the Summit. The Agenda called on the government, donor agencies and CGIP members themselves to give priority to action points in the areas of respect for indigenous peoples' right to self-determination, IPRA and the government's National Com-

mission on Indigenous Peoples (NCIP), delivery of basic social services, protection from development aggression, human rights violations and militarisation, and recognition of the role of indigenous peoples in the peace process.²

Basic services

One significant development in the area of appropriate education for indigenous peoples was the Department of Education's (DepEd) issuing of a departmental order entitled "Adopting the National IPs Educational Policy" in August. This policy framework calls for consideration of Indigenous Knowledge, Skills and Practices (IKSPs) so that indigenous peoples' education can have appropriate basic education pedagogy, content and assessment. The DepEd intends to adopt the mother tongue-based multilingual education approach for indigenous learners. To support this government initiative the "Philippines' Response to Indigenous Peoples' and Muslim Education (PRIME) Program" is being implemented with support from AusAid, and piloted in 24 areas throughout the country with significant indigenous populations.

As with other countries where poverty is a problem, the Philippine government has a program on Conditional Cash Transfers (CCTs) called the "Pantawid Pamilyang Pilipino Program" (this translates as "program to help tide over poor Filipino families") or "4Ps Program". Identified poor families with pregnant women or children under 5 can avail themselves of cash from the Department of Social Welfare and Development (DSWD).³ Officials from the municipality of Abra de Ilog on Mindoro Island, Central Philippines, have shared the fact that 30% of its population are Iraya Mangyan, and that 70% of its "4Ps" goes to indigenous peoples, illustrating a recognition that indigenous peoples are among the poorest of the poor.⁴ Yet there are still implementation issues that need to be addressed. For example, since indigenous peoples live in isolated areas, the cost of transport may be more than the amount of cash received per visit. Furthermore, requirements such as having to go to school or to the health centre are hampered by the indigenous peoples' lack of access to these facilities, and many IPs lack identification papers.

Land and resources

A primary mandate of the IPRA is to recognise indigenous peoples' ownership of their territories by awarding them a Certificate of Ancestral Domain Title (CADT). By the end of 2010, the National Commission on Indigenous Peoples (NCIP) had approved a total of 156 CADT applications. This number did not change in 2011, and this for two main reasons. First, a CADT is approved by a unanimous decision of the NCIP's seven-member Commission En Banc (CEB). At the beginning of the year, there were only four Commissioners in place, and CEB membership was completed only in the first half of the year. There was also a change in the leadership of the CEB, with the appointment of a new Chair (from among the Commissioners) towards the middle of the year. The new CEB then decided to put CADT application activities on hold pending a further review of the CADT application process.⁵

The NCIP is likewise mandated to assist indigenous communities in producing an Ancestral Domain Sustainable Development and Protection Plan (ADSDPP). By the end of the year, NCIP records showed that 92 ADSDPPs had been made, with three in the process of being completed in 2011. There are fundamental issues in relation to the NCIP and its ADSDPP formulation processes. Among the criticisms are: a heavy emphasis on investment generation at the expense of the protection of indigenous peoples' rights and culturally appropriate processes; the lack of NCIP staff capacity for this task; and a lack of budget.⁶ There are more ADSDPPs in existence apart from the NCIP list, but the NCIP refuses to recognise ADSDPPs produced with assistance from organisations which are wary of the NCIP methods and motivations. The NCIP is likewise reviewing its existing ADSDPP guidelines and draft manual. On the other hand, support organisations have been cautioned that ADSDPP formulation without a clear follow-up towards actual implementation is tantamount to simply building up the communities' dreams.

With regard to the total number of CADT applications and the number of indigenous communities wishing to have an ADSDPP, progress is indeed slow. Other forms of tenurial rights to indigenous lands are thus continuously being sought. An emerging trend is for the recognition of Indigenous and Community Conserved Areas (ICCAs). Following a global study that showed that indigenous communities fared better in terms of environmental protection than government-

managed protected areas, there have been efforts to recognise indigenous peoples' right to manage such areas. In the Philippines, the Department of Environment and Natural Resources (DENR) is implementing the "New Conservation Areas in the Philippines Programme" (NewCAPP), with support from the United Nations Development Programme (UNDP) and the Global Environment Facility (GEF).

This programme is seen as a way of bridging the tension between the DENR's expressed mandate to manage special and vulnerable environmentally-significant areas, especially those marked as protected areas, on the one hand, and indigenous communities' right to practise their IKSPs in relation to environmental protection, on the other. Thus one modality being encouraged by the NewCAPP is for indigenous areas to be recognised as ICCAs. This perspective is still a small voice within the DENR but it is hoped that the said project will contribute to making that voice louder.

Meanwhile, a series of regional consultations were held during the year to ascertain how indigenous peoples in the Philippines define ICCAs, what their motivations are in maintaining such areas, and what the threats to these areas are. A national conference to consolidate these data is planned for March 2012.

The exercise of priority rights

A major debate in relation to indigenous peoples' rights to land and its resources is the issue of the "exercise of priority rights" (EPR). The IPRA states that property rights already existing within the ancestral domains should be recognized and respected. Thus, some argue that since inherently IPs have had ownership of their traditional territories "since time immemorial", IPs have the right to be given priority in the use of the resources there. Some indigenous communities have declared that this is a basis for them to undertake mining on their lands themselves as opposed to allowing the entry of foreign mining corporations. In response to the flak received from groups opposed to mining, a few leaders who have agreed to mining on their territories have stated that this is their way of staving off the relentless pressure of mining interests that results in harassment and deaths within their communities; stating that they intend to pursue mining on their own does not necessarily mean that they will do so. A tricky element not articulated by these leaders is the matter of the necessary capital; it appears that they

are dealing with capitalists who have links to the mining corporations, and the latter's stipulations are then not scrutinised in terms of upholding indigenous peoples' rights and environmental protection. The presence of private armies trained and managed by retired military officials to guard the mining interests of corporations is escalating, even in areas where indigenous peoples have declared the exercise of their priority rights. The NCIP, for its part, is preparing guidelines on the EPR.⁷

The right to meaningful representation

By 2010, there were two guidelines in place, one from the NCIP and one from the Department of the Interior and Local Government (DILG), in relation to institutionalising the representation of indigenous peoples in local government bodies, or mandatory representation, as it is referred to.⁸ These were, however, put on hold in the latter part of the year by the NCIP as it sought to review several guidelines, including one on mandatory representation that it had previously issued.

In the meantime, initiatives by some indigenous leaders and local governments have resulted in the selection of indigenous leaders for mandatory representations: city councils (2); provincial councils (4); municipal councils (42); and councils of the *barangay* (smallest administrative unit of the Philippine government) (178). Of these 220 individuals, 45% have received the government's official Certificates of Appointment (COAs), another 45% do not have a COA but have received some form of monetary compensation or this is in process. Only 12% of these representatives are female, and only 9% are not from Mindanao.⁹ Regarding the latter, this may be due to two factors: mandatory representation is not as big an issue in the Cordillera, where indigenous peoples are the majority population, and a few provinces in Mindanao have passed resolutions for the selection of indigenous peoples' representatives to the local governments.

Efforts of the National Commission on Indigenous People

As with indigenous peoples and support groups, the NCIP was focused on policy in 2011. Already mentioned earlier is the fact that the guidelines on CADT applica-

tion, ADSDPP formulation and mandatory representation are under review. The guidelines for facilitating Free Prior and Informed Consent (FPIC) are also under review, backed up by studies on the part of two bodies: the Committee on Cultural Committees (CCC) of the House of Representatives and the consortium of organisations working on REDD+ preparedness. New guidelines being prepared include: exercise of priority rights, protection of IKSPs and recognition of indigenous peoples' organisations.¹⁰ While lauding the endeavours of the NCIP to improve its policy frameworks as a basis for a better implementation of its mandate, there is an apprehension that the NCIP may be attempting to over-regulate indigenous peoples' concerns. The challenge remains to come up with guidelines that are firm enough to matter in relation to principles but flexible enough to take account of a multicultural setting.

Another major focus of the NCIP during the year was the strengthening of its quasi-judicial functions through a study commissioned to look into the difficulties in implementing this function, its legal implications and the training of NCIP lawyers. The difficulties include a lack of lawyers in general, exacerbated by the difficulty in finding lawyers with sensitivity to indigenous peoples' situation in particular, and the lack of operational funds.

For the months of August to October, and in partnership with the Congress' CCC, the NCIP launched a campaign to highlight indigenous peoples' issues. The theme agreed upon was "*Karapatan, Kapayapaan at Kasarinlan ng Katutubong Kababaihang Pilipino*" (Rights, Peace and Self-Determination of Indigenous Filipino Women).¹¹ One major gain was the Philippine Commission on Women's fuller engagement in the rights and issues of indigenous women. Key officials of the NCIP also shared the fact that it was a learning opportunity for the institution in relation to a broad campaign.

Concluding remarks

Towards the end of the year, Typhoon Washi hit north-east Mindanao and resulted in the disastrous flooding of two major cities and the deaths of around 1,000 people. Among the issues highlighted as a result of this disaster was the protection of the environment. Continued logging, despite a government ban, and mining were underscored as the culprits in the environmental degradation that was

said to have resulted in the flooding. This put some focus on the forests and mountains, where most indigenous peoples live.

While policy advocacy achieved some gains in 2011, a substantial improvement in the situation of indigenous peoples remains to be seen, as there is always a lag between policy and implementation. And, meanwhile, myriad human rights violations continue, as reported by several indigenous peoples' organisations and support groups: harassment of indigenous peoples' schools by the military resulting in the provision of educational services ceasing; the incarceration of indigenous individuals suspected of being communist supporters; and extrajudicial killings that remain unresolved even after several years.¹²

2011 therefore ended on a note of hope that the gains of the immediate past would, over the coming year, make a significant dent in the profusion of overwhelming and escalating challenges. ○

Notes and references

- 1 Data in this section are taken from: <http://www.census.gov.ph/> accessed 6 March 2012; and **Sabino Padilla, Jr., 2000:** *Katutubong Mamamayan*. Manila: IWGIA. The figures for the population are the same as in the previous year, since the Philippine government has not updated this number.
- 2 **CGIP 2011:** "Write-up of the results of the IP summit evaluation", 8 April 2011; and *Our common ground: 2010 IPs policy agenda*. See also IWGIA, *The indigenous world 2011*, pp. 264-265.
- 3 PowerPoint presentation prepared by the DSWD dated April 12, 2011.
- 4 During a monitoring visit on June 29, 2011 of the European Union to a project it is supporting in that area, entitled "Local Institution Participation toward Livelihood Empowerment of the Mangyan Indigenous Peoples of Occidental Mindoro".
- 5 **NCIP, 2010:** "Status of AD/AL delineation and titling as of December 31, 2010; and NCIP OPIF/logframe, undated but as of 16 February 2012.
- 6 **NCIP, 2012:** "List of formulated ADSDPPs" as of January 2012.
- 7 See Section 56 of the IPRA; Endnote 10 below; and bulletins issued in 2011 by the ATM-Infoshare. ATM stands for Alyansa Tigil-Mining (alliance of civil society organizations supporting the stoppage of mining in IP lands).
- 8 See IWGIA, *The indigenous world 2011*, p. 269.
- 9 **NCIP, 2011:** "Mandatory representation of IPs/ICCs in Local Legislative Councils", undated but as of 11 November 2011.
- 10 Sources for this section mainly came from documents from the NCIP: "NCIP OPIF/logframe"; and notes from the NCIP National Management Conference held in 15-17 March 2011, and updated as of 16 February 2012.
- 11 "Manifesto of support for the IPs solidarity campaign", August to October 2011.

- 12 **Alternative Law Group et al., 2012:** "Joint submission on the Human Rights Situation of Indigenous Peoples (IPs) in the Philippines, submitted to the United Nations Office of the High Commissioner for Human Rights, for the Universal Periodic Review of the Philippines (2nd cycle, 13th session, 2012).

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INDONESIA

Indonesia has a population of around 237 million. The government recognizes 365 ethnic and sub-ethnic groups as *komunitas adat terpencil* (geographically-isolated customary law communities). They number about 1.1 million. However, many more peoples consider themselves, or are considered by others, as indigenous. The national indigenous peoples' organization, Aliansi Masyarakat Adat Nusantara (AMAN),¹ uses the term *masyarakat adat* to refer to indigenous peoples. A conservative estimate of the number of indigenous peoples in Indonesia amounts to between 30 and 40 million people.

The third amendment to the Indonesian Constitution recognizes indigenous peoples' rights in Article 18b-2. In more recent legislation there is an implicit, though conditional, recognition of some rights of peoples referred to as *masyarakat adat* or *masyarakat hukum adat*, such as Act No. 5/1960 on Basic Agrarian Regulation, Act No. 39/1999 on Human Rights, MPR Decree No X/2001 on Agrarian Reform.

Indonesia is a signatory to the UN Declaration on the Rights of Indigenous Peoples. However, government officials argue that the concept of indigenous peoples is not applicable, as almost all Indonesians (with the exception of the ethnic Chinese) are indigenous and thus entitled to the same rights. Consequently, the government has rejected calls for special treatment by groups identifying themselves as indigenous.

Land grabbing and violence against indigenous peoples

In 2011, Indonesian society was haunted by more than 1,000 cases of agrarian conflicts, leading to deprivation of indigenous peoples' territories in almost every province. In the course of these conflicts, several indigenous communities were deprived of their territories. HuMa, an Indonesian NGO working for law reforms concerning natural resources, noted 108 conflicts, Sawit Watch, an NGO

committed to social justice for farmers, workers and indigenous peoples, 663 conflicts and the Consortium for Agrarian Reform (KPA) 163 conflicts, while AMAN recorded 130 agrarian conflicts. These conflicts often involved violations of indigenous human rights, mainly committed by police and other security forces.²⁰ Important agrarian conflicts and human rights violations included:

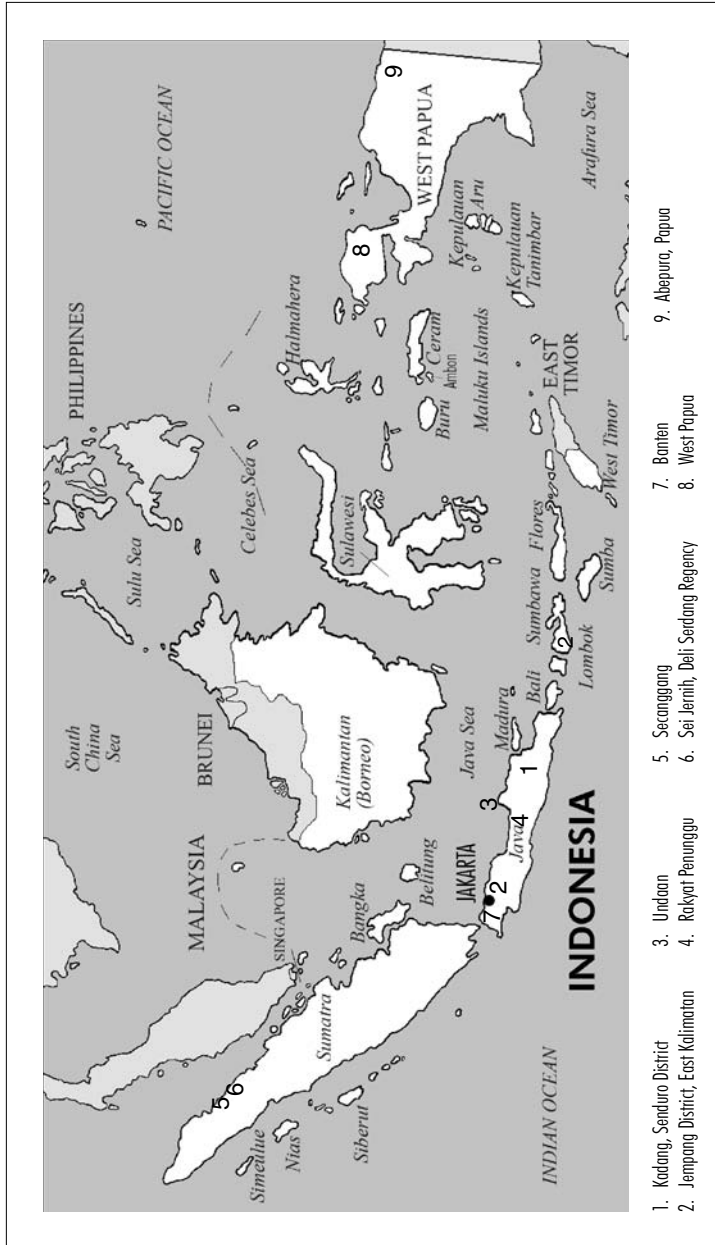
Conflicts in the territory of Rakyat Penunggu in North Sumatera

On May 25, 2011 the state-owned plantation company PTPN 2 ordered the mobile brigade (a special police force entrusted with domestic counter terrorism and law enforcement), heavily armed and clothed like thugs, to displace the indigenous inhabitants of the village of Secanggang. Representatives of PTPN 2 tried to erect a signpost stating that the territory was controlled by the special police forces. They were, however, hindered from this by hundreds of local indigenous peoples. Finally the plantation company decided to abandon the territory but threatened to come back with 1,000 security personnel in order to rid the territory of Secanggang of its indigenous inhabitants.

A similar incident was experienced by the indigenous community of the village of Sei Jernih, in the Deli Serdang Regency. On 17 June, 20 members of the special police forces and security guards from the PTPN 2 arrived, heavily armed, and beat and mistreated five members of the community. The conflict escalated on 18 June when five trucks with special police and PTPN 2 security forces burned down the traditional community house of Sei Jernih, destroyed the plants, and beat up and injured 14 inhabitants. On 21 July, PTPN 2 instructed 300 people to destroy 24 houses and burn down another two in the village of Klambir. The traditional territory of Rakyat Penunggu in Klambir is still controlled by the police and the situation is very tense.

The case of the indigenous peoples of Pekasa in West Nusa Tenggara

On 21 December 2011, around 30 members of the special police forces and the military and forestry police of the West Sumbawa Regency destroyed and burned down the houses of the indigenous peoples of Pekasa. They refused to engage in the talks offered by the Pekasa villagers and did not offer the inhabitants any possibility of saving their possessions. Sixty-three houses were demolished and



only the mosque was left untouched. Given the brutality of the government forces, many people hid in the forest.

The government forces furthermore arrested the community's traditional leader and brought him to the local police station. After three days he was released, as evidence against him could not be provided. The police forces are still investigating 23 of Pekasa's inhabitants on encroachment accusations made by the forestry department. This is the third time the community has been expelled from its territory on the pretext of preventing illegal forestry dwellings.

Killing of indigenous peoples in Mesuji, South Sumatera

In mid-April 2011, there was a clash between the PT Treekreasi Margamulya (TM)/Sumber Wangi Alam (SWA) company and the indigenous peoples living in the district of Mesuji in South Sumatera. The conflict was triggered by the forced planting of oil palm on the indigenous people's territory and the subsequent occupation of the plantation and cropping of the oil palm fruits by the indigenous inhabitants. The company reacted by calling in the special police and, in the clash that followed between the special police forces and the indigenous population, seven people lost their lives.

On 21 April, another two people from the indigenous community of Sodong were killed by the palm oil company's security guards and police forces. During a clash on 11 November, two people were killed and four were injured by gunshots. Five company staff were shot dead during the counter-attack by local inhabitants. The conflict in Mesuji remains ongoing.

Members of the indigenous Tengger group displaced by the Perhutani

On 16 October 2011, on the orders of the state-owned logging company *Perhutani Lumajang*, dozens of people destroyed and burnt down the homes of the Tenggers in the village of Kandang Tepus, Senduro district, East Java. The forest management said that the Tenggers were guilty of encroaching on the forest, illegal logging activities and inhabiting 60 hectares of land in the protected forest. Several buildings and cattle sheds were burnt down. On 11 October, the police arrested four inhabitants, accusing them of illegal encroachment and destruction of the forest. The inhabitants are still hiding in the forest, in fear of police brutality.

The Dayak Benuaq in Muara Tae, East Kalimantan

The territory of the indigenous community of Muara Tae in the district of Jempang in East Kalimantan, has long been threatened by the activities of palm oil plantations and coal mining. In 2011, the palm oil company PT. Munte Waniq Jaya Perkasa (PT MWJP) took the traditional territory of Muara Tae, claiming that, on 16 September 2011, they had bought 638 hectares of the land from the neighboring village of Ponak at a price of one million Rupiah/hectare. Prior to that, 200 hectares belonging to Muara Tae had already been cleared by the company. On 16 October 2011, the community went to the company's office and demanded they abandon the land. The company, however, continued to build roads for plantation activities with heavy machines that destroyed the inhabitants' agricultural land. The community then reported the deprivation of their traditional territory to the local police branch in Jempang and to the West Kutai district branch but their complaint was rejected. They further reported the case to the provincial head of police at East Kalimantan. The case is still pending.

The Paperu community in Maluku

In Maluku, 8,700 hectares in Cape Paperu owned by the Luhukay clan has been rented by the PT Maluku Diving and Tourism Company, which is denying the Paperu community access to the area in which they have been practising *Sasi*, a traditional marine resource management system, for centuries. The company has never made any effort to apply the principle of Free, Prior and Informed Consent (FPIC) to the 80% of the villagers who are affected, and who directly depend on the sea resources claimed by the company.³

Discrimination of indigenous beliefs

Apart from the deprivation of land and loss of lives and livelihoods, two cases of religious discrimination against indigenous peoples were noted in 2011.

Since January 2011, the Baduys in Banten have not been allowed to register *Sunda Wiwitan* as their religion on their identity cards, although it has been accepted in the past. Baduys protested at the provincial Registration Office to no avail. They thus decided not to apply for or renew their identity cards any more or,

alternatively, to demand that the space for religion be left blank. The Baduy traditional leader undertook to lobby for recognition of the Sunda Wiwitan religion but is still awaiting a response from the Ministry of Religious Affairs.

In Central Java, the indigenous community of Sedulur Sikep reports that children have been forced to attend religious classes in a public Middle School in Undaan, and that there have been attempts to reject Sedulur Sikep children applying to study at this school due to their wish to follow their own ancestral religion.

MoU between AMAN and the National Land Authority

On 18 September 2011, AMAN and the National Land Authority (BPN RI) signed a Memorandum of Understanding (MoU) aimed at ensuring justice and legal certainty for indigenous peoples over their land, territories and resources.

The scope of the MoU encompasses:

- The exchange of information and knowledge between BPN RI and AMAN.
- The drafting of a policy in order to incorporate indigenous peoples' rights into legal reforms and the national legislation of Indonesia.
- The identification and recording of indigenous communities and their territories as the fundamental basis of a legalization leading to the legal protection of the traditional linkages between indigenous groups and their territory.
- The development of agricultural land reforms in indigenous communities' territories.

The signing of the MoU signifies the recognition of indigenous peoples' long struggle for the recognition of their ancestral lands and territories. The MoU allows indigenous peoples to register their land and territories, which have been documented over the past years through community participatory mapping. The MoU also opens a space for meaningful dialogue between indigenous peoples and the government in order to tackle the widespread land conflicts throughout the country. Furthermore, through the MoU, the government and indigenous peoples will consider models for agrarian reform within indigenous lands and territories.

Draft Act on the Recognition and Protection of Indigenous Peoples' Rights

Although 2011 was a very tense year for Indonesia's indigenous peoples, there are at least good prospects for the future struggle for indigenous rights in Indonesia. The national parliament officially decided on 16 December 2011 that the draft Regulation for the Recognition and Protection of Indigenous Peoples' Rights would be among the priorities of the national legislation program (Prolegnas) in 2012.

During a workshop with the legislative board and the government (Ministry of Law and Human Rights) on 15 December 2011, the submission of the Draft Law was supported by the PDIP Party. The academic manuscript and the draft law on the recognition and protection of the rights of indigenous peoples (RUU PPMA), which is an outcome of consultation processes conducted in AMAN's seven administrative regions in 2011, became official material and were delivered to the head of the legislative board. AMAN will constantly monitor the process to make sure the draft is passed and becomes law in order to ensure that recognition and protection of Indonesia's indigenous peoples' rights become a reality in 2012.

West Papua: the Abepura Killing

Indigenous peoples in West Papua continued to experience gross human rights violations in 2011. On 19 October, 500 Indonesian army and police force personnel stormed the venue of the third Congress of West Papuans. As a result, three people died, dozens were injured and six more were detained. In addition, officials combed the houses in Kampung Padang Bulan and the Student Dormitory, searching late into the night to find Selpius Bobii, the Chairman of the Committee of the Congress. They arrested more than 300 people suspected of participating in the congress, many of whom were tortured, beaten and kicked by the officers.

On the following day, three dead bodies were found lying in the hills near the location of the congress. They were: 1) Mr. Daniel Kadepa Yewi (25), a student from Jayapura, with gunshot wounds to his thigh and head; 2) Maxsasa Yewi (35), a Sabron villager from West Sentani, with stab wounds to his right thigh and a bullet wound to his left thigh; 3) Yakob Samansabra (53), a Waibron villager from

West Sentani, with gunshot wounds to his chest. They were allegedly shot by the army/police.

This incident illustrates the human rights violations taking place against freedom of expression and assembly as guaranteed by international human rights laws ratified by Indonesia, the Indonesian Constitution and the Indonesian Act on Human Rights. The military operation was also against Law 34/2004 on Indonesian National Army (especially Art 17 paras 1 and 2). The brutal conduct of the military troops and police officers against citizens in Abepura, Papua was thus illegal. To date there has been no official measures taken by the Indonesian government concerning the Abepura killings. ○

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Notes

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- 2 According to a report of the national human rights commission (Komnas HAM)
- 3 AMAN's report on indigenous peoples' participation in decision making submitted to the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) in 2011 included this case.

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MALAYSIA

The indigenous peoples of Malaysia represent around 12% of the 28.6 million people in Malaysia. They are collectively called *Orang Asal*.

The *Orang Asli* are the indigenous peoples of Peninsular Malaysia. They number 150,000, representing a mere 0.6% of the national population. Anthropologists and government officials have traditionally regarded the *Orang Asli* as consisting of three main groups, comprising several distinct sub-groups: Negrito (Semang), Senoi and Aboriginal-Malay.

In Sarawak, the indigenous peoples are collectively called *Orang Ulu* or *Dayak* and include the Iban, Bidayuh, Kenyah, Kayan, Kedayan, Murut, Punan, Bisayah, Kelabit, Berawan and Penan. They constitute around 50% of Sarawak's population of 2.5 million people.

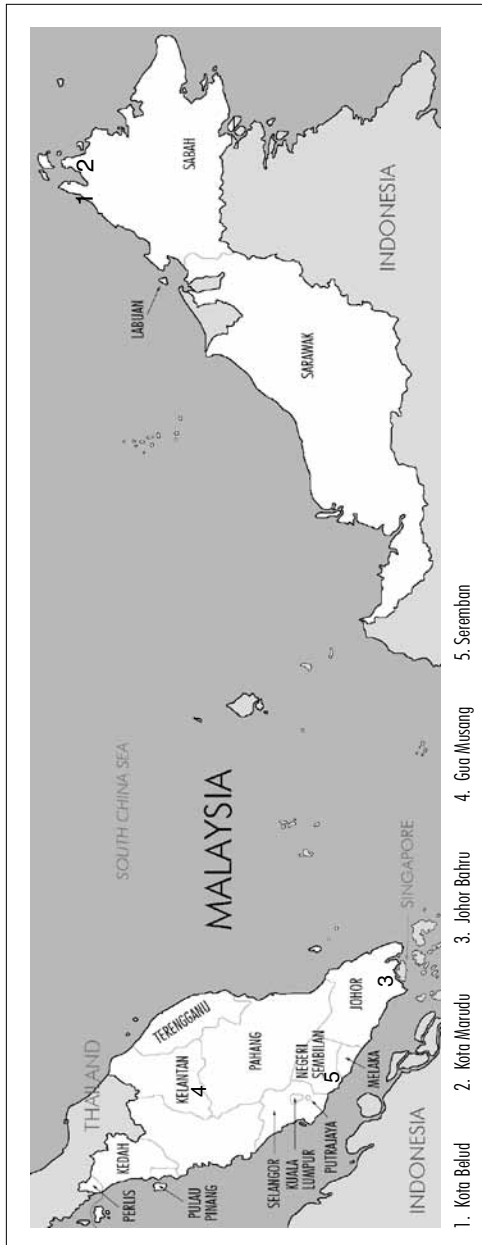
The 39 different indigenous ethnic groups in Sabah are called natives or *Anak Negeri*. At present, they account for about 47.4% of the total population of Sabah, a steep drop from the 60% estimated in 2000.

In Sarawak and Sabah, laws introduced by the British during their colonial rule recognizing the customary land rights and customary law of the indigenous peoples are still in place. However, they are not properly implemented, and are even outright ignored by the government, which gives priority to large-scale resource extraction and plantations of private companies over the rights and interests of the indigenous communities.

Malaysia is signatory to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), but has still not ratified the ILO Convention 169.

National Inquiry on Land & Indigenous Peoples

On 10 May 2011, the National Human Rights Commission of Malaysia (SUHAKAM) launched its National Inquiry into the land rights of the *Orang Asal*, Malaysia's indigenous peoples. The Inquiry is divided into public consultations



and public hearings and started in Sabah in June 2011, followed by Peninsular Malaysia in July and Sarawak from September to October. According to SUHAKAM, the results of the National Inquiry will be available in June 2012.

The Federal and State Government policy on the land rights of the Orang Asal has been a patchwork of quick-fixes or short-term solutions that fail to adequately address the core issues. The Orang Asal have therefore faced numerous encroachments to, and loss of, their customary lands which have been appropriated by the state authorities and handed over to logging and oil palm companies, while the Orang Asal have had to face the ignominy of being arrested for allegedly trespassing onto what was once their ancestral homes. Between 2005 and 2010, SUHAKAM received over 1,100 complaints of violations to native customary rights (NCR) land. Sabah

has the highest number (834) followed by Sarawak (229) and Peninsular Malaysia (45).¹

Orang Asli activism against assimilation

Since the historic march of the Orang Asli to protest against the amendment of the National Land Act in April 2010, the Orang Asli continue to stage protests against the continuous land grabs and encroachment of their customary lands. On 18 May 2011, more than 500 Temiar people staged a historic protest march to the Gua Musang District and Land Office. They were protesting against the state government's *Ladang Rakyat* (People's Farm) Project that does not recognise their rights to their land, but instead carve it out for others to own and profit from.²

Some 300 Orang Seletar people from nine separate villages gathered on 15 December 2011 in Kota Iskandar (Johor Bahru) to hand in a memorandum to the Johor Chief Minister. Their protests were directed at the ongoing large scale development under Iskandar Malaysia which has encroached upon their native customary area (land and coastal area) and destroyed their livelihood base.³

On 16 November 2011, about 100 Orang Asli from 68 villages in Negeri Sembilan demonstrated at the state secretariat building in Seremban demanding an apology for what they said was an insult leveled against them by the *Menteri Besar* (state Minister) Mohamad Hasan.⁴ Mohamad was reported as saying that Orang Asli villages were located in forest reserves, which means they are mere "squatters" and do not have any rights to the land. Mohamad's remarks also went against the rights enshrined in the federal constitution - the right to life (Article 5), equality (Article 8) and to property (Article 13).

Sarawak gets international attention

Sarawak has long been a stronghold of the ruling coalition but corruption allegations against the Chief Minister, Taib Mahmud, and his family are causing discontent among the indigenous peoples and civil society in general. The Stop Timber Corruption campaign launched in early 2011 has built up international pressure against the corrupt Taib family and pressure to put a stop to timber corruption in Sarawak.

In London, protesters supporting the Stop Timber Corruption Campaign gathered at the headquarters of the property company associated with Taib Mahmud. The protesters said that Taib and his family have been personally responsible for the destruction of much of the Borneo Rainforest during his 30 years of power that logging, which has caused one of the worst environmental crimes of the past decades, and that the indigenous tribes of the region are facing ethnocide as a result.

Campaigners also published a blacklist of 49 property companies associated with Taib Mahmud, which are believed to represent just the tip of the iceberg of a multi-billion dollar property empire purchased with illegal timber money. The issue was featured in *London's Evening Standard* on 22 February.⁵

In December, Canada's Global Television broadcast an extensive report on timber corruption in Sarawak and the Taib family's property business in Ottawa, Canada. Taib's daughter Jamilah Taib Murray and her Canadian husband Sean Murray who are accused of laundering the proceeds of Sarawak logging in Canada refused to appear in the show.⁶

Rape of Penan women continues

The unresolved cases of the rape of Penan women and children in Sarawak are a horrific reminder of the escalating rates of violence against indigenous women (see the *Indigenous World 2011*). The Sarawak government's lack of political will in bringing the perpetrators to justice is highly suspect and unwarranted and the rape of Penan girls and women in Baram continues like the inaction of the federal and state governments and the police.

On 23 May, 2011, a Penan woman lodged a police report alleging rape by an Indonesian logging camp worker she had met in her village in Baram. She said the man had raped her repeatedly, after coaxing her into following him to the city in the pretext of finding work and told police that there had been similar rapes involving other Penan girls in her village.

In response to the report of rape, the Telang Usan assemblyman Dennis Ngau responded, admitting that there had been a surge in the number of foreigners in the interior, because of the expansion of oil palm plantations and logging activities. The assemblyman said that he would hold an "urgent dialogue" with the plantation companies to discuss this matter.

It is an irony that the Deputy Home Minister confirmed that the National Registration Department had found “many stateless children” whose mothers are Penans and fathers Indonesians. Yet until today, nothing significant has been done to protect the communities from sexual predators. The authorities are in possession of statistics that Penan girls and women are indeed being victimised by the logging and plantation workers.⁷

Damned dams

A 12-year legal battle by indigenous peoples in Sarawak against their ancestral land being seized to build a mega-dam ended in defeat in the Federal Court. The fight, seen as a test case, began 12 years ago when the Sarawak state government requisitioned land for the controversial Bakun hydroelectric dam and a timber pulp mill. The construction costs for Bakun have added up to at least US\$2.6 billion (RM7.8 billion), making it among the most expensive infrastructure projects in Malaysian history. About 15,000 people were forcibly relocated to make room for the dam and a reservoir about the size of Singapore.

In a unanimous dismissal by a three-judge panel from Malaysia’s highest court, the Federal Court, which found the eviction had not violated the tribal peoples’ constitutional rights. The case was brought by members of indigenous tribes including the Iban, Dayak, Kayan, Kenyah and Ukit peoples. A lawyer for the group, Baru Bian, said that more tribal people in Sarawak might now be forcibly moved in the name of development. There is a possibility the move to displace natives in Sarawak will gain momentum. About 200 cases of indigenous people fighting state acquisition of their land are ongoing in lower courts.

The planned construction for mega dams in Sabah and Sarawak continues despite the protests and demands of the affected communities (see *The Indigenous World 2011*). In Sarawak, the deceitful and insidious manner by which the state government is going about with the construction of the Baram Dam has angered the Orang Ulu communities in the dam project vicinity. Newspaper reports and information dripping from the project supporters speaks of an affected area covering 38,900 hectares (389 sq km) or half of the size of Singapore island. At least 90% of the land mass which will be flooded by the dam reservoir will be NCR land. Relocation of the 20,000 people, mainly Kenyah and Kayan, who traditionally live in longhouses to make way for the Baram Dam will definitely result

in the end of the traditional social structure, besides colossal environmental devastation and severe consequences on the ecosystem. Local village headmen are being told that the government has shelved the construction of the Baram Dam, but it is seemingly only until environmental and social impact assessments have been completed.

In Sabah, an academic from the Faculty of Agriculture in Universiti Pertanian Malaysia (UPM) cast doubt on the necessity for the proposed Tambatuon dam in Kota Belud in order to increasing Malaysia's rice productivity. There is still plenty of room to increase the yields of existing paddy fields.

The assessment is at odds with that of Kota Belud Member of Parliament, Abdul Rahman Dahlan, who is championing the construction of the Tambatuon dam to irrigate 25,000 hectares of unproductive paddy fields in Kota Belud. The controversial project will involve flooding Kampung Tambatuon, including at least four villages, and resettling 600 villagers. Villagers of Tambatuon have been staging protests, alleging that 28 village heads had been removed for opposing the project.

State officials are urging villagers in Kg Tambatuon not to "jump the gun" by protesting against the dam since the project had yet to be decided. Abdul Rahman Dahlan said such a project would need an environmental impact assessment as well as studies of its impact on the livelihood of people living in the area.⁸

Sabah's land and forests continue to be commodified

With the amended Sabah Land Ordinance, the government is now aggressively promoting communal title, officially as one of the strategies to overcome the NCR land issues and reduce poverty. The major concern among the indigenous peoples in Sabah is that the communal titles are given on the condition that the communities agree to the development of the land and its planting with mono-crops (oil palm or rubber) through joint ventures with government agencies or private companies. In this way, the original purpose of the communal title is being manipulated by the government.

Rampant land grabs have been on the rise in Sabah. The "communal title" as it brings new threat of limiting native ownership to available land in their districts, and the lingering question as to who will inherit the allocated lands eventually. The newly created arrangement of "communal title" has also not solved a single land-grab case. Worse still, while communal title is given on the premise that less

land is available for individual natives (who are used to being allowed to own in perpetuity 15 to 50 acres or even more of native land per person), companies, on the contrary, had been known to be given thousands of acres in one “sweeping” approval.

In one case, a single company was said to have been given approval for a whopping 65,000 acres of land stretching from Beluran to Pitas and Kota Marudu districts in the northern-east of Sabah, threatening dozens of native villages with massive forced evacuation or relocation.⁹

Despite receiving commendation for taking pro-active steps and a leading role in promoting a green economy, the Sabah Forestry Department does not recognize indigenous peoples’ rights to land, culture and customary systems. In August 2011, Lobou elders and village chiefs in Sook, lodged a report at the Keningau police station. They accused the Forestry Department of demolishing religious structures at the Sungai Lobou area after the thanksgiving ceremony to their guardian. Gimibun Pandikar, the Lobou shaman said the Department had insulted the Lobou community by belittling their traditional beliefs.¹⁰

In another district, villagers in Kampung Sinawangan/Katubu of Mukim Rundum lodged a report regarding the demolition of four houses by the Forestry Department. The four houses belonging to villagers were demolished by a group of about 20 personnel from the Forestry Department at 1pm on January 13 because the structures were found to be in the Rundum Forest Reserve. ○

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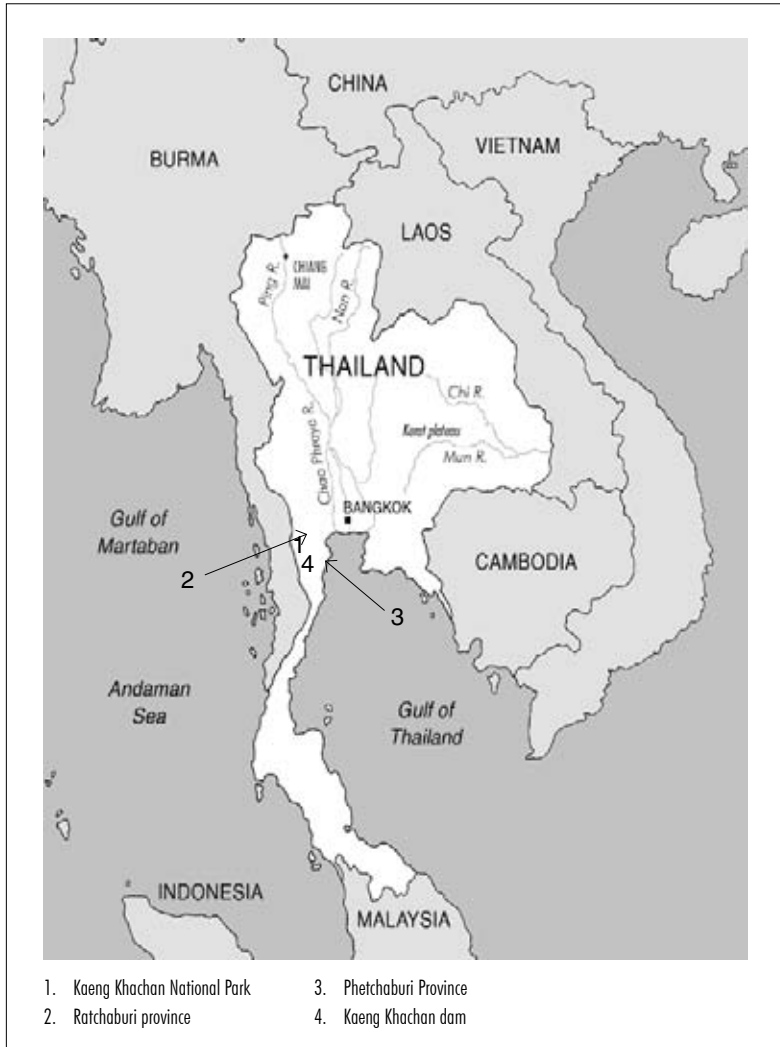
THAILAND

In Thailand, the indigenous peoples mainly include indigenous fisher communities (the Chao Ley) and small populations of hunter-gatherers in the south of Thailand; small groups on the Korat plateau of the north-east, and in eastern Thailand, especially along the border with Laos and Cambodia; and the many different highland peoples in the north and north-west of the country (the Chao-Khao). With the drawing of national boundaries in South-east Asia during the colonial era and in the wake of decolonization, many indigenous peoples living in remote highlands and forests were divided. There is thus not a single indigenous people that resides only in Thailand.

Nine so-called “hill tribes” are officially recognized: the Hmong, Karen, Lisu, Mien, Akha, Lahu, Lua, Thin and Khamu.¹ There is no comprehensive official census data on the population of indigenous peoples, but According to the Department of Welfare & Social Development, there are 3,429 “hill tribe” villages with a total population of 923,257 people.² Obviously, the indigenous peoples of the south and north-east are not included.

A widespread misconception of indigenous peoples being drug producers and posing a threat to national security and the environment has historically shaped government policies towards indigenous peoples in the northern highlands. Despite positive developments in recent years, it continues to underlie the attitudes and actions of government officials. 296,000 indigenous persons in Thailand still lack citizenship,³ which restricts their ability to access public services such as basic health care or school admission.

Thailand has ratified or is a signatory to the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change, the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Universal Declaration of Human Rights and the United Nations Declaration on the Rights of Indigenous Peoples (UN-DRIP).



In 2011, Thailand experienced a huge natural disaster when large parts of the country were flooded during the monsoon season and remained inundated for months.

Provinces located in the Chao Phraya and Mekong River basin, including Bangkok and surrounding areas, were the most severely affected, directly or indirectly, by inundation. Flooding also affected provinces in the north and south of Thailand. The flooding inundated around six million hectares of land, over 300,000 hectares of which is farmland, in 58 provinces. Over 12.8 million people were affected, and the World Bank estimated damages of 1,440 billion baht (US\$45 billion).

Many indigenous communities also suffered from the unusual amount and long period of rainfall. Some upland rice fields could not be burnt before planting. This resulted in poor harvests and, as a result, some families now do not have enough rice for the whole year.

Despite being in difficulty themselves, many indigenous communities expressed their sympathy with those affected by the floods in central Thailand and tried to help the flood-affected people. This included providing rice, vegetables and other necessities that could be collected from indigenous communities in the hills.

With respect to the overall situation of indigenous peoples in Thailand, 2011 brought no improvements. On the contrary, the year saw a serious case of human rights violations against indigenous communities: the eviction of Karen people from the Kaeng Khachan National Park in Phetchaburi Province in mid-2011. Moreover, some positive moves to address long-standing problems in Thai society, and the lack of indigenous peoples' rights in particular, such as the implementation of community land titling and the much needed overall political and institutional reform, were stalled. This was, in one way or another, related to the political developments in the country. However, a new initiative was launched by the Ethnic Institute Affairs to address social and welfare development among indigenous peoples, although the process has not yet been fully completed.

Eviction of Karen people from Kaeng Khachan National Park

Kaeng Khachan is an administrative district of Phetchaburi Province. It is located in the west of Thailand. It is home to Karen indigenous communities who have inhabited this area for hundreds of years. Over the past decades, they have faced severe problems as a result of government development and conservation policies.

In 1966, the government built the Kaeng Khachan dam, which flooded a large area of the Karen's farm lands. This forced some of them to leave their traditional lands and settle in a new area. From 1965 to 1971, military operations to sup-

press the communist insurgency in this area forced the Karen to move further into the remote jungle and watershed areas of Phetchaburi, Huay Mae Pradon, Huay Mae Priang, Bang Kloi, Pong Luik and Jaipaendin. In 1978, some Karen were relocated to Phurakham village in Tanaosri Sub-district, Suanphueng District, Ratchaburi Province, in line with the Thai government resettlement policy. However, some of them decided to remain in the forest along the border with Burma.

The Kaeng Khachan National Park was established in 1981. At that time, the Karen were allowed to live in the area and it was not until 1996 that the first relocation started, after the establishment of the Forest Protection Unit 10 of Kaeng Khachan National Park. Fifty-seven families (391 persons) were relocated to an area near Pong Luik village called Bang Kloi', located at Moo 1, and Pong Luik, located at Moo 2 in Huay Mae Priang Sub-district. Each family received 7 rai (around 1 ha) of land for cultivation. They received some support from government income-generation projects. All this was, however, not enough for them to make a living. Furthermore, between 1998 and 2009, all government projects for the resettled communities were suspended. As a result, 25 families in Pong Luik and Bang Kloi decided to go back to the land where they used to live previously. Recently, however, they have again been evicted by the park authorities.

Between 1996 and 2011, there were in fact a series of forced relocations of Karen indigenous people out of the Kaeng Khachan National Park. The last one took place from 23 to 26 June 2011. During the operation, 98 houses were burnt down and many rice granaries were destroyed by the park officers and supporters. One of the villagers recalled the day his home was torched and his family evicted: "The following morning, the strangers burned down our house. Before they left, they told us to leave the forest at once, or else they would shoot us. We've never seen these people before".⁴

Some Karen families were relocated to Pong Luik and Bang Kloi villages. Some moved and stayed with their relatives in Phurakham village in Suanphueng District, Ratchaburi Province. Some still remain in the forest for fear they might be arrested by the officers.

Even though the operation was undertaken quietly, it became publicly known after three military helicopters in a row crashed in the area. The forced eviction has caused serious hardship to the Karen's lives and livelihoods. It also violates the Thai Constitution of 2007 (particularly section 66, 67 of part 12) and the Cabinet Resolution of 3 August 2010 on Recovery of Karen Livelihoods, as well as

international human rights law, the UN Convention on Biological Diversity and the UN Declaration on the Rights of Indigenous Peoples, to which Thailand is a signatory.

The Lawyers Council of Thailand has recently offered to help the affected villagers file a case against the national park officers before the Administrative Court. The National Human Rights Commissioner has also taken up the case, and it is now under investigation.

The Karen Network on Culture and Environment, a national-level network of Karen living in the west and north of the country, together with other supportive non-governmental organisations and indigenous peoples' organisations, also spoke up on this issue and demanded that the Thai government immediately and seriously tackle the problem.

Uncertainty of community land title initiative

On 7 June 2010, the government passed the Prime Minister's Office Regulation on Community Land Titling (see *The Indigenous World 2011*). Its main aim, according to the regulation, is to legally and temporarily allow communities to collectively occupy and use state land for settlements and farming. This is aimed not only at addressing a long-standing conflict between communities and the state with regard to land and resource use but also at ensuring the livelihood security of villagers. The concept behind this initiative sounds good but, in practice, there are still a number of limitations and challenges, such as traditional land ownership rights, and how to operationalize the regulation. For example, ownership rights remain vested in the state, and the issuing of a community land title is not allowed in protected areas such as national parks, wildlife sanctuaries and so-called "class A" watershed areas. Despite these shortcomings, the regulation is seen as a first step towards the state's recognition of community land rights.

Unfortunately, the implementation of community land titling activities became bogged down after the general election of August 2011. The new government's policy on land appears to be better. In particular, it has stated that it will push forward with passing a Community Rights Act regarding the management of natural resources (land, water, forests and sea). This act will, it seems, cover all aspects of land problems. However, it remains to be seen how the act will be translated into action, both at the policy level and on the ground.

The future of political and institutional reform

Another initiative taken last year to address conflicts and divisions within Thai society, as a result of the polarization of political views, was an institutional reform. Two independent mechanisms were established in early July 2010: the National Reform Committee (NRC) and the National Reform Assembly (NRA), chaired by former Prime Minister Anand Panyarachun and Dr. Prawes Wasi, a well-known scholar and social activist, respectively (see *Indigenous World 2011*).

These mechanisms could offer an opportunity for the indigenous peoples in Thailand since they provide platforms for the expression of their opinions and demands that could help promote the recognition and protection of indigenous peoples' rights.

Unfortunately, the chair and members of the NRC decided to resign after the Democrat-led government declared it was dissolving the lower house and calling fresh elections in May 2011. The work of these two committees has now stagnated, despite the fact that their mandate is for three years. It is now uncertain how they can achieve their goal of developing tangible plans to be presented to the public and government for immediate action within three years.

A new initiative

Amidst all the problems, there was one positive move to promote the rights of indigenous people last year, especially with regard to social and welfare development. The Ethnic Affairs Institute, Department of Social and Welfare Development, drafted a strategic plan on social and welfare development for indigenous peoples and ethnic groups in Thailand. This strategic plan clearly specifies "indigenous peoples" as one of its key target groups and provides more space for indigenous representatives to participate in the governance structure and have a role in approving projects and programmes to be submitted by indigenous communities and networks. The strategic plan is currently being finalised and will be submitted to the cabinet for approval. Once it is passed, it will represent a new channel that indigenous peoples can use in promoting their rights. ○

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- 1 Ten groups are sometimes mentioned, i.e. in some official documents the Palaung are also included. The directory of ethnic communities of 20 northern and western provinces of the Department of Social Development and Welfare of 2002 also includes the Mlabri and Padong.
- 2 The figure given is sometimes 1,203,149 people, which includes immigrant Chinese in the north.
- 3 Office of National Security, workshop on finding solutions for illegal immigrants, 18 June 2009 at Rimkok resort.
- 4 **Sanitsuda Ekachai:** *Bangkok Post* 1/10/2011

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CAMBODIA

There are no definitive population figures for indigenous peoples in Cambodia, as national census data are an imprecise gauge of this population. The general consensus based on limited studies is that indigenous peoples number approximately 200,000 people, constituting 1.2 percent of the Cambodian population. The Cambodian government's 2009 National Policy on the Development of Indigenous People (NPDIP) lists 24 different indigenous ethnic groups found in 15 of Cambodia's 23 provinces.¹

The 1993 Cambodian Constitution guarantees all citizens the same rights "regardless of race, colour, sex, language, and religious belief" or other differences.² In recent years, the Cambodian government has made reference to indigenous peoples (literally, indigenous minority peoples) in various laws and policies. The 2001 Cambodian Land Law laid the groundwork for communal land titling in indigenous communities and this legal framework was bolstered by the 2009 Policy on Registration and Right to Use of Land of Indigenous Communities in Cambodia³ and the Sub-Decree on Procedures of Registration of Land of Indigenous Communities.⁴ The 2002 Forestry Law makes explicit reference to the protection of traditional use rights of indigenous communities and their right to practise shifting cultivation.⁵ The 2009 NPDIP sets out government policies related to indigenous peoples in the fields of culture, education, vocational training, health, environment, land, agriculture, water resources, infrastructure, justice, tourism and industry, mines and energy.⁶

The Cambodian government has ratified the International Convention on the Elimination of Racial Discrimination (ICERD). In 2007, the Cambodian Government supported the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), but has still not ratified ILO Convention 169.

Indigenous land rights

According to the 2001 Land Law, indigenous peoples are entitled to communal ownership rights over land. (See *The Indigenous World 2011*). Since the application and titling procedures are rather lengthy and complicated, and in order to provide some protection during the period of awaiting and undertaking the titling process, an inter-ministerial circular on interim protective measures regarding the lands of indigenous communities who have applied for collective ownership titling was issued and became effective in 2011.⁷

In 2011, three indigenous communities (ICs) were registered and received collective land titles, two in Ratanakiri and one in Mondolkiri province. Twenty indigenous communities have been registered as legal entities by the Ministry of the Interior. Forty-three ICs have been recognized by the Ministry of Rural Development.⁸ The resource-intensive process of IC identity identification, IC legal entity registration and land titling has been supported by NGOs.

Despite these positive developments, the process of securing land tenure rights for indigenous communities is slow and land rights remain a central concern among indigenous communities. Land alienation is continuing almost unabated and indigenous communities lose their land through a variety of ways, including small-scale voluntary sales or land grabs and large-scale economic land concession (ELCs), concessions for mining or tourism, or hydropower projects. ELCs have been issued without any meaningful consultation of indigenous peoples during the project decision-making, and without having obtained their free, prior and informed consent. Long-term ELCs have been granted to foreign and national companies over a total of at least 2,036,170 hectares of land for agro-industrial operations, while mining concessions account for at least a further 1,900,311 hectares. (both in indigenous and non-indigenous areas). In Ratanakiri province alone, 77,816 hectares are under ELC agreements, while a further 497,174 hectares in the province have been opened up in mineral concessions for the exploration of gold and gemstones, primarily to Australian companies.⁹

Advocacy initiatives and actions by indigenous peoples in defence of their land and resource rights continued to increase in 2011. However, these have been met by various forms of intimidation. Threats of arrest from the government, company representatives and polices were also common. These tactics usually have the intended effect. The community members are afraid even to ask ques-

cial Governor explained that the national government had given authority back to the province to decide on the matter, after which Mong Rethy removed its machinery and equipment.¹⁰

ELCs continue to be issued despite the concerns raised and recommendations made by the Committee on the Elimination of all Forms of Racial Discrimination to the Cambodian government in 2010 regarding the granting of land concessions on indigenous peoples' lands.¹¹

The most high-profile advocacy has been around Prey Lang forest, which is important to Kuy communities. As a result of this advocacy, a sub-decree on the establishment of a protected area for Prey Lang forest was drafted in 2011. Prey Lang is the largest area of intact lowland evergreen forest remaining on mainland Southeast Asia, and of great importance to the Kui people. It is threatened by land concessions and illegal logging (see *The Indigenous World 2011*). Conservation organizations in Cambodia, however, criticized the lack of community involvement in the drafting of the decree, the fact that it excludes areas of valuable rosewood trees and that it will not be sufficient to stop illegal logging, plus the fact that communities are restricted in their access to forest resources.¹²

REDD in Cambodia

Cambodia was invited to join the UN REDD Programme, and was granted observer status on the UN REDD Policy Board. Following Cambodia's entry into UN REDD, the UNDP Cambodia and FAO Cambodia Country Offices undertook to support the Royal Government in the REDD Readiness planning process which led to the development of the Cambodia REDD+ Roadmap (the Cambodia Readiness Plan Proposal on REDD+). In 2011, a national workshop on Reduced Emissions from Deforestation and Forest Degradation (REDD) was organized in Cambodia. Two community consultations on the promotion of indigenous peoples' rights and REDD were organized. In these events, the participants provided their comments on REDD+ in Cambodia and the National Forestry Program. The consultation will be followed by REDD+ capacity building and consultation workshops in five provinces: Preah Vihear, Kampong Thom, Streng Treng, Ratanakiri and Mondolkiri. These workshops will be implemented in collaboration with local indigenous organizations in each province.

Media and access to information

In 2011, the pilot program on community audio media started in Ratanakiri province. This was in response to the findings of a study that revealed that indigenous peoples have little access to independent media and the information they receive is rarely in line with the community's needs. A UNESCO/UNDP program is also supporting the provincial radio station in Ratanakiri to provide a 20-minute time slot in indigenous languages. This UNESCO/UNDP program has collaborated with NGOs to allow people working with indigenous language radio in Laos to exchange experiences.

Access to relevant information and opportunities to voice concerns nonetheless remains extremely limited for indigenous peoples. All TV stations are said to be under the control of the dominant political party, as are approximately 80% of radio stations.¹³

Indigenous Peoples' Organizations

Cambodia's indigenous peoples are increasingly recognizing the relevance of the term "indigenous", identifying as indigenous, becoming familiar with the international indigenous peoples' movement and organizing themselves.

The Indigenous Rights Active Members (IRAM) is an informal national-level network of grassroots-based indigenous community leaders in 15 provinces. Although it is still struggling to ensure that membership of IRAM is inclusive and representative, for the time being it remains one of the most representative organizations in the country. It works on indigenous community capacity building, strengthening, organizing, empowering, awareness raising, networking and advocacy on indigenous peoples' issues, including rights to land and natural resources, and helping to re-build indigenous solidarity and identity. The Cambodian Indigenous Youth Association (CIYA) aims to mobilize and build the capacity of indigenous youth to work for indigenous communities. The Organization to Promote Kui Culture (OPKC) works on community information, community organizing, capacity building, advocacy support and livelihood development among Kui communities. The Highlander's Association (HA) is the oldest indigenous organization in Cambodia and works on community organizing, community capacity

building and community livelihoods. In 2011, these four indigenous organizations formed the Indigenous Peoples' Organizations Alliance (IPOA). This alliance seeks to promote and strengthen the collective assertion of indigenous values related to ownership, self-determination and representation in order to secure long-term indigenous land, territory and natural resources tenure, and to assert indigenous rights in general. The formation of this alliance followed the establishment of an indigenous peoples' learning and coordination group by some members of the Indigenous Peoples NGOs Network (IPNN).

Most worrying for civil society organizations in Cambodia is the current passage of a new law that would severely restrict the work of human rights and other civil society organizations. In 2011, a draft Law on Associations and NGOs (LAN-GO) was being reviewed by the Council of Ministers. The draft law was heavily criticized since it provides for mandatory registration and, if passed, effectively criminalizes unregistered groups. According to the draft law, NGOs and community-based organizations would have to provide regular financial reports to the authorities and organizations and failure to do so would be considered illegal.¹⁴ ○

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This article was prepared by a group of people working in consultation with indigenous peoples across Cambodia.

VIETNAM

Vietnam is strategically located in the Indo-Chinese peninsula that connects the Asian mainland to Southeast Asia. As a multi-ethnic country, Vietnam has 54 recognized ethnic groups; the Kinh represent the majority, comprising 87%, and the remaining 53 are ethnic minority groups, with an estimated 13 million accounting for around 14% of the country's total population of 89 million. Each ethnic group has its own distinct culture and traditions, contributing to Vietnam's rich cultural diversity.

The ethnic minorities live scattered throughout the country, inhabiting midland, coastal and mountain areas, but are concentrated mostly in the Northern Mountains and Central Highlands. The Vietnamese government does not use the term "indigenous peoples" for any groups, but it is generally the ethnic minorities living in the mountainous areas that are referred to as Vietnam's indigenous peoples. The term "ethnic minorities" is thus often used interchangeably with indigenous peoples in Vietnam. The Thai, Tay, Nung, Hmong and Dao, are fairly large groups, each with between 500,000 and 1.2 million people. There are many groups with fewer than 300,000 people, however, sometimes only a few hundred. Around 650,000 people belonging to several ethnic minority groups live on the plateau of the Central Highlands (Tay Nguyen) in the south. All ethnic minorities have Vietnamese citizenship.

Ethnic groups intermingle closely with each other but no one group possesses its own customary territory. Two or three groups can be found in the same village and, through everyday community relations, they all know each other's language, customs and traditions.

The government of Vietnam voted in favour of the UNDRIP but has not ratified ILO Convention 169. Vietnam's constitution recognizes that all people have equal rights but it does not recognize ethnic minorities as indigenous people. The Cultural Heritage Law of 2001 was legislated to provide recognition of and guarantees for the cultural heritage and traditional practices of all ethnic groups.



Despite the unprecedented socio-economic development of Vietnam, ethnic minorities still seriously lag behind with respect to all major development indicators, and have thus benefitted far less from the past years' economic growth than the ethnic majority Kinh or the Hoa (ethnic Chinese in Vietnam). Around 60% of the entire population living in mountainous communities, and thus a large percentage of ethnic minorities, live below the standard

poverty threshold as defined by the government's Poverty Reduction/Alleviation program.¹

Land and forest remain an important productive resource for most ethnic minority people. Many ethnic communities have special relationships with their land and forests and attach high political and cultural significance to them. This relationship goes beyond mere economic interests and includes cultural and spiritual connections to the places they have inhabited for generations.²

Land rights

Although Vietnam has several laws and policies on land and other natural resources, none of these provide legal recognition of ethnic minorities' customary collective rights to the land, the forest or their resources.

The land policy in general is progressive, as it provides for the allocation and distribution of agricultural land and forest land to individuals and organisations for long-term use. As a result, ethnic minority people have received land-use and stewardship rights certificates for agricultural land and, to some extent, forest land, just like their Kinh counterparts. By the end of 2009, ethnic minority and Kinh households had received use rights over 25%, and communities held certificates to 1%, of all forest land. Yet there are two critical issues with respect to the current land policy from the perspective of ethnic minorities, especially those living in remote areas. First, much of the land important to them has been classified as forest land, even though they have cultivated it for decades or even centuries. This has had severe negative impacts on ethnic minority livelihoods and led to serious conflicts between forest protection officers and local villagers. Land legislation is thus in stark contrast to the ethnic minority traditional recognition of land and forests as a key resource in their socio-political, economic and cultural development. Second, the land policy continues to ignore the collective role and responsibilities of ethnic communities in land and forest governance. The revised Land Law of 2004 allows land to be allocated to communities but they do not possess any formal governance powers over the land and forests, especially with regard to land use and assignments within communities. This runs directly counter to the customary role of community-based institutions and village leaders in land governance in many ethnic minority villages.³

Growing pressure on ethnic minorities' land

The national demand for energy and increasing worldwide scarcity of mineral resources means that large tracts of ethnic minority land can no longer be considered remote. This land has attracted the interest of national development planners and foreign investors for the construction of hydropower dams and mining operations. Several mining projects are already underway in the country. Ethnic

minorities' land is also under threat from other sources related to changes in global commodity markets and governance regimes. Increasing global demand for agricultural commodities is leading to a revalorization of the land, attracting interest from Kinh migrants, state companies and foreign investors alike. New forest governance initiatives, such as Payments for Environmental Services (PES) and Reduced Emissions from Deforestation and Forest Degradation (REDD+), are attaching new values to forests and lands, thereby making them a profitable target.

All of these have the potential to cause serious conflict between ethnic minority communities and outsiders and to marginalize ethnic minorities yet further.⁴ Due to the deficiencies of the land legislation and the resulting tenurial uncertainties, this will become a major problem among ethnic minorities in the future.

The first phase of the national REDD program implementation was completed in 2011 and the government has submitted its RPP (REDD Readiness Preparedness Proposal) to the World Bank's Forest Carbon Partnership Facility (FCPF). Given that Vietnam has no special laws or policies recognizing and protecting ethnic minority customary land rights, the tenure rights of ethnic minorities remain uncertain. The Draft Decision agreed in December 2010 in Cancún, Mexico at the Conference of the Parties of the UN Framework Convention on Climate Change (UNFCCC) contains several safeguards which REDD partner countries are supposed to ensure, among them respect for the knowledge and rights of indigenous peoples. As Vietnamese civil society organisations pointed out, however, Vietnam's RPP does not adequately address the issue of rights and access to the forest resources of ethnic minorities and they point out that: "There are risks that REDD+ can undermine the livelihoods of ethnic minorities and other forest dependent communities if it is pursued in isolation from the larger issues of forest governance."⁵

Hmong protests

An undetermined number of ethnic Hmong people, some reports say around 3,000, staged a spontaneous mass action on May 5, 2011 in remote villages of Muong Nhe district in Dien Bien province close to the border with Lao PDR. These Hmong protesters, some of them belonging to Christian denominations, were allegedly demanding an autonomous region, religious freedom and land reform in their territories.

The Vietnamese government sent in army troop reinforcements after demonstrations broke out in Dien Bien. Minor clashes occurred between the Hmong and the army soldiers and security forces. Army officials said they “had to intervene to prevent these troubles and disperse the crowd by force” but did not provide any details of casualties or the number of troops involved. Local authorities arrested and detained several people and opened an investigation. Although religious rights and freedoms are not absolutely denied in Vietnam, religion is strictly regulated.

The US-based Center for Public Policy Analysis, a supporter of the Hmong cause, reported on its website that 28 protesters had been killed and that hundreds were missing but these claims cannot be independently verified.⁷ Christy Lee, executive director of the Washington-based campaign group Hmong Advance cited “credible reports” of a major crackdown against Hmong people and that the operation was allegedly in response to the Hmong people’s protests for land reform, religious freedom, their opposition to illegal logging and other related issues.⁶

Government programs and policies

Program 135 Phase II, a five-year poverty reduction programme of the Government of Vietnam, ended in 2011. Program implementation only focused on the construction of infrastructure projects and brought positive changes in the infrastructure development of rural and mountainous areas. This created the necessary conditions for poverty reduction in ethnic minority and mountainous areas. However, the program has been criticized for its failure to acknowledge the distinct social and cultural aspects of the different ethnic groups and for not delivering significant outcomes in terms of alleviating the ethnic minority poverty situation. The sustainability of these projects is considered uncertain and some projects are not performing effectively.

With the government’s National Strategy on Reproductive Health published in 2011, sexual reproductive health is given a high priority on the country’s development agenda. The National Strategy stresses and calls for awareness raising of both men and women with regard to sex and sexuality so that they are able to fully exercise their rights and responsibilities in this regard. However, this strategy has not had any great impact on ethnic minorities, far less on women in mountain-

ous rural communities. The major reason for this is that there are no specific, culturally-sound programs and guidelines for implementation among ethnic minorities, and there is a lack of even the most basic knowledge of sexuality and sexual health issues among these groups. It still remains a taboo subject in many ethnic minority families, communities and institutions.⁷

In 2011, a decision of the Prime Minister provided for the launch of a new policy on the Conservation and Development of Ethnic Minorities' Culture in Vietnam, to be implemented over a ten-year period until 2020. The policy aims to conserve cultural elements such as the traditional songs, dances and festivals of relatively small intact ethnic minority groups with populations not exceeding 10,000 people. Ironically, this program pays little more than lip service to them given that there are far more pressing issues among ethnic minority communities that need to be addressed, such as poverty, land and forest rights, participation in decision-making and self-determined development. ○

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Due to the sensitivity of some of the issues covered in this article the authors prefer to remain anonymous.

LAOS

With a population of over seven million, Laos is the most ethnically diverse country in mainland Southeast Asia. Officially, all ethnic groups have equal status, and the concept of “indigenous peoples” is not officially recognized.

There is no specific legislation in Laos with regard to indigenous peoples. The National Assembly’s official Agreement N° 213 dated 24 November 2008 recognizes only one nationality – all citizens are Lao – but recognizes over 100 ethnic sub-groups within 49 ethnic groups and abolishes the previous tripartite division in nationalities.

The ethnic Lao, comprising around a third of the population, dominate the country economically and culturally. Another third consists of members of other Tai language-speaking groups. The remaining third have first languages in the Mon-Khmer, Sino-Tibetan and Hmong-lu Mien families and are those that are considered to be the indigenous peoples of Laos.

Indigenous people 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 livelihood-related challenges. Their land and resources are increasingly under pressure from government development policies and commercial natural resource exploitation.

Laos has officially endorsed the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

Land concessions

There are currently more than 2,000 land concession (agricultural, mining, hydropower) projects nationwide. More than 50 percent of land concessions granted for investment projects result in detrimental effects to Laos, according to the National Land Management Authority.¹ This includes loss of agricultural land



and culturally significant areas such as sacred forest and forest food. The Lao government initially set a 300,000 ha cap on rubber concessions but concessions are still being granted and it has become increasingly confusing as to which authority has the mandate to approve them. India accounts for one of the new players, with almost 10,000 ha of rubber concession, but is still far behind China and Vietnam.²

In southern Laos, indigenous people are losing their ancestral land while in northern Laos Chinese companies work under the 2+3 approach according to which villagers keep their land and provide labor while the investors provide capital, technology and marketing. The problem lies in the need for labor to harvest the rubber. For Louangnamtha Province alone, it is estimated that 20,000 to

40,000 laborers are going to be needed and, in Oudomxay Province, 48,000 workers will be needed over the next three years.³ In both cases, Chinese labor migrants are likely to come and fill the gap. A group of Vietnamese rubber growers has urged the Lao government to allow it to import more technicians as the country cannot supply enough skilled workers.⁴ Local authorities are concerned about a lack of contracts that will ensure the villagers a guaranteed price for the rubber, the extensive use of herbicides on rubber plantations, and the fluctuating price of rubber. The Director of the Phongsaly Provincial Agriculture and Forestry Department therefore wants to limit rubber plantations to around 18,000 hectares in all (almost 16,000 have already been planted).⁵

Communal land titling

In Sangthong district in Vientiane Province, four ethnically mixed communities (composed of indigenous people and also Lao people) have received an initial three-month temporary communal land title for their Village Production Forest (in total 2,100 ha) and are awaiting the permanent certificate. Supported by the civil society organization (CSO) the Gender Development Group and the Netherlands Development Organisation (SNV), the communities of Ban So, Ban Wangma, Ban Napho and Ban Kouay have been able to secure their rights because of the communal title to bamboo resources, a first for Lao PDR. Benefits of communal land titling include the protection of common land from renting by or concessions to outsiders; proving village ownership against future claims by others, acting as a legal basis for the sustainable management of a common pool of natural resources and as a legal basis for claiming possible future benefits from carbon credits.⁶ The question is: do communities have the capacity to stand up and defend their land?

REDD+

Laos is among the 40 countries involved in the World Bank's Forest Carbon Partnership Facility and one of eight countries that are moving to the Forest Investment Programme (FIP), aimed at scaling up REDD investment in existing climate mitigation for government, private actors, citizens and civil society. A USD 32 mil-

lion FIP has been presented by the Lao government for approval and the government is ready to start implementing the REDD structure and committees at provincial level. This includes the Strategic Environment and Social Framework, including a Social Impact Assessment in which World Bank safeguards are supposed to apply. CSOs such as the Gender Development Group (GDG), the Lao Biodiversity Association (LBA) and also individual indigenous peoples are involved in setting up the structure and the committee that will control the grant, the accounts and evaluate the proposals.

The USD 32 million FIP includes 9% set aside as a Dedicated Grant for Indigenous People that will be devoted to indigenous peoples and local communities. Since the Lao government does not officially recognize the concept of indigenous peoples, however, the grant is being made available to both indigenous peoples and local communities, which may also include Lao-Tai communities. The REDD initiative has, however, not yet been implemented because the land tenure remains unclear. Before REDD can be applied, the issue of who the land belongs to must be defined. This relates to the recognition of land rights, including to community land.

In Sayabouly Province, the German Agency for International Cooperation (GIZ) is pioneering Free, Prior and Informed Consent, as stipulated in the UNDRIP, within the REDD initiative. Since the UNDRIP has been officially endorsed by the Ministry of Foreign Affairs (MFA) but is not a legally binding convention, the GIZ and the Department of Forestry have a verbal agreement that if a community rejects REDD, the project will respect its decision. There is also a REDD project in the Xeopian National Biodiversity Conservation Area supported by the Global Association for People and the Environment (GAPE) and WWF.

Relocation

In 2011, the Lao government continued to officially pursue the resettlement of indigenous shifting cultivators, and 159 families of 1,014 people who were previously shifting farmers in Huaphan were sent to a new resettlement area in Kasy district, Vientiane Province.⁷ No data is available about the situation in the resettlement site. Nevertheless, aimed at poverty alleviation, the stabilization of shifting cultivation and improving access to basic healthcare and services, resettle-

ment often results in social suffering, decapitalization, marginalization, and exacerbated pressure on natural resources.

Hydropower

With a hydropower potential of 18,000 megawatts, Laos plans to become the “battery of Southeast Asia” and many projects were on the table in 2011, including Xekaman 1 in Attapeu Province, Sekong 4 and Houaylampang in Sekong Province. Sinohydro Group Ltd., China’s biggest builder of dams, signed a USD 2 billion framework agreement with Laos to build seven dams along the 475-kilometer (295-mile) Nam Ou River, a Mekong tributary.⁸ Laos is among China’s top ten new foreign investment destinations, with newly-signed contracts for projects reaching USD 55.98 billion between January and May 2011.⁹ The Government of Laos appears to be set on unilaterally moving forward with the controversial USD 3.8 billion Sayabouri Dam, in violation of international law and its commitments under the 1995 Mekong Agreement¹⁰ and despite the fact that the Lao government officially put the project on hold to conduct an environmental impact assessment.¹¹ According to International Rivers, a U.S.-based environmental group, 22,580 people from more than 100 countries have signed a petition calling for the cancellation of the project due to grave concerns about the future of the Lower Mekong basin.¹² Vietnamese officials also officially oppose the dam, which would jeopardize water supplies and threaten fishing on the rivers downstream.¹³

Mining

152 local and international mining companies operate in Laos, of which 70 are domestically owned and the remainder are international enterprises.¹⁴ Ord River Resources (ORD) is targeting an extensive good quality bauxite resource on the Bolaven Plateau in southern Laos over an aggregate area of 487 km².¹⁵ The project would result in the destruction of indigenous peoples’ upland fields and coffee plantations and, ultimately, in severe environmental impacts because the project also intends to refine bauxite and this would generate toxic waste.

Lao Sanxai Minerals Co. Ltd, jointly owned by Rio Tinto (70 per cent) and Mitsui (30 per cent), has been granted exclusive rights to prospect and explore for

bauxite and related minerals over an area of 484 km² belonging to Mon-Khmer communities that have sustainably managed their forest resources based on customary laws for centuries in the Sanxai District, Attapeu Province and Dakcheung District, Sekong Province.

Civil society

Two new decrees were promulgated in 2011: the Decree on Cooperatives and the Decree on Foundations. The first allows farmers to set up cooperatives in order to improve their price negotiating capacity. Registration of associations continues but, in all cases, the emerging non-profit associations (NPAs) and CSOs remain under strict state control. The Lao government decides how many people should stand on their committees; who is eligible to become a member, etc. so it is not genuine civil society but a hybrid state in Socialist Laos. Community Association Mobilizing Knowledge in Development (CAMKID) remains one of the only true indigenous organizations, while other NPAs have kept their original names but are now led by Vientiane-based ethnic Lao majority individuals and have cut their original roots with indigenous peoples. Nonetheless, some NPAs also get to register at provincial level. Some donors bypass these state-registered associations and directly support indigenous communities at field level.

Denied access to repatriated Hmong

The International Organization for Migration collaborated with the Ministry of Foreign Affairs in 2011 to provide assistance to the 4,500 Hmong forcibly returned from Thailand in the Phabeuak area of Bolikhamxay Province. Laos, however, denied independent monitors unfettered access to resettlement sites at Phonkham in Borikhamsay Province, and Phalak and Nongsan in Vientiane Province. This hampered proper assessment of the situation.¹⁶ The repatriation of Hmong refugees continues and, on one occasion, the Thai authorities forcibly handed over a registered Hmong refugee and his family to Lao officials. According to Human Right Watch, Ka Yang was a registered refugee recognized by the United Nations' Refugee Agency, UNHCR, in Bangkok and this is the second time he has been forcibly returned to Laos.¹⁷

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BURMA

Burma's diversity encompasses over 100 different ethnic groups. The Burmans make up an estimated 68 percent of Burma's 50 million people. The country is divided into seven, mainly Burman-dominated divisions and seven ethnic states. While the majority Burmans consider themselves to be indigenous, it is the marginalized groups referred to as "ethnic nationalities", including the Shan, Karen, Rakhine, Karenni, Chin, Kachin and Mon, that are commonly considered to be indigenous.

Burma has been ruled by a succession of Burman-dominated military regimes since the popularly elected government was toppled in 1962. The regime has justified its rule, characterized by the oppression of ethnic nationalities, by claiming that the military is the only institution that can prevent Burma from disintegrating along ethnic lines. After decades of armed conflict, the military regime negotiated a series of ceasefire agreements in the early and mid-1990s. While these resulted in the establishment of special regions with some degree of administrative autonomy, the agreements also allowed the military regime to progressively expand its presence and benefit from the unchecked exploitation of natural resources in ethnic areas. In 1990, the military regime held the first general elections in 30 years. The National League for Democracy (NLD), a pro-democracy party led by Aung San Suu Kyi, won over 80% of the parliamentary seats and the United Nationalities Alliance (UNA), a coalition of 12 ethnic political parties, won 10% of the seats.¹ However, the regime refused to honor the election results and never convened the Parliament.

Burma voted in favour of the UN Declaration on the Rights of Indigenous Peoples, which was adopted by the UN General Assembly in 2007.

In November 2010, the State Peace and Development Council (SPDC - official name of the military regime in Burma) held the first general election in 20 years. The junta-backed Union Solidarity and Development Party (USDP) won 76% of

the seats as a result of an electoral process which the UN said failed to meet international standards. Repressive electoral laws barred several significant ethnic-based parties from participating. Weeks before the election, the Election Commission announced that voting would not take place in 3,314 villages in ethnic nationality areas, effectively disenfranchising 1.5 million ethnic nationality voters. The NLD and ethnic nationalities parties, which collectively won more than 90% of seats in the 1990, elections did not participate in the 2010 elections. Elected MPs from the 24 ethnic-based parties that ran in the polls accounted for only 13% of the seats in the National Parliament. USDP and military-appointed MPs now occupy approximately 84% of parliamentary seats.

New regime marginalizes ethnic nationalities

After the November elections, the SPDC ensured that the military would maintain its grip on power in the new nominally civilian regime. In February 2011, the USDP-dominated Parliament elected former SPDC high-ranking officials to the top of Burma's political system. MPs elected former SPDC Prime Minister Thein Sein as Burma's new President. The Parliament also approved Thein Sein's 30 nominees for cabinet Ministers. Only four nominees were civilians. Four army generals were appointed to key ministerial positions, with the remaining 22 being either retired military officials or former cabinet ministers under the SPDC. On 30 March, President-elect Thein Sein was sworn in along with Vice-Presidents Tin Aung Myint Oo and Mauk Kham. The event marked the dissolution of the SPDC. SPDC Chairman Senior General Than Shwe officially retired from politics and handed over the reins as Tatmadaw (Burma's Armed Forces) Commander-in-Chief to General Min Aung Hlaing. Vice-President Mauk Kham, an ethnic Shan and USDP MP, was the only ethnic nationality individual to feature in the new regime's top echelons.

Despite the regime's claim that the elections would bring greater representation for ethnic nationalities, at the local level ethnic nationality parties remained under-represented in ministerial positions compared to the number of parliamentary seats won. In addition, President Thein Sein ensured that the military remained in control of key positions. USDP MPs, as well as former and current high-ranking military officers, dominated Thein Sein's appointments. Out of seven Chief Ministers, six were USDP MPs and one (in Karen State) was a military-



appointed MP. All but two of the Chief Ministers were current or former Tatmadaw Commanders. All Ministers of Security and Border Affairs were military personnel nominated by the Tatmadaw Commander-in-Chief. USDP MPs accounted for over 60% of the remaining ministers in ethnic states. USDP MPs also filled all key positions in the local parliaments. In ethnic states, all Speakers and Deputy Speakers were USDP MPs. In Karenni State, MPs elected a former Tatmadaw Regional Commander as Speaker.

Parliament fails to address ethnic grievances

On 31 January, the USDP-dominated Parliament convened in Naypyidaw for Burma's first parliamentary session in 22 years. Fourteen local parliaments (including seven assemblies in ethnic nationality states) also convened in their respective areas. MPs convened two sessions, for a total of 89 days. Amid tight security measures and severe restrictions on parliamentary debate, MPs were only able to pose questions to regime ministers and officials and to discuss proposals. However, regime officials failed to address the substantive issues raised by MPs. Regime officials ignored questions that dealt with important issues such as land ownership rights, the impact of energy projects on local communities, and education in ethnic nationality areas. Important issues, such as national reconciliation and the ongoing conflict in ethnic nationality areas, were only marginally discussed. In ethnic nationality states, local parliaments met for three sessions but failed to introduce or debate any legislation.

Conflict intensifies in ethnic nationality areas

While the Parliament was holding its first session in Naypyidaw, the regime stepped up pressure against armed groups in ethnic nationality areas that had refused to incorporate their forces into Tatmadaw-controlled forces under the Border Guard Force (BGF) scheme (see *The Indigenous World 2011*). Tatmadaw deployed additional troops near the Kachin Independence Army (KIA) headquarters in Laiza, Momauk Township, Kachin State, and near the Shan State Army-North (SSA-N) base in Wanhai in Kyethi Township, Northern Shan State. Sporadic fighting was reported even in the relatively quiet region of Chin State, where

Tatmadaw soldiers clashed several times with the Chin National Army and the Arakan Liberation Army. In Karen State, in addition to ongoing military operations against the Karen National Liberation Army (KNLA), Tatmadaw troops continued to engage in heavy fighting with Democratic Karen Buddhist Army (DKBA) forces that had refused to join the BGF. Hostilities reached a peak in late April, causing about 1,200 civilians to flee across the Thai border.

In February, ethnic nationality groups responded to the regime's increasingly aggressive stance by forming an alliance that comprised 12 ethnic nationality armed opposition groups and political organizations.² The new coalition, called the United Nationalities Federal Council (UNFC), included Rakhine, Chin, Karen, Karenni, Kachin, Lahu, Mon, Pa-O, Palaung, Shan and Wa groups. UNFC members agreed to provide mutual military assistance in case of Tatmadaw attacks. They also agreed that individual groups would not hold separate ceasefire talks with the regime.

Tensions between the Tatmadaw and the SSA-N and the KIA turned into full-scale conflict when regime troops broke long-standing ceasefire agreements with both groups in March and June respectively. Between April and September, the Tatmadaw stepped up military operations and built up troops in Northern Shan State as part of their offensive against the SSA-N base in Wanhai. Tatmadaw and SSA-N troops continued to clash in other townships. Shan State Army-South (SSA-S) forces participated in the hostilities by repeatedly ambushing Tatmadaw convoys headed towards the conflict areas of Northern Shan State. In Kachin State, conflict rapidly spread from Momauk Township to other areas, with hostilities reported in two-thirds of Kachin State's townships and several townships of Northern Shan State between June and December. Despite several meetings between regime officials and KIA representatives, the two sides failed to reach a ceasefire agreement. Tatmadaw attacks and troop deployments did not cease even after President Thein Sein's 10 December order to cease all military operations against the KIA.

The regime initially sought to end conflicts in ethnic nationality areas through military intervention. However, as the Tatmadaw increasingly faced heavy casualties and a high rate of desertion in Kachin, Shan and Karen states, the regime changed tack and embarked on a series of talks with individual ceasefire groups. On 18 August, the regime officially invited ethnic nationality armed groups to peace talks with their respective regional administrations. However, these groups unanimously rejected the regime's offer of talks held at the regional level. The

groups maintained that they would only consider direct talks at the national level between Thein Sein's administration and the UNFC with the aim of securing a durable and sustainable nationwide ceasefire that applied to all ethnic nationality groups.

The regime appeared to be making headway in negotiations after it assigned regime Rail Transport Minister Aung Min the task of holding initial talks with ethnic nationality armed groups. On 19 November, Aung Min held preliminary peace talks with representatives from the SSA-S, the KIO, the KNU, the KNPP and the CNF on the Thai-Burma border. In December, the DKBA was the first ethnic armed group to sign a "peace agreement" with the regime. In addition, regime officials agreed "in principle" to an SSA-S ceasefire proposal. During all the talks, the regime did not raise issues related to the BGF. On 16 December, regime Minister of Industry and head of the "Peace-Making Group" Aung Thaung cautioned that ending ethnic conflicts in Burma would take as long as three years.

Crimes against humanity, war crimes exposed

UN bodies continued to denounce the Tatmadaw's ongoing violations of human rights in ethnic nationality areas in their annual resolutions on Burma. In March and December respectively, the Human Rights Council and the General Assembly adopted resolutions that expressed concern over the "continuing discrimination, human rights violations, violence, displacement and economic deprivation affecting numerous ethnic minorities."³ In October, UN Special Rapporteur on human rights in Burma, Tomás Ojea Quintana, said that the Tatmadaw was continuing to commit human rights violations in ethnic nationality areas. These violations included attacks against civilians, extrajudicial killings, sexual violence, arbitrary arrests and detentions, internal displacement, land confiscation, the recruitment of child soldiers, and forced labor.⁴ Ojea Quintana made it clear that such gross and systematic human rights violations could amount to crimes against humanity and/or war crimes.⁵

This pattern of abuse was particularly evident during the Tatmadaw's military operations in Northern Shan State and Kachin State, where numerous cases of extrajudicial killings, rapes of women, arbitrary detentions, forced displacements, forced labor, and the use of civilians as human shields were documented by numerous human rights organizations.⁶ Serious human rights abuses committed by

Tatmadaw troops were not limited to Kachin and Shan states. Two important reports also exposed Tatmadaw's atrocities in Karen and Chin states.

In January, the US-based Physicians for Human Rights released "Life under the Junta", a report that exposed the Tatmadaw's widespread human rights abuses in Chin State.⁷ According to the report, nearly 92% of the households surveyed had experienced at least one case of forced labor between October 2009 and November 2010.

In July, Human Rights Watch and the Karen Human Rights Group released a joint report entitled "Dead men walking: convict porters on the front lines in Eastern Burma".⁸ The report detailed the serious and systematic abuses committed by Tatmadaw soldiers against prisoners forced to carry military supplies in Burma's conflict zones.

Number of IDPs reaches new high

As a result of the Tatmadaw's ongoing offensives in ethnic areas, the number of Internally Displaced Persons (IDPs) soared to a new high in 2011. In its annual survey of the displacement situation in Eastern and Southern Burma, the Thailand Burma Border Consortium (TBBC) found that, between August 2010 and July 2011, the regime had displaced at least 112,000 people, a 53% increase on the 73,000 recorded between August 2009 and July 2010. It was the highest number of IDPs recorded in a decade.⁹ The figure did not include the over 30,000 IDPs who had fled conflict between the Tatmadaw and the KIA and sought refuge in camps located in KIA-controlled territory on the Sino-Burma border.

Myitsone dam project suspended

In what was perhaps the most positive development for communities in ethnic nationality areas last year, on 30 September, President Thein Sein announced the suspension of the Myitsone dam project on the Irrawaddy River in Kachin State. Thein Sein's decision followed a relentless campaign carried out over the past few years by local Kachin communities, civil society and environmental groups to demand an end to the project. The project had already resulted in the forced relocation of up to 12,000 people, environmental degradation, and a loss

of livelihood for local residents. However, after China vented its unhappiness over Thein Sein's decision to suspend construction of the dam, the regime indicated that it could reconsider its decision and agreed with Beijing to hold further talks regarding the future of the project. This raised concerns that the construction of the dam may continue. In October, the Kachin Development Networking Group reported that work on the Myitsone dam project had not stopped. The group noted that equipment remained in place and that workers continued to construct a supply road as part of the project.¹⁰ ○

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SOUTH ASIA

BANGLADESH

The majority of Bangladesh's 143.3 million people are Bengalis, and approximately 3 million are indigenous peoples belonging to at least 45 different ethnic groups. These peoples are concentrated in the north, and in the Chittagong Hill Tracts (CHT) in the south-east of the country. In the CHT, the indigenous peoples are commonly known as *Jummas* for their common practice of swidden cultivation (crop rotation agriculture) locally known as *jum*. A 2011 amendment to the constitution refer to the indigenous peoples of Bangladesh as 'tribes', 'minor races' and 'ethnic sects and communities'. Bangladesh has ratified ILO Convention No 107 on Indigenous and Tribal Populations but abstained when the UN Declaration on the Rights of Indigenous Peoples was up for voting in the General Assembly in 2007.

Indigenous peoples remain among the most persecuted of all minorities, facing discrimination not only on the basis of their religion and ethnicity but also because of their indigenous identity and their socio-economic status. In the CHT, the indigenous peoples took up arms in defence of their rights in 1976. In December 1997, the civil war ended with a 'Peace' Accord between the Government of Bangladesh and the Parbattya Chatagoram Jana Samhati Samiti (PCJSS, United People's Party of CHT), which led the resistance movement. The Accord recognizes the CHT as a "tribal inhabited" region, its traditional governance system and the role of its chiefs, and provides building blocks for indigenous self-determination. The CHT Accord, however, remains largely unimplemented which has resulted in continued widespread human rights violations, violent conflicts and military control.

Legal and constitutional rights

On 30 June 2011, the Bangladesh Parliament passed the 15th amendment to the National Constitution of Bangladesh. During the constitutional amend-



ment process indigenous peoples' organizations and leaders submitted a memorandum to the government demanding, amongst others, constitutional recognition of indigenous peoples/*adivasi* and their languages and cultures; reserved seats for indigenous peoples, including women, in the parliament and local government councils; indigenous peoples' control over their land, territory and natural resources; and constitutional guarantee of the Chittagong Hill Tracts Accord of 1997.

However, the Government of Bangladesh disregarded the demands of the indigenous peoples' organizations and civil society groups as well as the fact that a number of legal documents use the term *adivasi*/indigenous peoples/indigenous hill men. Instead the amended Constitution refers to indigenous peoples as tribes (*upajati*), minor races (*khudro jatishaotta*), ethnic sects and communities (*nrigoshthi o shomproda*). It also says that all the people of Bangladesh will be known as Bangalees (Article 6.2).

Indigenous peoples' organizations and leaders staged nation-wide protests against the amended Constitution but rather than acknowledging these protests the Foreign Minister urged foreign diplomats and journalists in Bangladesh to avoid using the term *Adivasi*/indigenous peoples.¹ One newspaper also reported that the Government has decided to remove the term 'indigenous' from all the laws, policies, documents and publications of the Bangladesh Government.²

In a similar vein a number of legislative amendments have been proposed by the Government without consulting indigenous peoples who will be heavily affected if they are passed in their current form in Parliament. The legislations in questions include proposed amendment to the Forest Act of 1927, the Wildlife Protection Bill of 2010 and changes in the Hill District Council Acts of 1998. On the other hand, the recommendations proposed by the indigenous peoples to amend the 2001 Land Commission Act to make the Land Commission effective and to bring it in line with the CHT Accord have still not been taken up. The work of the Land Commission has remained largely suspended throughout 2011.

A few positive steps and initiatives have been taken such as the National Human Rights Commission adopting a strategy plan for the promotion and protection of the rights of indigenous peoples, though it still lacks institutional capacity and adequate government support, and the adoption of the National Women Development Policy (see below).

UNPFII study on the 1997 CHT Accord

At the tenth session of the UN Permanent Forum on Indigenous Issues (UNPFII) an appointed Special Rapporteur, Mr. Lars-Anders Baer, former member of the UNPFII, presented a study on the status of implementation of the Chittagong Hill Tracts Accord of 1997. The study concludes that many of the most important provisions of the 1997 CHT Accord remain unimplemented or partially implement-

ed, including those related to the settlement of land disputes, demilitarization and the devolution of authority to local institutions, and provides a number of recommendations related to the Accord implementation and the general human rights situation in the CHT.³ In its report the UNPFII takes note of the discussions following the presentation of the study and provides four recommendations, including that the Government of Bangladesh declare a timeline and outline modalities of implementation and persons and/or institutions responsible for implementation and that, consistent with the code of conduct for United Nations peacekeeping personnel, the Department of Peacekeeping Operations (DPKO) prevent military personnel and units that are violating human rights from participating in international peacekeeping activities under the auspices of the United Nations, in order to maintain the integrity of the indigenous peoples concerned.⁴

The Government of Bangladesh reacted strongly to the study stating that it was “a ‘lopsided’ opinion on a ‘non-indigenous’ issue” and objected to paragraph 56 and 58A dealing with the DPKO saying that it was “completely out of context.”⁵ Subsequently the Bangladesh government unsuccessfully attempted to have two paragraphs dealing with the CHT removed from the tenth session UNPFII report when it was presented for adoption by the UN Economic and Social Council.⁶ Some analysts believe that the lack of constitutional recognition of indigenous peoples (see above) and the subsequent developments aimed at further curtailing indigenous peoples’ rights (see below) should be seen in light of the Government’s reaction to the study and discussions during the UNPFII session, particularly the issues and recommendations relating to the army and DPKO as Bangladesh is one of the countries providing most troops to UN peacekeeping missions.

In 2011 no significant steps were taken to implement the CHT Accord - despite the fact that three years of the tenure of the political party signatory to the Accord, Awami League, has passed and despite the commitment made in the Awami League’s Election Manifesto and continued strong demand from indigenous peoples and civil society groups in the country.

Discriminatory rules in the CHT

In the name of ‘higher security measures’ the government imposed restrictions on the travel and activities of foreigners visiting the CHT. According to the new rules foreigners need to inform the Deputy Commissioners of respective hill districts in

advance about their visit (where they are going and who they plan to meet). In addition to this, the local hill district administration in Bandarban now issues instructions to foreigners visiting the district placing a prohibition on foreigners and foreign nationals on holding discussions with any indigenous groups or religious groups without the presence of a responsible officer. It also places restrictions on cash endowments to indigenous children and their families for education or any other purposes.⁷

In August, a British national was ordered to leave Bandarban district accused of involvement with controversial activities after he participated in a solidarity program of the Bangladesh Indigenous Peoples Forum calling for constitutional recognition of indigenous peoples. In November the international CHT Commission was compelled to discontinue its sixth mission to the CHT aimed at assessing the human rights situation in the area as a consequence of unprecedented interference from officials of the district civil administration and intelligence agencies during meetings with civil society groups in Rangamati and Bandarban districts. Finally, in January 2012 a US national was told to leave Bandarban after having spoken to an indigenous newspaper correspondent and other indigenous people, which was apparently deemed to be “suspicious” in nature.

The local indigenous peoples’ organizations have complained about these unconstitutional restrictions which severely affect the work of the organizations who are working for socio-economic development of indigenous peoples. Such restrictions also create an air of intimidation and fear on the residents of the CHT and helps to add to the culture of impunity by making it difficult for human rights activists to investigate allegations of impunity enjoyed by members of the security forces. The restrictions on access come on top of the local administration’s efforts to interfere with the work of local organisations. On 22 November 2011 the Deputy Commissioner’s office asked all NGOs in the three hill districts to submit information about the ethnicity of the organizations’ beneficiaries (the percentage of indigenous beneficiaries against Bengali persons) as well as the ethnicity of the organizations’ employees (the percentage of indigenous employees against Bengali employees).⁸

Human rights violations

The pattern of persistent and widespread human rights violations against indigenous peoples continued and the impunity with which the violations are carried out irrespec-

tive of the perpetrators being state or non-state actors remains a serious concern. There have been no attempts to fully and impartially investigate the human rights violations by Bengali settlers in the CHT with the support of the law enforcement agencies, and in the plain land by the influential land grabbers with the support of the local administration, including the police. The law enforcement authorities also do not provide adequate protection or cooperation in filing cases against perpetrators of crimes against indigenous peoples. Criminals are therefore rarely captured, prosecuted and punished, and in general the rule of law is not being implemented.

In 2011, 7 indigenous people were killed while 13 persons were arrested or detained. In addition, 30 indigenous persons were tortured, harassed and threatened, including five village heads who were tortured and humiliated by security personnel during a public meeting in Bandarban district. At least 8 massive communal attacks were made upon indigenous peoples across the country, four of these occurred in the CHT and were committed by Bengali settlers with direct or indirect collaboration from security forces. At least three indigenous persons were killed in these communal attacks while 70 were injured. 137 houses of indigenous peoples were completely burnt to ashes while 47 houses were looted or ransacked.⁹

Land dispossession and violence against women

Incidents of forcible land grabbing by Bengali land grabbers and eviction of indigenous peoples from their ancestral land remained a common scenario in 2011. For example, in the CHT at least 7,118 acres of land belonging to indigenous people were grabbed by Bengali settlers. In addition, several attempts were made to occupy indigenous peoples' land, which resulted in at least 111 houses of indigenous villagers being completely burnt down, 12 houses being looted and ransacked and 164 indigenous families being attacked. Besides, 21 indigenous persons were assaulted and three were brutally killed.¹⁰

No attempts were made by the authorities, including the CHT Land Commission, to address the land dispossession issue and to solve the numerous land disputes which are one of the main contributing factors leading to the impoverishment and marginalization of indigenous peoples and to the many human rights violations perpetrated against the indigenous population. Interest in land belonging to indigenous peoples is also one of the main factors behind many of the incidents of violence against indigenous women observed in 2011.

In 2011, 12 indigenous women were raped and of these 5 were killed afterwards. Except one woman from the plain lands, all the raped women were from the CHT. In addition, 6 cases of attempted rape and 5 cases of abduction were reported. In the CHT, almost all incidents of violence against indigenous women were allegedly committed by Bengali settlers, except one case of attempted rape allegedly committed by security personnel.¹¹ There is, however, not a single example where the indigenous women got justice against her rights violation and persistent corruption, police negligence, impunity, and a general lack of justice for victims of human rights violations were pervasive themes among all the cases committed in 2011.¹²

On 7 March 2011, the Ministry of Women and Children Affairs adopted the National Women Development Policy which incorporates some provisions on indigenous women but uses the term 'backward and small ethnic groups'. The policy ensures the rights for development of 'small ethnic groups and backward women' while maintaining their own traditions and culture and provides for special programmes for the women of the 'backward and small ethnic groups'. One of the major criticisms of the policy is that the government did not consult with indigenous women rights activists during its formulation and that it therefore does not include adequate safeguards of indigenous women who face unique discrimination distinct from the women of the mainstream population.

Some positive developments

The EU, UNDP, ILO, Oxfam GB and some other organizations took initiatives to address indigenous issues in Bangladesh. In 2011, national and international seminars were jointly organized by Bangladesh Adivasi Forum, ILO, the National Human Rights Commission, Oxfam GB, NGOs and civil society towards better understanding indigenous peoples' rights in Bangladesh. Ministers, members of Parliament, civil society members and indigenous leaders attended those events. ○

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NEPAL

The indigenous nationalities (*Adivasi Janajati*) of Nepal officially comprise 8.4 million people, or 37.19% of the total population, although indigenous peoples' organizations claim a larger figure of more than 50%. Even though they constitute a significant proportion of the population, throughout the history of Nepal indigenous peoples have been marginalized in terms of language, culture, and political and economic opportunities.

The 2001 census listed the population as belonging to 50 Hindu castes, 43 indigenous peoples, 2 Muslim groups, 4 religious groups and 3 unidentified groups. The census, however, failed to provide data on 16 indigenous nationalities as the Nepal government has legally recognized 59 indigenous nationalities under the National Foundation for Development of Indigenous Nationalities (NFDIN) Act of 2002. Controversial recommendations for a revision of the list have recently been made.

The 2007 Interim Constitution of Nepal focuses on promoting cultural diversity and talks about enhancing the skills, knowledge and rights of indigenous peoples. The indigenous peoples of Nepal are waiting to see how these intentions will be made concrete in the new constitution, which is in the process of being promulgated. In 2007, the Government of Nepal also ratified ILO Convention 169 on Indigenous and Tribal Peoples and voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The implementation of ILO Convention 169 is still wanting, however, and it is yet to be seen how the new constitution will bring national laws into line with the provisions of the ILO Convention and the UNDRIP.

Uphill battle to establish identity-based federalism

In 2010, the Committee on Restructuring of the State and Sharing of the State Powers (CRSSSP), one of ten thematic committees of the Constituent Assem-



bly (CA) mandated to draft the constitution, recommended the formation of 14 provinces, 23 autonomous regions, and unspecified numbers of special and protective areas based on the primary criterion of identity and secondary criterion of ability, as agreed unanimously by all political parties represented in the CA (see *The Indigenous World 2011*).

However, since then, political parties, including the Nepali Congress (NC) and the Communist Party of Nepal-Unified Marxist Leninist (CPN-UML), have been trying to undo these recommendations by giving primacy to ability, not identity. The top leaders of all the three main political parties (NC, CPN-UML and Communist Party of Nepal (CPN)-Maoist) are hatching conspiracies that involve many different highly coordinated actions with many twists and turns. Last year, the dominant caste groups, i.e. Bahun and Chhetris, were visible on a political front (in the CA, Legislature-Parliament and political parties), agreeing to devalue identity-based federalism, and on an intellectual front, organizing international seminars and (mis)using the media to deconstruct identity-based federalism.

On 1 November 2011, the three dominant political parties and the Madhesi¹ political parties struck a seven-point agreement to the effect that the government would present a bill seeking an 11th amendment to the Article 138 (2) of the Interim Constitution.² The bill would provide for the formation of an experts' committee from within the CA by scrapping the existing provision for a state restructuring commission, which had become outdated and irrelevant as it was supposed to have been formed before the birth of the CA. The government registered the bill

on 4 November. The top leaders of the three major political parties, namely the CPN-Maoist, CPN-UML and NC, all led by the dominant Bahun caste, decided to endorse the proposed bill in the Legislature-Parliament but the House failed to pass the bill due to very strong objections from the indigenous caucus and Mohan Baidhya, who leads one of the three factions of CPN-Maoist lawmakers/CA members and who stood firm for securing the rights of indigenous peoples and other excluded groups.

The government's second attempt to pass the bill was also thwarted by the Indigenous Caucus and the Baidhya faction.³ They opposed the proposed amendment bill and demanded that the committee's Terms of Reference be determined prior to the proposed amendment so as to work further on, and not dismantle, the recommendations made by the CRSSSP. At the same time, the indigenous peoples' movement staged a protest against the bill outside the Legislature-Parliament building. As a result, the government withdrew the constitutional amendment bill on 18 November.

The main political parties and the government subsequently, belatedly, formed the State Restructuring Commission with a limited mandate to provide further suggestions based on the reports and recommendations made by the CRSSSP to the CA. 2011 will thus go down in history as a watershed in the struggle of Nepal's indigenous peoples for enforcement of their human rights in accordance with the international standards laid out in the UNDRIP and ILO Convention No. 169.

Defining moment postponed once more

The drafting of the new constitution was supposed to be finalized by 28 May 2011 but, as the work was incomplete, the CA's term was extended three times and finalization postponed until first 30 August, then November 2011 and, finally, 28 May 2012. The Supreme Court ruled on 25 November 2011 that the CA could not further extend its term and that if the work of drafting the constitution were still incomplete, there would either have to be fresh elections or another alternative found. The Nepal government tried to file a writ petition to review the decision but the Court refused to register the petition and, on 27 December 2011, the Supreme Court rejected the parliament's and government's pleas to review its decision.

The continuing hatching of conspiracies against the rights of indigenous peoples, Madhesi and other oppressed and excluded groups/communities, as well as intra-party and inter-party political wrangling for power, appears to be making the CA unable to produce the new constitution within the extended timeframe. The constitution would be drafted in time if indigenous peoples and Madhesis agreed to restructure the state by giving primacy to ability, but this is next to impossible. It means the Nepali Congress and CPN-UML will try to dillydally in order to buy time to hatch more conspiracies aimed at dividing indigenous peoples and Madhesis. To do this, they are using the cards of integrating the Peoples' Liberation Army into the Nepal Army and returning confiscated lands to their owners as pre-conditions for writing the constitution.

With a deal reached between the political parties on 1 November 2011 on the integration and rehabilitation of Maoist fighters – a major stumbling block to the constitution-drafting process – the work is now speeding up. However, with previous attempts by the NC and CPN-UML to divide indigenous peoples and Madhesis in order to do away with ethnic-based federalism, there are no guarantees that the constitution will address the fundamental rights of indigenous peoples.

Claim to indigenous identity by dominant groups

As part of the efforts to curtail indigenous peoples' rights, Brahman *Samaj* ("Society"), Chhetri *Samaj* and Khas Chhetri *Samaj* (all very recent organizational offshoots of the dominant caste groups) are demanding recognition of Bahun and Chhetris as indigenous peoples and are against the restructuring of the state or federalism based on identity and/or ethnicity. They are making such demands by rallying in the streets, staging sit-ins in front of the CA, submitting memoranda to the main political parties and expressing their views in both the print and electronic media. Although Brahman and Chhetris are not indigenous in Nepal, on 18 November, the government formed a nine-member taskforce to enlist Chhetris as indigenous peoples. The coordinator of the task force, Prof. Chhetri, claims: "Chhetris have been residents of Nepal for thousands of years, yet they were not recognized as an indigenous people. Therefore, the taskforce will come with credible evidence to prove that Chhetris are aboriginal inhabitants".⁴ The formation of Brahman and Chhetri organizations demanding their recognition as indigenous peoples and rejecting indigenous peoples' rights to self-determination,

autonomy and self-rule is a malicious attempt to continue their centuries-long domination. Hence, it appears likely that violent communal and/or armed confrontations between Bahun-Chhetris and indigenous peoples could break out in the near future.

DFID against indigenous peoples

The Nepal Federation of Indigenous Nationalities (NEFIN), an umbrella organization of 59 indigenous peoples recognized by the government, called a nationwide strike on 27 April. The previous week, the British Department for International Development (DFID)-Nepal had publicly announced that it would no longer continue its financial support of NEFIN's Janajati Empowerment Project II (JEP II) project due to NEFIN's continued involvement in national strikes and *bandhs*.⁵ NEFIN uses *bandhs* to protest for the constitutional rights of *Janajati* and people from marginalised communities. In its strong response to DFID-Nepal's decision to stop funding the JEP II, NEFIN accused DFID of practising "double standards" in the name of providing assistance for transparency and good governance and blamed it of "interfering" in the internal matters of a sovereign country.⁶

Mega Front demands FPIC mechanism

During 2011, the CA and the Nepal government did not establish the Free, Prior and Informed Consent (FPIC) mechanism as recommended by the ICERD Committee on 13 March 2009 and the Special Rapporteur on the rights of indigenous peoples on 20 July 2009 and 15 September 2010 (see *The Indigenous World 2011*), despite the fact that, on 11 March 2010, the Nepal government had responded to the Special Rapporteur's letter by saying that: "Constituent Assembly regulations provide that the Constituent Assembly Chairman may form additional committees as needed" and that: "In addition to existing means of representation in the Constituent Assembly, special mechanisms should be developed for consultations with the Adivasi Janajati, through their own representative institutions, in relation to proposals for new constitutional provisions that affect them."

On 16 January 2011, the Indigenous Peoples' Mega Front thus submitted a memorandum to the Chairperson of the CA calling on him to establish the FPIC

mechanism. However, he merely stated that he would inform all the political parties represented in the CA about it, implying that he had no power to establish such a mechanism.⁷

Indigenous women submit historic CEDAW Shadow Report

The National Indigenous Women's Federation (NIWF) and the Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), with support from the Forest Peoples' Programme and International Women's Rights Action Watch Asia Pacific, submitted a Shadow Report entitled *The Rights of Indigenous Women in Nepal* for the combined 4th and 5th Committee on the Elimination of Discrimination against Women (CEDAW) Periodic Reports of Nepal.⁸ On 18 July 2011, Yasso Kanti Bhattachan, one of the founders of and current advisor to NIWF, made a three-minute presentation to the CEDAW Committee during the informal meeting between NGOs and CEDAW committee members in New York.⁹ The Committee responded well to the discussions that the delegation had with them over the course of the session, and recommendations were made to the Nepal state in response to three key demands in the shadow report, namely equitable political participation through quotas for indigenous women, the need to address access to education for indigenous girls and the need to more effectively respond to the ongoing challenges of bonded labour among the Tharu people.¹⁰

REDD

Under the first-ever pilot Forest Carbon Trust Fund in Nepal, representatives from three watersheds in Dolakha, Gorkha and Chitwan districts received a total of USD 95,000 on behalf of community forest user groups at a ceremony organized at the International Centre for Integrated Mountain Development (ICIMOD) on 15 June 2011.¹¹ This initiative is being implemented by ICIMOD and its partners, the Federation of Community Forestry Users, Nepal (FECOFUN) and the Asia Network for Sustainable Agriculture and Bioresources (ANSAB). Both FECOFUN and ANSAB are non-indigenous organizations, and most of the beneficiaries were non-indigenous peoples. This indicates that, in general, there is still a long

way to go to ensure full and effective participation of indigenous peoples in community forestry and REDD in Nepal. ○

Notes and References

- 1 Madhesi (referring to the Hindu caste groups of the Terai region) are regionally excluded groups but, since the Madhesi movement of 2007, they have emerged as the fourth most powerful political force. Their issues, such as regional autonomy, are, however, yet to be fulfilled.
- 2 The Madhesi political parties, like indigenous peoples, are excluded by the dominant Hill Hindu caste groups but, in this case, they aligned themselves with the dominant political parties with the aim of not allowing indigenous peoples of the Terai region to have their own autonomy and self-rule.
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INDIA

In India, 461 ethnic groups are recognized as *Scheduled Tribes*, and these are considered to be India's indigenous peoples. In mainland India, the Scheduled Tribes are usually referred to as *Adivasis*, which literally means indigenous peoples. With an estimated population of 84.3 million, they comprise 8.2% of the total population. There are, however, many more ethnic groups that would qualify for Scheduled Tribe status but which are not officially recognized. Estimates of the total number of tribal groups are as high as 635. The largest concentrations of indigenous peoples are found in the seven states of north-east India, and the so-called "central tribal belt" stretching from Rajasthan to West Bengal.

India has several laws and constitutional provisions, such as the Fifth Schedule for mainland India and the Sixth Schedule for certain areas of north-east India, which recognize indigenous peoples' rights to land and self-governance. The laws aimed at protecting indigenous peoples have numerous shortcomings and their implementation is far from satisfactory. India has a long history of indigenous peoples' movements aimed at asserting their rights.

Violent conflicts broke out in indigenous areas all over the country, but above all in the Northeast and the so-called "central tribal belt". Some of these conflicts have lasted for decades and continue to be the cause of extreme hardship and serious human rights violations for the affected communities.

The Indian government voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in the UN General Assembly. However, it does not consider the concept of "indigenous peoples", and thus the UNDRIP, applicable to India.

Legal rights and policy developments

The Land Acquisition, Rehabilitation and Resettlement Bill 2011, which seeks to replace the controversial Land Acquisition Act of 1894 and provides for

mechanisms of land acquisition and adequate rehabilitation for all affected persons, was introduced in the *Lok Sabha* (Lower House of Indian Parliament) during the Monsoon Session on 7 September 2011 by Rural Development Minister, Jairam Ramesh. The Bill was referred to the Parliamentary Standing Committee on Rural Development for examination and report within three months.¹ Although inadequate, the Bill provides a safeguard, for the first time, in terms of ensuring that land acquisition would require prior consent of at least eighty per cent of the “project affected” people where the government acquires land for the purpose of transferring it to private companies.

The National Tribal Policy, a draft of which was ready as early as May 2007, has been hanging fire. In 2011, the Parliamentary Standing Committee on Social Justice and Empowerment urged the Ministry of Tribal Affairs to “expedite the matter and get the final nod for the National Tribal Policy at the earliest so that the benefits of this important Policy really accrue to the needy and poor tribals.”² The draft policy seeks to address the issues concerning tribals, such as their lower Human Development Index, poor infrastructure, diminishing control over the natural resource base, threats of eviction from their territories, exclusion from mainstream society, inadequate implementation of constitutional provisions etc, and to ensure their active and informed participation in development.

Human rights violations against indigenous peoples

According to the latest report of the National Crime Records Bureau (NCRB) of the Ministry of Home Affairs, a total of 5,885 cases of atrocities against indigenous peoples/tribals were reported in the country during 2010, as compared to 5,425 cases in 2009, showing an increase of 8.5% over the year. The NCRB statistics are not yet available for 2011 but a large number of cases of serious human rights violations perpetrated against indigenous peoples were reported across India.

Human rights violations by the security forces

In 2011, the security forces were responsible for alleged fake “encounter killings”, torture, arbitrary arrests and other human rights violations against indigenous peoples.



During a five-day anti-Maoist operation in Dantewada district of Chhattisgarh from 11 to 16 March 2011, the security forces (comprising Koya commandos from Chhattisgarh police and the Central Reserve Police Force's elite unit Combat Battalion for Resolute Action (CoBRA)) allegedly killed three tribal villagers, criminally assaulted three tribal women and burnt down around 300 houses and granaries in three villages, namely Morpalli, Timapuram and Tarmetla.³ On 27 March 2011, Chhattisgarh Home Minister Nankiram Kanwar confirmed that the security forces had raided these three villages but claimed that it was the Maoists who had burnt down the houses.⁴ On 26 January 2011, Washing N Marak, a 50-year-old tribal, was killed in an alleged fake encounter by the Special Operations Team of Meghalaya Police, at Rongrekgre village under Williamnagar police station in

East Garo Hills district of Meghalaya. The police also arrested four persons, three of them youths, on charges of being cadres in the Garo National Liberation Army, a militant group. However, villagers alleged that the deceased and the four arrested people were innocent, that the deceased was killed in a fake encounter and that the arrested youths were tortured, during which one sustained injuries to his face.⁵

On 15 April 2011, Haresh Chakma, a tribal, was tortured by three Special Police Officers (SPOs), first at Hemshuklapara village and then at Laljuri police outpost in Kanchanpur subdivision of North Tripura district in Tripura state. The victim sustained serious injuries and had to be admitted to hospital. The authorities confirmed torture of the victim in a report to the National Human Rights Commission.⁶

Human rights violations by armed opposition groups

Armed opposition groups continued to be involved in gross violations of international humanitarian law, including killings, abductions and torture, during 2011.

The Maoists continued to kill innocent tribals on charges of being “police informers”, or simply for not obeying their diktats. During 2011, the Maoists allegedly killed several tribals, including Wadeka Nasanna at Dandabadi village in Koraput district of Odhisa on February 16;⁷ Dilu Habika in Narayanpatna block of Koraput district of Odhisa on July 23;⁸ Nachika Suka in Koraput district of Odhisa on July 25;⁹ five tribal villagers at Banda village in Rohtas district of Bihar on the night of July 30;¹⁰ a village leader, Krushna Punji, in Balangir district of Odisha on November 14;¹¹ two tribal youths identified as D. Sivaprakash Koti and T. Bojjibabu at Kampumanapakala village in Visakhapatnam district of Andhra Pradesh on November 27,¹² among others.

On 7 June 2011, eight tribal villagers were kidnapped at gunpoint from Owanasa Para village under Gandacherra police station of Dhalai district of Tripura by suspected cadres of the National Liberation Front of Tripura (NLFT).¹³ Furthermore, on 30 June 2011, six tribals were kidnapped from Ujanbari Reang Para under Nutun Bazar police station in South Tripura district by NLFT cadres for a ransom.¹⁴

Violence against indigenous women and children

Indigenous women and children continue to suffer from various forms of violence, including killing, rape and torture by non-tribals, security forces and members of

the armed opposition groups in armed conflict situations. According to the latest NCRB report referred to above, a total of 654 cases of rape of indigenous/tribal women were reported in 2010 as compared to 583 cases in 2009, an increase of 12.2% on the year.¹⁵ The situation does not seem to have improved in 2011, as the cases included here show.

On 4 October 2011, Ms Soni Sori, a 36-year-old Adivasi school teacher, was arrested in New Delhi for her alleged role in receiving "protection money" from the Essar company on behalf of the Maoists. She was allegedly tortured in police custody in Dantewada, Chhattisgarh.¹⁶ The victim moved the Supreme Court with her allegations of police torture. On the directions of the Apex Court, she was taken from Chhattisgarh and examined by doctors at the NRS Medical College and Hospital in Kolkata for injuries allegedly sustained in police custody. A report submitted by the Kolkata hospital to the Supreme Court reportedly stated that the doctors had found two stones in her private parts and rectum.¹⁷

Earlier, on 19 February 2011, a 27-year-old tribal woman, Nilima Debbarma was allegedly gang-raped and killed by personnel from Tripura State Rifles (TSR) near the 6th TSR Battalion camp at Shikaribari village in the West District of Tripura.¹⁸ On 23 February 2011, a 15-year-old minor tribal girl was allegedly raped by a TSR personnel identified as Tejendra Barui at Nandakumarpara village in Khowai subdivision in West Tripura district.¹⁹ On 15 May 2011, a tribal girl was allegedly raped by two police constables inside the Chhoti Sadri police station in Pratapgarh district of Rajasthan after taking the victim to the police station on the pretext of interrogating her in connection with a case.²⁰ On the night of 10 September 2011, the personnel of Sasashtra Seema Bal (SSB)²¹ forced their way into a house and allegedly raped a deaf and dumb Bodo tribal woman at Sonapur village near the Indo-Bhutan border in Kokrajhar district of Assam. The report submitted by the Assam government stated that the forensic tests found human semen in the victim's swab.²² On 22 November 2011, four tribal girls including a minor were allegedly picked up from their house and raped by four police personnel at Thirukovilur in Villupuram district of Tamil Nadu.²³

The fundamental right of children to education has been severely affected by the armed conflicts. The security forces continued to occupy educational institutions in conflict-affected areas. On 18 January 2011, the Supreme Court directed the Chhattisgarh government to vacate all school buildings under the occupation of security forces within four months.²⁴ On 7 March 2011, the Supreme Court directed the Jharkhand and Tripura governments to ensure that all schools and

hostels are free from the occupation of security forces within two months. Twenty-one schools in Jharkhand and 16 in Tripura were still being occupied by the security forces.²⁵

Alienation of tribal land

The 5th Schedule and 6th Schedule to the Constitution of India provide stringent protection of the land belonging to the tribal peoples. In addition, at the state level, there is a plethora of laws prohibiting the sale or transfer of tribal lands to non-tribals and the restoration of alienated tribal lands to them. However, the laws are either not properly implemented or they are manipulated to facilitate the transfer of tribal lands to non-tribals. On 12 November 2010, the Minister of State in the Ministry of Tribal Affairs informed the Lok Sabha that, as of July 2010, a total of 477,000 cases of tribal land alienation had been registered, covering 810,000 acres of land, of which 378,000 cases covering 786,000 acres had been decided by the Court. Of these, 209,000 cases had been decided in favour of tribals, covering a total area of 406,000 acres.²⁶ This means that 169,000 cases had been decided against the tribals.

On 24 July 2011, Mukul Sangma, Chief Minister of Meghalaya state in North East India, stated that “benami (illegal) transactions” had contributed to the alienation of tribal lands in the state and that there was an urgent need to amend the Meghalaya Transfer of Land Regulation Act 1971 to curb illegal transfer of tribal lands to non-tribals.²⁷

The conditions of the tribal internally displaced people

Development-induced displacement

There is no official figure for displacements due to development projects. It is estimated that at least 60 million people have been displaced by development projects across the country since 1947. Of these, over 40 per cent are tribals and another 40 per cent are Dalits and other rural poor.²⁸ The state is totally indifferent towards the plights of the tribals, who have been denied rehabilitation and compensation after their lands were acquired for development projects.

Conflict-induced displacement

The government has failed to ensure proper repatriation and rehabilitation of the conflict-induced internally displaced people (IDP), including tribals. In 2011, the Assam government “resettled” the Rabha and Garo tribal IDP families after providing a rehabilitation grant of only 10,000 Rupees (US\$ 190) in cash and three bundles of corrugated galvanised iron (CGI) sheets to each family although they had lost everything in the communal clashes.²⁹

At least 30,000 Bru tribals from Mizoram have been languishing in the relief camps in neighbouring Tripura state since 1997. A total of 799 Bru tribal families, consisting of 4,119 individuals, have been repatriated to Mizoram since 2010 but, on 5 June 2011, the Mizoram government suspended the repatriation process, demanding the rehabilitation of 80 Mizo families first.³⁰

At least 30,000 Gutti Koya tribals from Chhattisgarh have been living in miserable conditions in Khammam, Warangal and East Godavari districts of Andhra Pradesh.³¹ They have been denied basic facilities such as healthcare, schooling, adequate food, housing and jobs under the Mahatma Gandhi National Rural Employment Guarantee Scheme. Their huts were demolished by the forest officials in the Nellipaka reserve forest area near Mondikunta village in Khammam district on 11 May 2011,³² and again in the Ramavaram forest range near Chinthalapadu village in Khammam district on 2 June 2011.³³

Repression under forest laws

Although the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act came into force on 1 January 2009, lack of proper implementation has deprived tens of thousands of tribals of their rights to forest land. According to the Ministry of Tribal Affairs, as of 30 September 2011, a total of 3,149,269 claims had been received, of which 2,808,494 had been dealt with. Of these, 1,230,663 titles had been distributed and 1,577,83 claims rejected,³⁴ meaning that 56% of the claims that have been considered have been rejected. Studies by the National Committee on the Forest Rights Act (a government committee jointly set up by the Ministry of Tribal Affairs and the Ministry of Environment & Forests) found that the majority of the rejections were unlawful and that the claimants were denied any opportunity to appeal. On 4 March 2011, Minister

of State in the Ministry of Tribal Affairs Shri Mahadeo Singh Khandela admitted in the Lok Sabha that: "Complaints have been received over a period of time concerning denial of rights and eviction of tribals from forests etc."³⁵

In December 2011, tribals held rallies in Adilabad, headquarters of Jannaram mandal in Adilabad district of Andhra Pradesh, in protest at the government's proposal to develop Kawal wildlife sanctuary as a tiger reserve forest by evicting Adivasis who have lived there for a long time.³⁶

Non-implementation of reservation in employment

The Scheduled Tribes (STs) are legally entitled to a 7.5% reservation of all government jobs. A lack of "suitable" candidates amongst the STs has, however, often been cited as the main reason for not filling the reserved vacancies in India. As of 25 July 2011, there were a total of 20,301 posts reserved for STs lying vacant in central government.³⁷

Non-utilization and mis-utilization of tribal funds

The funds meant for the development of the tribals are grossly under-utilized or mis-utilized in India. In a recent report, the Parliamentary Standing Committee on Social Justice and Empowerment found that, during the year 2010-11, the Ministry of Tribal Affairs had surrendered funds to the tune of 729.7 million Rupees (US\$ 15.5 million) under the crucial schemes of Special Central Assistance to Tribal Sub Plan (102.4 million Rupees), Grants under Article 275 (1) of the Constitution (66.6 million) and Development of Primitive Tribal Groups (103.2 million). The Ministry of Tribal Affairs allocates funds under SCA to TSP annually to all the 22 states covered under the programmes but, during 2008-09, as many as nine states, during 2009-10 20 states and during 2010-11 eight states have not availed themselves of the entire allocation, resulting in a gross under utilization of funds earmarked for the scheme. States such as Assam, Goa, Tamil Nadu, Jammu & Kashmir, Kerala, Uttarakhand, Uttar Pradesh etc. have not availed themselves of any funds for two consecutive years. Similarly, during 2010-11, under the Article 275(1) grants scheme, out of the budgetary allocation of Rs. 10.46 billion Rupees (US\$ 208.5 million), only 9.9989 billion (US\$ 199.34 million) was utilized. Non-

submission/belated submission of complete proposals, along with the requisite utilization certificates from previous years etc., from the states of Andhra Pradesh, Assam, Goa, J&K, Meghalaya, Tamil Nadu, Uttar Pradesh and Uttarakhand, have been cited as the reasons for not releasing the amount under the scheme.³⁸ ○

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SRI LANKA

Sri Lanka is home to diverse indigenous cultures that have combined to influence its societal make-up for over two thousand years. Of these, the historically recognized *Vyadha* (“huntsmen/ archers”) or *Vadda*, as they are now commonly referred to, were among the various other social or occupational indigenous groups who served a defined role, recognised by royal decree, and who owed allegiance to the King.¹ With European colonisation, however, the different indigenous groups, including the Vadda, came under threat as a result of social transformations that ended up isolating them. The norm among European and other travel writers of the colonial era was to depict hunter-gatherer groups such as the Vadda as “uncivilized” or “barbarous”. The Vadda comprise independent groups who originally coexisted alongside their non-Vadda neighbours and were once widespread in the south-eastern and eastern coastal belt, the northern tracts and the central part of the island where they are, however, less known.² Of these, a comparatively few independent Vadda groups – particularly those of the south-east - are recognised by certain cultural traits, such as *varige* (Sinhala term for clan name) and ancestor worship.³ The majority, however, compare with their neighbours, the long-term Sinhalese sedentary agriculturalists, and some with Tamil-speaking populations. While colonial census reports portrayed the Vadda people as a distinct ethnic group and gave population figures of between 1,229 and 4,510 people, census surveys of the last three decades have not distinguished them as a separate ethnic group.⁴

At present, the Vadda and other communities are being displaced from their ancestral territories. Modernisation, resettlement and wildlife and cultural conservation policies have led to the loss of traditional rights and a livelihood base consisting of hunting, gathering and shifting cultivation. The result is widespread poverty and a deterioration of health due to nutritional deficiencies, habitat change and lack of knowledge on primary health care.

Legal recognition and rights

There has still been no change to national legislation that would recognize the status and protect the rights of the Vadda and other forest people. Despite preliminary discussions aimed at encouraging the country to ratify ILO 169 in the past year, no action has transpired thus far. Amendments to the Fauna and Flora Protection Ordinance and forest laws are the most critical as far as forest-based indigenous and local communities are concerned. Restrictions on traditional livelihood practices in wildlife protected areas (PA) and proposed forest reserves have threatened their traditional livelihoods and customary practices – their primary subsistence base. Consequently, they have had to seek employment opportunities in local areas, particularly in the unskilled labour sector. This has led to increased economic vulnerability among Vadda, particularly among the youth.

The text on the National Policy on Traditional Knowledge, which recognizes traditional forest peoples' rights, has been finalized for submission to cabinet for approval, and some of the recommended actions have already been implemented by the Biodiversity Secretariat of the Ministry of Environment and relevant government and non-governmental agencies.

The most significant event in 2011 was undoubtedly the Memorandum of Understanding signed between the Vadda Custodians, focusing on a segment of the Dambana community, and the Department of Wildlife Conservation. This was aimed at providing assistance with regard to livelihoods and use of forest resources in wildlife protected areas, excluding hunting, in order to meet some of the requirements of the Convention on Biological Diversity that Sri Lanka has ratified. The Department has further issued a selected number of permits to Vadda youth for the use of forest resources and fishing in selected water bodies in protected areas, in recognition of the customary rituals of local and indigenous communities and rights of access to surrounding natural resources.

Census

A systematic census to estimate the population of the Vadda has yet to be conducted. Integration with neighbouring forest-dependent communities has been a common and obvious factor in their loss of cultural identity. The tendency has



thus been to incorporate comparable communities within the main ethnic groups, such as the Sinhalese, Muslims and Tamils.⁵ As an exception, there are a few self-designated Vadda groups that were recognised during the European colonial period, and who reside in Ampara, Monaragala, Polonnaruwa, Batticaloa and Mahiyangana Districts. These communities are nationally recognised and are the recipients of varying degrees of benefits from a welfare programme designed to assist them.

Development assistance and livelihood recovery

No specific programme aimed at the holistic development of the Vadda people was designed over the period in question. Mainstream development programmes implemented by the government have, however, allocated resources from the national budget, through a special fund, to meet certain Vadda needs. Of these, the housing issue affecting Vadda families has been addressed among selected families in some of the areas referred to above. This concerns a pilot project being implemented by the Ministry of Culture & the Arts, in association with the Ministry of Housing, to provide building materials and the cost of skilled labour for house construction. Renovation work on the existing museum facility in Kotabakiniya, Dambana, also commenced with funding from the Ministry of Heritage. The special fund was further used to conduct a socio-economic study in selected Vadda communities, in addition to a study of cave paintings. Government funding was further utilized to provide for ongoing development work on the Vadda interpretation centre in Kotabakiniya. In addition, a medicinal plant project was initiated by the Ministry of Indigenous Medicine to encourage selected Vadda community members to cultivate the necessary plants. Although the programme is acknowledged to have contributed to basic awareness raising and training, it has not been sustainable because the commercial returns on medicinal plants are minimal in comparison to conventional cash crops. The majority of projects are obviously implemented as showcase projects, without resolving the real issues at hand. What indigenous and local communities actually need is a programme that addresses the major prevalent issues from an holistic approach.⁶

Mainstream development activities have commenced on the major “Rambakan Oya” Irrigation Project in Ampara District and have resulted in further shrinking of the traditional gathering lands of the Pollebadda Vadda group, adding to the loss of ancestral lands and associated intangible heritage that the Vadda communities had already experienced as a result of the Gal Oya (1950s) and Mahavali (1980s) irrigation development projects. Vadda youth, in particular, are affected by the lack of agricultural land in resettlement areas and the lack of livelihood opportunities, apart from casual wage labour in the neighbourhood.

Women, children, youth and elders

A specific programme designed for the benefit of Vadda elders, women and children has yet to be developed. Such a programme is a priority, as these groups are particularly vulnerable to various threats, as observed during the field studies conducted by the Centre for Eco-cultural Studies (CES). The study reveals that most of the youth lack basic education on adolescence, and that there is a significant prevalence of teenage mothers among the communities in Dalukana and Dimbulagala, as well as Ratugala and Dambana. The participation of women in the decision-making process in most of the village meetings and associations is a positive development, as certain traditional Vadda women were previously not involved in the negotiation process and had little exposure outside their cultural setting and customary practice.⁷

This study also revealed that although education is free and compulsory in the country, school attendance among Vadda children is minimal and the available facilities in primary schools are rudimentary and mostly limited to a few buildings with inadequate learning facilities. Some of the children still suffer from learning disorders owing to nutritional deficiencies or the lack of a healthy meal prior to attending school, despite a government incentive to remedy the situation by providing nutritional meals in the rural sector.⁸

Use of the traditional forest dialect – mainly integrated with the Sinhala language - among the Vadda groups of Dambana, Henanigala (formerly of Kandedganvila in the neighbourhood of Dambana) and Pollebedda (Bingoda Vadda group) is rapidly diminishing while the youth of Dambana sustain the practice owing to its popularity with tourists. An effort has recently been made to preserve the dialect among the children of Pollebedda, initiated by the Dambana Vadda group, but this was interrupted because of the practical and political issues prevailing among the communities.

Integration with the elders in the community is minimal. Consequently, the possible transfer of knowledge is threatened as most of the village elders who used to live in the forest environment now suffer from ill health and memory loss due to old age. Immediate action is therefore required to remedy this unfortunate situation, with steps taken to document their life histories, experiences and knowledge systems before they are lost forever.

It has also been noted that the authorities in question have made no efforts or encouragement to integrate the traditional knowledge system of forest people into the mainstream educational or development system, with the exception of a few interested Vadda community teachers who are making individual efforts in terms of some academic exercises to address the rapidly diminishing cultural heritage and associated knowledge of sustainable traditional forest-based life-ways.

National Capacity Development

Different mechanisms have been employed to educate the general public and key stakeholders on indigenous community issues in terms of the value of intangible heritage and knowledge systems. Capacity development among Vadda youth in selected communities was undertaken in 2011 by the CES, with financial assistance from UNDP/GEF-SGP and technical assistance from the Inter-agency Working Group on the Livelihood Recovery of Traditional/Indigenous Forest-dwelling Peoples. The Custodian of the Henanigala Group and a youth member of Ratugala were given the opportunity to participate in the UNREDD training programme for knowledge on the Free, Prior and Informed Consent (FPIC) process in Hanoi, Vietnam, particularly with regard to the UNREDD programme, as Sri Lanka proposes participating in this. The representative of the Biodiversity Secretariat of the Ministry of Environment, and the UNDP/GEF-SGP and CES representatives also attended the regional dialogue organized by the UNDP's Regional Indigenous Peoples' Programme (RIPP) in Thailand.

International Day of the World's Indigenous Peoples 2011 was celebrated in the coastal Vadda settlement of Vakaraï with the participation of H.E. President Mahinda Rajapakse, and representatives of the line ministries, including Ministers. ○

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NAGALIM

Approximately 4 million in population and comprising more than 45 different tribes, the Nagas are a transnational indigenous people inhabiting parts of north-east India (in the federal states of Assam, Arunachal Pradesh, Nagaland and Manipur) and north-west Burma (parts of Kachin state and Sagaing division). The Nagas were divided between the two countries with the colonial transfer of power from Great Britain to India in 1947. Nagalim is the name coined to refer to the Naga homeland transcending the present state boundaries, and is an expression of their assertion of their political identity and aspirations as a nation.

The Naga people's struggle for the right to self-determination dates back to the colonial transfer of power from Great Britain to India. Armed conflict between the Indian state and the Nagas' armed opposition forces began in the early 1950s and it is one of the longest armed struggles in Asia. A violent history has marred the Naga areas since the beginning of the 20th century, and undemocratic laws and regulations have governed the Nagas for more than half a century. In 1997, the Indian government and the largest of the armed groups, the National Socialist Council of Nagaland Isaac-Muivah faction (NSCN-IM), agreed on a cease-fire and since then have held regular peace talks. However, a final peace agreement has not yet been reached.

Largely as a result of India's divide-and-rule tactics, the armed movement was split into several factions fighting each other. In 2010, the reconciliation process among the Nagas of the past years resulted, however, in the formation of a Joint Working Group of the three main armed factions, the NSCN-IM, the Government of the People's Republic of Nagaland/National Socialist Council of Nagaland (GPRN/NSCN) and the Naga National Council (NNC).



The peace talks

In late 2010, with the promise of a “comprehensive political package”, the Government of India (GoI) submitted a proposal to the National Socialist Council of Nagaland (NSCN-IM). No public comment was made by the NSCN-IM on the proposal but the Joint Working Group (JWG) of the Naga underground factions made it clear that any form of conditional package offered by the GoI would not be acceptable. In 2011, several rounds of political talks took place and one wondered whether any connections would be made to the GoI’s 2010 proposal. The Union Home Secretary, GK Pillai, toured the Naga areas more intensively than

before, particularly in Manipur, and kept assuring the people that talks were progressing well. In his tour, he also kept talking of the central government's many development schemes that were in the pipeline and the funds that were ready to be made available from central government. He also continued to insist that the political solution had to be a consensus among all sections of Naga society and not just an agreement signed between the NSCN-IM and the GoI. This was tricky as it appeared as though the NSCN-IM's legitimacy to represent the Naga people was being questioned by the GoI.

Both the GoI and the NSCN-IM have, from time to time, made diplomatic gestures to the public without disclosing much on the actual substance and progress of the talks. However, in November, a Guwahati-based newspaper, the "*Seven Sisters Post*" (SSP) carried an article entitled "'Supra State Body' likely Christmas gift for Nagas!" This news item was reproduced by many newspapers across North-east India and provoked opposition in some of the states bordering or including Naga territories, especially in Manipur.

The proposal for a Supra-State Body

A "Supra-State Body" as the GoI's final proposal for a settlement of the political conflict came as a surprise when it was published in the *Seven Sisters Post* (SSP). The SSP reported in early November that the negotiations between the Indian Government and the National Socialist Council of Nagaland (NSCN-IM) were now in their final stages and that the final settlement envisaged a "special federal relationship" between India and Nagaland and the creation of a "Supra-state Body" for the Nagas to preserve, protect and promote their cultural, social and customary practices.¹

The paper further stated that the merger of Naga-inhabited areas of Manipur, Assam and Arunachal Pradesh with the State of Nagaland was likely to provoke huge resistance among the first three states, so Delhi was offering to create the "Supra-State Body", to which the legal authority and decision-making power of the Naga-populated areas of the above states would be formally transferred. The newspaper outlined the following as the content of the proposal:

- The basis of the proposal recognizes the "distinct identity" of the Nagas and ensures that nobody will interfere with the lifestyle and dignity of the Naga people.

- The proposed Supra-State Body will oversee the cultural, traditional and other aspects of Naga life inside Manipur, Arunachal Pradesh and Assam.
- The Supra-state Body will advise the state agencies concerned on the implementation of different development projects in the Naga areas.
- The Inner Line Regulation² will be strictly enforced.
- Power to oversee law and order, including police and the security aspect of the Naga inhabited areas will rest entirely with the states concerned and central government.

The news report immediately generated critical responses in Assam, Arunachal Pradesh and Manipur, states which border the Nagaland state and which also have substantial Naga populations. Opposition to the alleged “Supra-State Body” was particularly strong in Manipur on account of the fear that it might affect the territorial integrity of the state, and clarifications were demanded from the central government on the factual accuracy of the report.

Central government did not deny the report explicitly until the Chief Minister of Manipur flew to New Delhi seeking clarification. On 19 November, the Union Home Minister, P Chidambaram, finally denied the SSP’s report. However, the editor of the SSP insisted that they were in possession of the twelve-page status report on the peace talks that was submitted by the interlocutor R.S. Pandey to the Prime Minister, and which contained reference to the Supra-State Body, and that the paper had also spoken to a top official in the Home Ministry regarding the matter. The NSCN-IM did not confirm or deny the report but scepticism regarding the proposal was expressed when the leaders of the NSCN-IM, NNC and the GPRN/NSCN met during the summit of the Naga Reconciliation on December 3, 2011. The *Eastern Mirror* reported that: “The signatories said they are... appalled by the so-called ‘Christmas Gift’ in the form of a “Naga Supra State,”... It sought to place on record that Nagas are not seeking or demanding any ‘gift’ from India”.³

The Naga public and civil society were almost silent on the news and showed little sign of excitement. It was obvious that such a proposal would require in-depth examination, plus it had become a habit of the Gol’s authorities and officials to make a statement one day and then deny it the very next. The result is that nobody knows for sure whether the proposal did provide a glimpse of what India was actually going to propose as a solution to the Indo-Naga conflict.

Formation of the High-Level Commission

The Forum for Naga Reconciliation (FNR) continued to organize its reconciliation meetings both within and outside Naga areas. Although it was progressing well, it was taken by surprise when the NSCN Kaplang faction (NSCN-K) split in two in June 2011, one faction led by N Kitovi Zhimomi, General Secretary, and the other by SS Khaplang, Chairman. This meant adding more splinters to the reconciliation efforts. The number of factional conflicts was still high in 2011 but, in what may be considered as the greatest achievement of the reconciliation process so far, the three Naga political groups—the NSCN-IM, NNC and GPRN/NSCN—signed the “Naga Concordant” on August 26, 2011. One of the agreements in the Naga Concordant is to expedite the process of eventually forming one Naga National Government for all. And for this process to follow soon, a High-Level Commission of the three groups was formed comprising the signatories and headed either by the Chairman/President or the General Secretary/Vice President. Further, there will be no less than four competent members at the rank of Kilonser (Minister)/Major General and above, as deemed fit by the respective governments.

The other major decision taken was that any interim arrangement of the political rights of the Nagas would be outside of the purview of the Indian Constitution. The meeting also agreed to work for the territorial integration of all Nagas.

Through the facilitation of the FNR, the High-Level Commission of the three groups continued to meet to take forward the decisions taken collectively and to affirm their commitment for the unity of the Nagas. It is expected that some bold steps will be taken in early 2012.

The demand for an alternative political arrangement

In 2010, the Nagas inhabiting four hill districts of Manipur termed the Government of Manipur (GoM) a “communal government” and demanded an alternative political arrangement for the Nagas in Manipur until a long-term solution is found to the Indo-Naga political problem (see *The Indigenous World 2011*). This demand is being led by the United Naga Council (UNC), the apex body of the Nagas in Manipur or Southern Nagalim. In 2011, the UNC made several efforts to realize this

demand and also made trips to Delhi to meet the central government. However, there is no tangible result as yet and the relationship between the Nagas in Manipur and the GoM remains sour. Manipur's majority Meitei people and the GoM continue to react negatively whenever the issue of the rights of the Nagas receives some limelight. The situation continues to deteriorate, with endless debates in the media. ○

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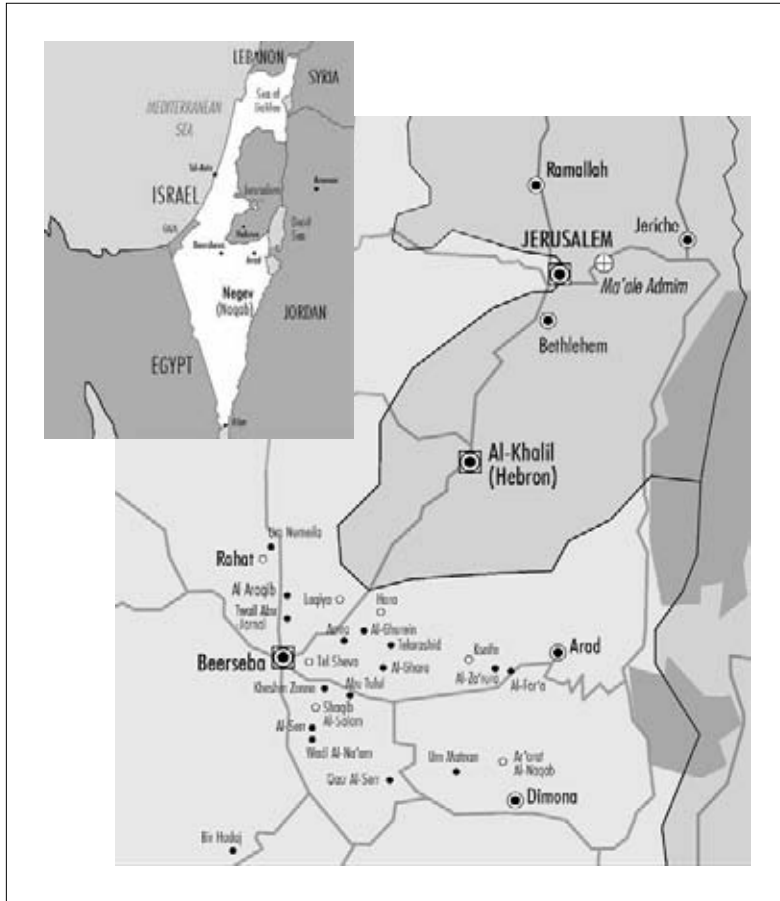


ISRAEL

Israel's Arab Bedouin are indigenous to the Negev-Naqab. They are traditionally a semi-nomadic people, combining herding with agriculture in villages linked by tribal and kinship systems that largely determine land ownership patterns. In the early 1950s, the Israeli government concentrated this indigenous semi-nomadic population within the so-called Siyahg, a restricted geographical area in the eastern Negev of approximately 1,000 km² (or about 10% of the Bedouins' former territory) with a promise of return to their original lands within six months. The fulfilment of that promise is still outstanding.

Today, the Bedouin community in Israel's Negev numbers 201,840 of whom 53,111 live in 35 so-called unrecognized villages. These villages do not appear on Israeli maps, have no road signs indicating their existence, and are denied basic services and infrastructure. 148,729 Bedouin are concentrated in one government-planned town, Rahat, six townships, (Lakiya, Hura, Tel Arad, Tel Sheva, Segev Shalom and Ar'ara BaNegev) and ten villages that received recognition over the last decade. The town and townships give little or no consideration to the traditional Arab-Bedouin way of life, and provide only few local employment opportunities.

Like many other indigenous peoples worldwide, the Negev Bedouin lay claim to lands they have settled on since time immemorial. They too have thus focused much of their struggle for equal rights on land restitution claims. The claims process became possible in the 1970s but many have still not been addressed by the state. Although some families do hold documents from the Ottoman or British mandate periods proving their ownership to specific lands, these documents have never yet been accepted by the courts. The claims are legally complex and leave a wide opening for state takeover of land.¹ Relying on a land law from the Ottoman period, most of the Negev is defined by the Israeli state as "Mawat" or dead land and as such cannot be claimed by individuals or groups.²



The ongoing land rights struggle of the Negev Bedouin intensified during 2011 into what amounts to a Government declaration of war on the community. The response has been renewed efforts by the Bedouin community to claim their legitimate rights.

The Praver Plan fosters resistance

On 11 September 2011, the Israeli Cabinet approved a plan to regulate the settlement of Arab Bedouin citizens of Israel in the Negev. This will involve the forcible

relocation of some 40,000 people and the destruction of a significant number of unrecognized villages. The plan emanates from an implementation committee, established in 2009 and headed by Ehud Praver,³ former deputy chairman of the National Security Council. The committee, which did not include any Bedouin members, was mandated to implement the 2008 Goldberg Committee⁴ recommendations on the same issue. The plan has two main components:⁵

- Resolving ownership claims and compensation for claimants' with strict criteria and enforcement mechanisms within a 5-year deadline. As recommended by the Goldberg Report, the Praver Plan also stipulates that there shall be no Bedouin settlement to the west of Route 40, an area to be reserved for Jewish settlement only.
- The plan calls for the mass demolition of existing villages and relocation of their residents to existing townships.

The major thrust of Bedouin activism in 2012 will therefore be "Recognition Now", an effort to thwart the Praver Plan's passage into law. For instance, one important counter proposal, "A Master Plan for the Unrecognized Bedouin Villages",⁶ has been compiled in accordance with government planning laws by three Israeli NGOs: the Regional Council for the Unrecognized Villages, Bimkom, Planners for Planning Rights, and Sidreh-Lakiya Negev Weaving, and proposes a viable alternative that includes the recognition of all the 45 villages in their existing locations, as well as "reasonable administrative and municipal solutions for each community". Rallying to claim their basic human rights as citizens of Israel, the Negev Bedouin are lobbying and demonstrating for this as well as for other alternative approaches.

The Unrecognized Villages⁷

The so-called unrecognized villages, whether originating within the *Siyagh* or re-established after forced relocation, are considered 'illegal' by the state and are denied building permits since the villages are not included in any government regional plan. As a result, the threat of demolition hangs over the majority of Bedouin homes in the villages, a threat all too often realised: in 2011 alone, there were over 1,000 such demolitions,⁸ a 120% increase on 2010.⁹ The unrecognized

villages receive little or no government services nor can they legally connect to the national electricity grid and, in some cases, not even to the water supply. Transportation and access roads, postal and sanitation services, kindergartens, adequate class-room facilities and secondary education institutions and health clinics are often sadly lacking. Restrictions on grazing have led to a decline in traditional occupations such as herding. Agriculture too is severely curtailed by land expropriation, resulting in high unemployment rates. The Government-sponsored townships provide no viable alternative. They too suffer from inadequate infrastructure, overcrowding, lack of employment opportunities and poor government services. As a result of these conditions and institutionalised discrimination,¹⁰ many Bedouin are marginalised within Israeli society. In spite of these difficulties, the community has produced a leadership cadre that has made a significant contribution to the life of the Negev region - academics, doctors, lawyers and community activists, while Bedouin students are a vital part of the Ben Gurion University of the Negev.

Struggling for land and recognition

The year 2012 will be dominated by the struggle for recognition of the unrecognized villages, opposition to the forcible relocation of residents and opposition to home demolitions both in the unrecognized villages and in the townships. A notorious case of demolition is that of El Araqib, an unrecognized village north-west of the major city of Beersheva that has been totally destroyed 31 times since July 2010 in order to make way for a forest to be planted by the Jewish National Fund, funded in part by a Christian fundamentalist media channel, God TV.¹¹ The demolitions were overseen by huge numbers of regular and special police units, acting with great violence, and included not only the destruction of the homes of some 34 families but also the uprooting of existing trees, destruction of water tanks, expropriation of personal property and destruction of livestock quarters. The demolitions have cost the state in the region of US\$450,000 and the authorities are now claiming these costs from the villagers themselves. The villagers, however, are determined to resist and, together with Jewish-Israeli NGO supporters, have worked tirelessly time after time to rebuild the village, even if only symbolically.

The Government's plans to uproot the Bedouin from their homes, condemning them to restrictions and a life of deprivation in the townships must not be allowed to proceed. As one Bedouin leader puts it: "...we dream only of living in peace on our ancestral lands".¹² A modest dream indeed, and one that would take so little to make come true. ○

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- 11 See *The Indigenous World 2011*, p.371.
- 12 Khalil el Alamour, *ibid*.

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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-Rashayida), took refuge in the West Bank, then under Jordanian rule. These tribes, who number well over 13,000 people in Area C of the West Bank and thousands more in Areas A and B, are semi-nomadic agro-pastoralists living mainly 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 were due to cease to exist in 1998, represents 62% of the West Bank. It is home to all West Bank Israeli settlements, industrial estates, military bases, firing ranges, nature reserves and settler-only by-pass roads, all under Israeli military control.

The Greater Jerusalem plan threatens Bedouin communities

The Israeli army plans to forcibly relocate some 20 Palestinian Jahalin Bedouin communities living near East Jerusalem.¹ These communities are located in areas of strategic importance to the Israeli Greater Jerusalem plan. This plan will endanger the viability and contiguity of a future Palestinian state and constitutes yet another unilateral Israeli "Judaisation" measure, creating "facts on the ground" which, if carried out, would not merely affect final status issues but would threaten any possible peace negotiation.

The Israeli Civil Administration plans to begin by relocating these communities, involving over 2,300 persons to a site near the main Jerusalem refuse dump. This will seriously affect the lives of these vulnerable people, just as it affected some 200 families similarly removed to that site in 1997. It is also Israel's stated intention in the coming years to forcibly displace a total of some 27,000 Bedouin

and other herders within the entire “Area C” to various permanent locations, thereby committing a grave breach of the Geneva Conventions.²

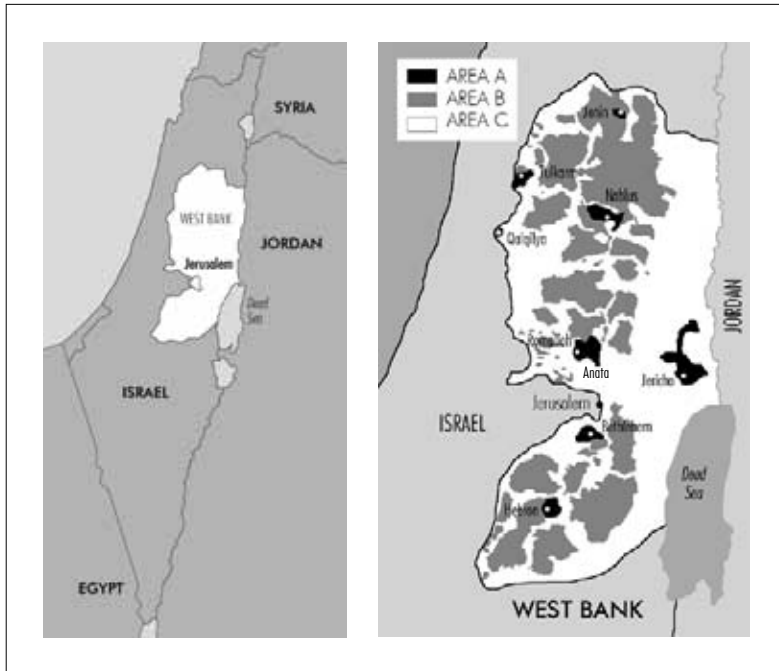
Dispossessing the Bedouin

The planned population transfer is the continuation of a pattern of dispossession spurred on by the fast growing but, according to international humanitarian laws, illegal Israeli implantation in Area C. The Bedouin in the OPT lack basic infrastructure and suffer from land confiscations and movement restrictions. According to UN statistics, over 1,094 Palestinians in the OPT were forcibly displaced in 2011 due to 622 home demolitions, and 139 were displaced due to settler violence; over 5,258 people were affected by demolitions, 40% of whom were Bedouin.

The inability to move freely, to find grazing land or to access markets to sell their animal products has increased Bedouin vulnerability, and food insecurity in 2010 ran at 55%.³ The building of permanent infrastructure—such as water tanks, power lines, schools and health clinics—is not allowed in Area C without a permit⁴ and, according to the UN,⁵ such permits are almost never granted.

Some of the most vulnerable Bedouin are the 2,300 or so living close to the Israeli settlement of Ma’ale Adumim, the third largest Israeli settlement, just east of Jerusalem. Many of the men are still without permits to work in nearby settlements (their source of work for many years), after having tried to assert their right to education, development and self-determination.⁶ Their children’s access to school is also affected. The Khan el Ahmar School, built in 2009 using old car tyres and mud, is a case in point.⁷ Although a demolition order was immediately issued, court proceedings allowed the school—staffed by seven teachers provided by the Palestinian Authority and serving 80 primary students—to remain in operation in 2011. Its future is precarious, not least since three nearby settlements have sued for its demolition, claiming in the Supreme Court that the Jahalin are occupying their land (it actually belongs to Palestinian villagers of nearby Anata) and threatening their security.

All Negev Bedouin displaced to the West Bank as refugees suffer from restrictions limiting their access to natural resources, such as water and grazing land, and many are subject to incidents of settler violence. This is also the case of the isolated Bedouin communities in the Jordan Valley, who are living in abject



poverty “cramped into overcrowded shelters made of metal, scrap wood and old containers. They are, in some cases, forced to live in the same dwellings as their animals, unconnected to water, electricity and sewage networks.”⁸ These Bedouin have, in recent months, been increasingly targeted by Israeli military activities following declarations by Israeli Prime Minister Benjamin Netanyahu raising—yet again—the Israeli claim to retain control, for security reasons, of the border area along the Jordan River and large parts of the Jordan Valley. Almost the entire Jordan Valley (94% of its total area of 2,400 sq.km) falls within Area C.⁹ Today, 37 Israeli settlements control up to 50% of the land area, and closed military zones and nature reserves take up an additional 44%, leaving only 6% of the land for the Palestinian population. From an estimated 320,000 in 1967, Palestinians in the Jordan Valley now number less than 56,000 (with over 70% of them living in Jericho, in Area A).

The future of the Bedouin in the West Bank is therefore bleak. Victims of settlement expansionism, settler violence and regular brutal demolitions, these peo-

ple represent the human face of Israeli occupation policies and settlement expansion based on ethnic discrimination. As refugees, they call for their right of return to their ancestral lands inside Israel. As people with human rights, they ask that their camps be recognized as official villages through the establishment of a fair planning and zoning policy. As indigenous peoples, they demand the right to preserve their traditional lifestyle, for their needs to be respected and that they be informed and give their free consent if they have to move. At the Committee on Economic, Social and Cultural Rights (CESCR) hearings in Geneva in November 2011, the Israeli delegation, when questioned by the Committee, refused to recognise the Bedouin inside Israel or in the West Bank as an indigenous people, thus indicating the general mindset of the Israeli authorities and the problematic nature of this relationship.

According to international humanitarian law, Israel, as an occupying power, is responsible for administering the Occupation in a manner that does not harm the local Palestinian population. In addition, under international human rights law, all people have: the right to a life free from discrimination, the right to have access to effective legal remedy and the right to enjoy an adequate standard of living, housing, health, education and water. Israel is therefore grossly disregarding this body of law by forcing the Bedouin to abandon their herds and traditional lifestyle, and to live under conditions that press them to become dependent on humanitarian assistance.¹⁰

The international community must urgently require Israel to halt the planned forced relocations immediately, to respect international human rights standards, and to review the long-term nature of the Occupation.

Notes and references

- 1 http://www.ochaopt.org/documents/ocha_opt_bedouin_FactSheet_October_2011_english.pdf
- 2 See Diakonia's legal opinion: <http://www.diakonia.se/sa/node.asp?node=4164>
- 3 **UNRWA 2010:** Herders Factsheet <http://unispal.un.org/UNISPAL.NSF/0/9B8154497A585D36852578AF00522589>
- 4 See **Human Rights Watch, 2010:** "Separate and Unequal – Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories" (December 2010) at <http://www.hrw.org/en/reports/2010/12/19/separate-and-unequal-0>
- 5 http://www.ochaopt.org/documents/ocha_opt_Area_C_Fact_Sheet_July_2011.pdf
- 6 See *The Indigenous World 2011*, p. 364.
- 7 Ibid.
- 8 **Ma'an, 2010:** "Eye on the Jordan Valley". Accessed at <http://www.ma-an-ctr.org/pdfs/Eyeon%20theJVReport-Final.pdf>

- 9 The Jordan Valley constitutes 30% of Area C.
- 10 See two documentary films produced by the author, at *Time Magazine Videos*, One-Time Nomads in the West Bank Face Eviction - Video - TIME.com and at www.jahalin.org: NOWHERE LEFT TO GO - The Jahalin Bedouin.

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NORTH AND WEST AFRICA

MOROCCO

The Amazigh (Berber) peoples are the indigenous peoples of North Africa. The most recent census in Morocco (2006) estimated the number of Amazigh speakers to be 28% of the population. However, the Amazigh associations strongly challenge this and instead claim a rate of 65 to 70%. This means that the Amazigh-speaking population may well number around 20 million in Morocco, and around 30 million throughout North Africa and the Sahel as a whole.

The Amazigh people have founded an organisation called the “Amazigh Cultural Movement” (ACM) to advocate for their rights. There are now more than 800 Amazigh associations established throughout the whole of Morocco. It is a civil society movement based on universal values of human rights.

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. Recent years have however seen positive changes, and the new Constitution of 2011 now officially recognizes the Amazigh identity and language. This is a very positive and encouraging step forward for the Amazigh people of Morocco.

Morocco has not ratified ILO Convention 169 and has not voted in favour of the UN Declaration on the Rights of Indigenous Peoples.

The general situation of Amazigh rights: a historic year for the Amazigh

Finally, after more than two decades of marginalisation, the new Moroccan Constitution presented by King Mohamed VI on 17 June 2011, now recog-



nises the Amazigh identity. The introductory recitals to the constitution stipulate that:

The Kingdom of Morocco intends to preserve its one and indivisible national identity in all its fullness and diversity. Its unity, forged through the convergence of its Arabo-Islamic and Saharo-Hassani components, has drawn on and been enriched by its African, Andalus, Hebraic and Mediterranean influences.¹

This important recognition means that Morocco is henceforward a plural society. The Amazigh movement has fought for almost half a century to achieve this rec-

ognition, which provides an official legislative framework for the Amazigh identity. This recognition is an historic step in relation to the previous situation. Another achievement is that the constitution now also gives official status to the Amazigh language. Article 5 of the Constitution, on the status of languages, stipulates that:

Arabic remains the official state language. The state shall work to protect and develop the Arabic language and promote its use. Amazigh also forms an official state language, as the common heritage of all Moroccans without exception. An organic law shall define the process of implementing the official nature of this language, along with ways of integrating it into education and into priority areas of public life, so that it can eventually fulfil its role of official language.²

The Amazigh associations welcome this recognition as an historic victory on the part of the Amazigh movement, given that gaining official status for the Amazigh language was one of their crucial and fundamental demands. In fact, the lack of official and constitutional status suffered by the Amazigh identity and language in the past has meant that state and administrative officials (education, information, justice, administration...) were able to ban the Amazigh from using their language for years on the pretext that it was not official. With this new constitution, the Amazigh now have the right to use their language within state institutions without any fear of being in conflict with the law.

This constitutional recognition is, however, followed by a paragraph stating that such official status is dependent on an organic law that will need to define the practical details. This law will need to be tabled by government and adopted by parliament. This has led to a strong reaction from the Amazigh movement, which sees this as a way for the conservatives in power to block Amazigh demands.

Yet it remains no less the case that the Amazigh language is now clearly recognised and granted official status within the constitution. The Amazigh movement is thus now embarking on actions to support the adoption of an organic law that will encourage full official status for the Amazigh language, for example, by forming an alliance amongst the political parties most favourable to the issue.

The government coalition is headed by the Party for Justice and Development (PJD), which is hostile to granting the Amazigh language official status. However,

it also comprises two parties allied to the Amazigh movement, namely the Party for Progress and Socialism (PPS) and the Popular Movement (MP). These two parties will undoubtedly be able to defend Amazigh interests within the government coalition.

Amazigh civil and political rights

With the Arab Spring: the Jasmine Revolution in Tunisia and the revolutions in Egypt and Libya, Moroccan youth began to demonstrate on 20 February 2011. Their movement is known as the “20 February Movement”. It organises demonstrations every Sunday demanding constitutional reform and application of the international human rights charters, along with calls for good governance and an end to corruption. In spite of all the reforms in Morocco, which are considered significant, and the formation of a new government in January 2012, the demonstrations are still continuing and the movement is keeping up the pressure. The Moroccan authorities remain more or less tolerant of these demonstrations, observing them with caution. Although the situation generally remains correct and respectful, there have been occasional incidents and aggression from the authorities, which have led to the deaths of demonstrators. The first victim was in the town of Safi on 3 June 2011 and the second in Al-Hoceima, on 11 November 2011 in the north. There have been a number of arrests and court cases.

Alongside this, the government has released a number of political prisoners, although not the following Amazigh who were sentenced by the Meknes Court of Appeal in 2011 for “public disturbances” within Meknes University:

- 10-year mandatory prison sentence for Hamid Oudouch
- 10-year mandatory prison sentence for Mustapha Ousaya

Each was also fined 100 000 Dirhams.³

The Amazigh organisations have repeatedly called for the immediate release of these two persons, in line with the other political prisoners who were freed on the eve of the political reforms of June 2011. The Amazigh Cultural Movement is in the process of organising a huge mobilisation to call for the release of these prisoners.

The right to choose Amazigh first names

In spite of the government's stated claim before the UN Human Rights Council in April 2008 that the problem of Amazigh first names had been resolved once and for all, the problem still persists in some regions and in some Moroccan towns.

The Amazigh continue to see their use of Amazigh first names banned. Even after distribution of a memo on 9 April 2010 by the Minister for the Interior, the Amazigh organisations continue to receive complaints from people who have fallen victim to a ban on the first names they have chosen for their children. For example, the President of TAWESSNA, an Amazigh association in the south of Morocco, was banned from registering his daughter Celène at the Moroccan Consulate in New York in December 2011. The last example occurred in Béni Tjit, near Figuig in the south, where the name Sifaw was forbidden by the local authority.

This ban not only affects first names but also the country's toponymy. Several Amazigh place names have been changed into Arabic, such as Imi Ougadir, which is now Fom Lhsen in the Tata region of southern Morocco, and the Illalen tribe, who have become the Hilala, to name but two examples.

Amazigh language teaching in crisis

In 2003, Morocco decided to introduce Amazigh language teaching in response to demands from the Amazigh Cultural Movement and efforts were made to bring it in. Strong opposition still remains, however. Various education authorities remain indifferent to this initiative. There is no effective system for monitoring the introduction of this language within the Ministry of Education. Everything depends on the conviction and will of the heads of the local education authorities and teachers. The Royal Institute for Amazigh Culture, a body created by King Mohamed VI, has on a number occasions highlighted the major difficulties that Amazigh teaching is facing on the ground, holding the Minister of Education responsible for this.

During 2011, the situation of Amazigh teaching deteriorated yet more, even in the Sous region of southern Morocco which had, up until then, been the best region for teaching Amazigh. The units created within the education

authorities to monitor this teaching have been neglected and become informal and symbolic structures. The Amazigh movement hopes this situation will change with the new official status of the Amazigh language.

Conclusion

Although the situation of Amazigh rights has improved this year with the new constitution, the Amazigh movement remains vigilant with regard to the new Islamist government. There is, however, good reason for the people to feel optimistic. In relation to its neighbours, Morocco remains a flexible country governed by the rule of law. ○

Notes

- 1 See the full text of the Moroccan Constitution: Official Journal N 5952 of 17 June 2011.
- 2 Op.Cit.
- 3 *Journal Agraw Amazigh* January 2010.

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ALGERIA

The Amazigh are the indigenous people of Algeria. They have been present in these territories since ancient times, but the government, does not recognise their indigenous status. There are no official statistics concerning their number, but based on demographic data relating to the territories in which Tamazight-speaking people live, associations defending and promoting the Amazigh culture estimate the Tamazight-speaking population at around 11 million people, or 1/3 of Algeria's total population. The Amazigh live Kabylia in the north-east, Aurès in the east, Chenoua, a mountainous region on the Mediterranean coast, M'zab in the south, and Tuareg territory in the Sahara. A large number of Amazigh populations also exist in the south (Touggourt, Adrar, Timimoun) and south-west of the country (Tlemcen and Béchar). Large cities such as Algiers, Blida, Oran, and Constantine are home to several hundred thousand people who are historically and culturally Amazigh but who have been partly Arabised over the course of the years, succumbing to a gradual process of acculturation. The indigenous population can primarily be distinguished by their language (Tamazight), but also by their way of life and culture (clothes, food, beliefs..).

Tamazight was finally recognised as a “national language” in the Constitution in 2002. Amazigh identity, however, continues to be marginalised and folklorised by state institutions. Officially, Algeria is presented as an “Arab country” and anti-Amazigh laws are still in force (such as the 1992 Law of Arabisation).

Algeria has ratified the main international human rights 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 are not applied, which has led to the UN treaty monitoring bodies making numerous observations and recommendations to Algeria in this regard.



Marginalised by legislation

The Amazigh enjoy no legal recognition as an indigenous people. Decades of peaceful struggle have, however, led to the Amazigh obtaining two constitutional reforms: the first in 1996 such that the constitution now states that the Algerian identity comprises “an Islamic identity, an Arab identity and an Amazigh identity”, and the second in 2002 to include an Article 3a which stipulates that, “Tamazight is also a national language. The state shall work for its promotion and its development in all its linguistic variations in use within the national territory”. Despite this, no regulatory or legislative text has since been adopted to implement these reforms in practice. Arabic, nonetheless, remains the country’s only official language. The state’s resources remain entirely focused on promoting the Arabo-Islamic identity of Algeria while the Amazigh aspect is covered up and relegated to second place. The few initiatives taken in the area of communications and teaching have had their implementation hindered by numerous obstacles.

The rights of Amazigh women are governed by the “Family Code”, which relegates them to a position of inferiority and submission to men. Based on Sharia law, this legislation and the resulting practices are in violation of Amazigh conscience and civilisation. Consequently, the Amazigh reject this legal text, which authorises polygamy, makes women minors for life and bans them from marrying non-Muslims. The rights of Amazigh women are thus trampled on because Algerian law ignores Amazigh traditions and customary law, known as Azref.

Deteriorating living conditions

The Amazigh in Algeria receive no benefits from the natural resources found on their territories (water, forests, oil, gas, etc.). In the Sahara, the Mozabite and Tuareg enjoy none of the benefits of the energy resources located in their subsoil, and the water from the mountains in Kabylia and Chemoua benefits large cities such as Algiers first and foremost, the local populations gaining nothing in return. Because of this, the Amazigh suffer above average levels of poverty unless they receive remittances from abroad. In any case, the unemployment rate is well above the national average (20% national average, 30% to 50% in Kabylia and Aurès). The young people, in particular, seek an escape in alcohol, drugs, exile or suicide. According to official statistics, there were 47 suicides (39 men and 8 women) in 2011 in Kabylia alone.¹

On the pretext of the war on Islamic terror, the Algerian government has sent significant military reinforcements to Kabylia, in particular. This region is experiencing the heaviest concentration of military forces in Algeria but also the greatest insecurity (murders, armed robberies, kidnappings for ransoms, etc.) and this is seriously disrupting the people’s social, economic and cultural life. More than 60 kidnappings were recorded² over the course of 2011, and yet not one of the perpetrators was arrested. On 15 April 2011, civilians were caught in the crossfire between soldiers from the Algerian army and an armed Islamist group in the town of Azazga, killing two people and injuring several more. On 11 September 2011, at Freha (30 km to the east of Tizi-Wezzu), a soldier shot dead a 55-year-old woman during a military operation. Weary of the Algerian army’s “blunders”, the local people have now called for the army to leave Kabylia.

Violations of fundamental freedoms

Freedom of movement is restricted both inside and outside the country. The land border between Algeria and Morocco has been closed since 1994, preventing Amazigh on both sides of the border from being in contact.

As in 2009, the region of M'zab was once again the scene of violence between the indigenous Mozabite population and the Chaamba Arabs in December 2011. According to civil society organisations, the authorities are responsible for this conflict by openly discriminating against the Mozabites, particularly with regard to access to social housing and jobs. Moreover, there are continuous acts of police and judicial intimidation and harassment of human rights activists and members of independent associations in the country. Members of the Amazigh World Congress (CMA) and the Movement for Kabyl Autonomy (MAK) have been particularly targeted:

- Members of the CMA who travel abroad are systematically and meticulously searched at the airport on departure and return. In 2011, for example, such was the case of Kamira Nait Sid, Vice-President of the CMA-Algeria;
- Members of MAK have been arrested and questioned on a number of occasions with regard to the alleged "separatist" plots of this movement although this organisation has publicly stated that its objective is not Kabyl independence but rather autonomy, within the context of the Algerian state. For example, on 5 September 2011, five activists were arrested in Darguina, Wilaya (Province) of Vgayet. They were: Bouhala Hocine, Bourouchou Samir, Chabane Mourad, Lachouri Hicham and Zerguini Hachmi. On 17 September 2011, nine activists were arrested by the police in Ath Yenni, including the national secretary, Bouaziz Ait Chebib. On 11 October 2011, Arezqi Mohamed, head teacher and MAK member, was arrested by the Algerian security service in Adekkar. On 23 October 2011, Samir Bourouchou, a member of MAK's national council, was arrested by the Algerian police in Tichy, Wilaya of Vgayet. On 15 November 2011, Salah Chemlal, general secretary of MAK was arrested by the Chorfia police. He was released after three hours of questioning.
- In October 2011, Mr Said Zamouche, President the Numidya association (Oran) was again summoned before the courts, for having invited Belgian members of parliament to visit Algeria;

- On 21 October 2011, acts of racial aggression were committed against Amazigh students at Sétif University (east of Algeria). No action was taken against the aggressors and perpetrators of these racist acts, although they were known to the administration.

After 19 years, a state of emergency that gave full powers to the administration, the police and the army was lifted in February 2011. Nonetheless, to this day, the same restrictions on freedoms remain in place. All organisational activity is subject to an administrative authorisation. Over the course of 2011, numerous cultural and scientific activities were thus banned because they were organised by associations that are outside of Algeria's circles of power.

In December 2011, the Algerian parliament adopted a new law on associations³ that drastically restricts their freedom. Article 2 of the new law stipulates that the aim of an association “must not run counter to constants and national values”, without specifying the nature of these “constants” or “national values”. However, it is clear that these include Sharia law and the country's policy of Arabisation. Article 23 of the new law also stipulates that associations can cooperate with foreign associations and NGOs within a partnership framework but that this “cooperation is subject to the prior agreement of the relevant authority”, that is, the Ministry of Foreign Affairs and the Ministry of the Interior. Article 30 also states that it is “forbidden for any association to receive funds from foreign embassies or NGOs”. These provisions seriously restrict indigenous organisations' freedom of action and deprive them of sources of funding that are vital for their survival. ○

Notes and references

1 *Algérie plus*, www.algerie-plus.com

2 *Dernières Nouvelles d'Algérie*, www.dna-algerie.com

3 Law No.12-06 of 12 January 2012 on associations, *Official Journal* of 15/01/2012.

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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), 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 burnt, their possessions stolen, their animals killed or disappeared, children and the elderly killed, bodies left to decay and their families forbidden from retrieving them.

Peul pastoralists are gradually becoming sedentarised in some parts of Burkina Faso. There are, however, still many who remain nomadic, following seasonal migrations and travelling hundreds of kilometres into neighbouring countries, particularly Togo, Benin and Ghana. Unlike other populations in Burkina Faso, the nomadic Peul are pastoralists whose whole lives are governed by the activities necessary for the survival of their animals and many of them still reject any activity not related to extensive livestock rearing.

The existence of indigenous peoples is not 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.

Nomadic pastoralists living in state-created zones

The Sondré Est pastoral zone

In order to provide nomadic pastoralists with greater security, the Burkinabe state has created pastoral zones,¹ which are generally inhabited by extensive livestock farmers. From December to June, however, these zones do not provide sufficient food for their animals and so these farmers move in search of new pasture. Such is the case of the Sondré Est pastoral zone, which covers an area of 16,459 ha.² Many of the pastoralists in the Sondré Est pastoral zone practise seasonal transhumance, moving to the provinces of Sissili and Naouri in the south of Burkina and also to Ghana and then returning to Sondré Est during the rainy season.

Although the Sondré Est pastoral zone can only be occupied by pastoralists, neighbouring agricultural farmers tried on several occasions during 2011 to take over part of the area and clear it. It took the intervention of the Ministry for Animal Resources³ to dissuade them. They may, however, try again in 2012, and the question remains how nomadic pastoralists can be provided with the best security.

The AVV development zone

Apart from the pastoral zones, nomadic pastoralists' families are also settled in other areas created by the state. Such is the case of the Volta Valleys Development Zone, commonly known as the AVV. The aim of the AVV is to improve the uninhabited or under-populated valleys of the River Volta and its tributaries.⁴

The nomadic pastoralists living in the AVV practise seasonal transhumance, sometimes travelling to Ghana or Togo with their animals. Since 1 December 2011, these pastoralists have been suffering attacks at the hands of their neighbours. Pawanezambo Belem, a journalist with *Mutations*⁵ described the attacks, using the words of Mrs Mariam Bandé,⁶ a pastoralist:

We were at home on the night of 1 December 2011 as usual. We didn't expect anything to happen. It was around seven in the evening that one of our sons came to tell us that a group of people were burning our neighbours' houses down. We went outside and saw the fire. We didn't know what was



going on. We didn't know what to do. A few minutes later, they reached us. There was a lot of them. When they arrived, they told us clearly that they had come to burn the area. They told us to leave the village. Family members began to run. No-one was able to get anything out of the house. A young Mossi even took the only bag that one of our elders had managed to bring out and threw it on the fire. When I asked them to let me get my sick child who was in the house, another youth caught me and beat me, hitting me violently on my legs with a stone. I fell over. Luckily, another one of them told them to let me get my child out before they set fire to the house.

According to Belem, the agricultural community from the village, mainly Mossi, had decided to burn everything belonging to their Peul neighbours. A fight between two individuals from the two communities was apparently at the origin of this rage. A young cattle herder had let his cattle stray into a cotton field. The farmer, unable to control himself, had apparently slapped the boy, who retaliated by injuring the farmer. This latter went to the clinic for treatment. He told his family what had happened and they informed the whole Mossi community. The Mossi decided to embark on a path of indiscriminate revenge. Belem entitled his article "*Mogtédó: the authorities endorse the pursuit of Peul from Bomboré*". Two

months after the tragedy, dozens of pastoralists are still unable to return home and none of the assailants have been arrested.

Cross-border pastoralists: Burkinabe in Ghana and Malians in Burkina

Transhumant pastoralists suffer massacres both in their country of origin and across borders. On 7 December 2011, the worst massacre to date led to the deaths of 13 *egga hod'daabe* from Burkina Faso, six of whom were children, in Gushiegu/Tamalé, in the Northern Region of Ghana.

Moreover, 205 *egga hod'daabe*, Malian in origin, have been settled in Oudalan Province, in the north of Burkina, for eight months. They fled acts of violence being committed by the Tuareg, who kill them and take their cattle. Without cereal crops or other sources of income, their future is in grave doubt.

Activities aimed at ensuring the safety of nomadic pastoralists

Meetings on the massacres

For years, the *egga hod'daabe* have been subjected to massacres that have resulted in many deaths. In an attempt to find strategies to put an end to this violence, meetings were organised in 2011 in four provinces where massacres have taken place: Naouri, Zoundweogo, Poni and Gourma.⁷ These meetings were well attended by locally-elected representatives, commune-level mayors, customary chiefs, lawyers, members of civil society organisations, pastoral and agricultural technicians, and members of the *egga hod'daabe*, and were a great success.

Workshops on building an indigenous peoples' movement

Although the *egga hod'daabe* self-identify as indigenous peoples, they lack a greater awareness of the concept. This is why 2011 was devoted to encouraging ownership of the concept through workshops organised in the provinces of Burkina Faso in which many *egga hod'daabe* live, and also in the bordering countries to which they move seasonally.

Overall, the workshops enabled more than a thousand *egga hod'daabe* in the provinces of Naouri, Poni, Kulelgo, Gourma and Kompienga, and in Benin,

Togo and Ghana to gain a greater understanding of the concept of “indigenous peoples”. They also revealed the need to establish a network aimed at reducing the discrimination, stigmatisation, marginalisation and vulnerability of the *egga hoddaabe*.

A better structured regional indigenous peoples' movement

It is becoming increasingly clear that the issue of the *egga hoddaabe* cannot be addressed on a national basis alone. In fact, many Peul live throughout the countries of both the Economic Community of West African States (ECOWAS) and the Economic Community of Central African States (ECCAS) south of the Sahara, and they all have one thing in common: pastoralism is their main activity.

Pastoralism contributes between 10% and 44% of an African state's GDP, depending on the country. Moreover, “Pastoralists, who have been accused of being at the root of environmental degradation for decades are now being recognised as the good guardians of variable environments and the positive environmental externalities that well-managed pastureland offers are now commonly acknowledged”.⁸

It is important to help the *egga hoddaabe* organise across the ECOWAS and even the ECCAS space, so that Member States can better understand the importance and contribution of pastoralism at a national and regional level. ○

Notes and references

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- 3 I personally met the Minister for Animal Resources to inform him of the situation.
- 4 Decree No. 76/021/PRES/PL/DRET of 23 January 1976.
- 5 **Belem, Pawanezambo, 2012:** *Mutations - Mensuel d'informations générales et d'opinions*, No. 05/January 2012.
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NIGER

Niger's indigenous populations are the Peul, Tuareg and Toubou. These peoples are all transhumant pastoralists. Niger's total 2009 population was estimated at 14,693,110. 8.5% of the population are Peul, i.e. 1,248,914 individuals. They are mostly cattle and sheep herders but some of them have converted to agriculture because they have lost their livestock during droughts. They live in all regions of the country and can be further sub-divided into a number of groups, namely the Tolèbé, Gorgabé, Djelgobé and Bororo. 8.3% of the population are Tuareg, i.e. 1,219,528 individuals. They are camel and goat herders. They live in the north (Agadez and Tahoua) and west (Tillabery) of the country. 1.5% of the population are Toubou, i.e. 220,397 individuals. They are camel herders and live in the east of the country: Tesker (Zinder), N'guigmi (Diffa) and along the border with Libya (Bilma).

The Constitution of June 2010 does not explicitly mention the existence of indigenous peoples in Niger. The rights of pastoralists are set out in the Pastoral Code, adopted in 2010. The most important rights in the code include an explicit recognition of mobility as a fundamental right of pastoralists and a ban on the privatisation of pastoral spaces, which poses a threat to pastoral mobility. An additional important element in the Pastoral Code is the recognition of priority use rights in pastoral homelands (*terroirs d'attache*). Niger has not signed ILO Convention 169 but did vote in favour of the United Nations Declaration on the Rights of Indigenous Peoples.

The return to democracy

Democratic elections in early 2011 marked a return to democracy after a brief transition period following the military coup in February 2010. The opposition leader, Mahamadou Issoufou, from the PNDS (*Parti Nigérien pour la Démocratie et le Socialisme*), is now in power.

The Pastoral Code and National Strategy on Pastoral Water

The Pastoral Code was finally adopted in 2010 but its implementation is still awaiting a decree. This requires a cross-ministerial process involving the four key ministries of agriculture, water, livestock and community development as well as the cabinet of the Prime Minister and the Secretary-General of the government. There is a real risk that this process may be stalled if civil society does not strive to hold the government accountable for its implementation. There is some work being done around this, but only at quite low intensity.

Another important tool for securing pastoral rights in terms of access to resources is the National Strategy on Pastoral Water, which was adopted in 2011. The strategy has been long in the coming and is a milestone in ensuring that investment in water infrastructure does not cause harm by increasing conflicts in pastoral areas. Many donors have either been reluctant to invest in pastoral water or have used an inappropriate village approach, resulting in conflicts and/or the monopolization of a water source by the most powerful or least mobile groups. The national strategy takes mobility as the starting point when facilitating dialogue with the different pastoral groups before a well is dug, thus ensuring that all groups are heard in the process and that a consensus on management rules is established. This means that the most mobile and marginalized groups are also heard in the process and guaranteed access to water. A number of actors have been driving the development of the national strategy, including CARE, the EU and the Research Institute for the application of development methodologies (IRAM), and they have been implementing the approach for quite some years. The challenge is to ensure its implementation by all actors within the water and sanitation sector, because it is a more costly and time consuming process to ensure that all are heard in a pastoral context than simply to apply a standard village approach.

Indigenous peoples of Niger – continued struggle for recognition

Niger was under Universal Periodic Review (UPR) in June 2011. The UPR report highlighted the need to implement the recommendations from the 2008 report of the Working Group on Indigenous Populations/Communities under the African Commission on Human and Peoples' Rights. These recommendations concern



the need for the state to recognise the status of Nigerien pastoralists as indigenous peoples and to ensure their access to basic social services without discrimination. The response of the state to the efforts to get pastoralists recognised as indigenous peoples was as follows: “Niger does not recognise the existence of indigenous peoples on its territory...it is minorities who live in harmony with all other ethnic groups without any form of discrimination” .

Pastoralist meeting

The network of pastoral organisations, Billital Maroobe, organised a meeting in Ouagadougou, Burkina Faso in October 2011 on the existing legislation and policies regulating transhumance in the Liptako-Gouma region, which comprises

Burkina Faso, Niger and Mali. There was broad participation from civil society, institutional donors and the Economic Community of West African States (ECOWAS). It resulted in the Ouagadougou Declaration (the full text of the declaration can be found at: www.marooobe.org), the main points of which relate to the consequences of the rising insecurity in the pastoral zones, the upcoming pastoral crisis and a need to harmonize the texts regulating mobility in the region.

Rising insecurity in the pastoral zones

The Nigerien state's struggle to impose its authority over the pastoral zones in the north of the country increased during 2011, with Aqmi (*al-Qaida au Maghreb Islamique*) continuing to gain a foothold. The Libyan crisis and the fall of Gaddafi further fuelled this development. Gaddafi had invested significant resources in limiting the presence of Aqmi in the pastoral zones, a battle which is now left to the anti-terrorist group Cémoc (*Comité d'état-major opérationnel conjoint*), a collaboration between Niger, Mali, Mauritania and Algeria. The kidnapping of five Westerners, and the killing of one, within 48 hours in northern Mali at the end of November 2011 illustrates the challenges Cémoc faces in succeeding in its mission.

The crisis in Libya has also led to the increased circulation of arms in the region, some of which have fallen into the hands of Aqmi. The rising insecurity has prompted most countries to classify the pastoral zones of Niger as no-go areas. This has led to a severe decline in tourism, which has significant negative consequences for the pastoral groups, who generate part of their income from the tourist industry and the sale of handicrafts. The presence of international organizations has also declined significantly, further limiting the pastoralists' access to social services. Secondly, as Aqmi is present mainly in the Tuareg zones of the north, the Tuareg themselves are increasingly facing allegations of terrorism or of being linked to terrorist actions. It is, however, highly doubtful whether there is a link between the Tuareg and Aqmi, for two main reasons. Firstly, Aqmi are extremists, whereas the Tuareg are moderate Muslims and, secondly, Aqmi tends to focus on fundraising for causes outside of Niger, mainly in Algeria, whereas the Tuareg are fighting for rights and influence in a national Nigerien context. The suspicion is no longer limited only to the Tuaregs but is increasingly affecting all pastoralists of Niger, both nationally and when they cross into neighbouring coun-

tries. The pastoralists of Niger are likewise looked upon with suspicion in Libya, as some fought on the side of Gaddafi as mercenaries, making it difficult for them to return to work after the end of the conflict. Hundreds of thousands of migrant workers have returned to Niger frustrated and with empty pockets.

Niger as an oil-producing nation

One of the new government's priorities is to fight corruption. This commitment will be put to the test now that Niger has officially become an oil-producing nation. The first barrel of oil was extracted from the pastoral zone of Diffa in November 2011. According to Article 153 of the Nigerien constitution, the revenue from natural resource extraction has to be invested in the four priority sectors of agriculture, pastoralism, education and health as well as in a fund for future generations. In addition, the oil raised expectations among pastoral young men in Diffa that jobs would be created at the drilling site. Unfortunately, this has not been the case as most jobs are taken by the Chinese, leaving very limited opportunities for nationals.

A chronic pastoral crisis?

The pastoral zones of Agadez and Diffa were the hardest hit by the food crisis of 2010 in terms of child malnutrition. Another pastoral crisis is now looming due to a poor rainy season in 2011, with the most affected areas of Tillabéry, Tahoua and Zinder suffering from as much as a 50% deficit in pasture. The recurrent scarcity of pasture creates a situation where access shifts from being free to being monetised. People collect pasture and sell it to pastoralists, and agriculturalists only grant pastoralists access to field residues in exchange for money. In effect, pasture is increasingly becoming a privatised commodity. The price of this access increases as food prices rise. Faced with yet another pasture crisis in 2011 and 2012, pastoral households are starting to settle parts of their household as a way of securing access to strategic resources such as water and pasture.¹ In short, recurrent crises and insufficient structures to help pastoralists cope are threatening an entire way of life.

The situation of indigenous women in Niger

A pastoral family is, according to Brigitte Thebaud,² a group of people living off the same herd. The family often consists of more than one household, even though polygamy is less widespread among pastoralists than agriculturalists in Niger. Pastoral women also have more control over household assets than women in agricultural households. A pastoral woman controls the animals she received as her dowry, as well as milk, which is a female domain. However, 2011 followed a year of food crisis with a consequent destocking among pastoral households in Niger, and a reduction in the number of animals women possess. In addition, recurrent crises have left animals in a poor physical state, with a consequent reduction in the quantities of milk produced. This directly impacts on the income of pastoral women and has increased their workload because they now have to cook a hot meal several times a day since there is no longer enough milk to constitute a meal. Increased poverty among pastoral households thus negatively impacts on women's access to and control over household resources. The need to secure access to strategic resources (water and pasture) is leading to an increase in polygamy. This is being driven by the tendency among pastoral households to deploy the dual strategy of mobility and fixity,³ whereby one wife is left behind and another moves with the husband and the herd. The consequences of this trend have yet to be seen and understood in terms of the rights of women.

Alongside this is a new tendency among pastoral youth to marry later, and this can be attributed to two main factors. Firstly, interviews show that the pastoral youth in Niger are now maturing later due to poorer diets with less milk and other sources of protein, so girls enter puberty later and are therefore ready for marriage at a later age. Secondly, it takes more time for families to raise enough money for the dowry and for a herd to set up the new young household. Both causes are driven by increased poverty in pastoral zones.⁴ ○

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- 3 **Monimart, Marie and Marthe Diarra, 2010:** *Gender Analyses in the pastoral zone, the Diffa Region of Eastern Niger.* CARE Denmark
- 4 Op.cit

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THE HORN OF AFRICA &
EAST AFRICA

ETHIOPIA

The groups meeting the criteria for identification of indigenous peoples in Ethiopia include the pastoralists and the hunter/gatherers.¹ Pastoralism in Ethiopia constitutes a unique and important way of life for close to 10 million of the country's total estimated population of 80 million.² Pastoralists live in around seven of the country's nine regions, inhabiting almost the entire lowlands, which constitute around 61% of the country's landmass. Pastoralists own 40% of the livestock population in the country. They live a fragile existence, mainly characterized by unpredictable and unstable climatic conditions. They are affected by recurrent droughts, persistent food insecurity, conflict, flood, inadequate services and infrastructure and they are among the poorest of the poor in terms of disposable incomes, access to social services and general welfare. Access to health care and primary and secondary education is very low compared with other areas (mid- and highlands) of the country. The pastoral population is heterogeneous in its ethnic composition and social structure, having some larger ethnic groups such as the Afar, Oromo and Somalis with well over four million pastoral people between them. The rest are Omotic pastoral groups such as the Hamar, Dassenech, Nygagaton and Erbore, and the Nuer and other groups in the western lowlands.

There is no national legislation in Ethiopia mentioning or protecting the rights of indigenous peoples. Ethiopia has not ratified ILO Convention 169, and Ethiopia was absent during the voting on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

Villagization and forced evictions

During 2011, the government continued its scheme to lease out land to foreign investors for large-scale commercial farming in the ancestral lands of indigenous peoples of the South Omo and Gambella (Western Ethiopia) (see *The Indigenous World 2011*).



To make the land available to these foreign investors, the government first of all had to evict the indigenous and other farming communities from their ancestral lands and settle them somewhere else, under a programme called “Villagization” that was initiated in 2010.³ The current policy of transformation, reflected in the villagization programme, basically uses the same “reasoning” applied by the British towards the Maasai pastoralists at the turn of the 20th century: “Maasai land is idle land”. One official of the current government in Addis Ababa told a community in Gambella the same thing: “We will invite investors who will grow cash crops. You do not use the land well. It is lying idle.”⁴

To avoid criticism from the international community, the government is trying its best not to relate the villagization programme to the land grabs. However, according to *Associated Press*,⁵ the government has told the Gambella communities who are affected by the villagization programme that it will lease out huge tracts of their land to commercial farmers, who grow cash crop and generate “development” instead of the pastoralists keeping the land idle. According to Human Rights Watch,⁶ former government officials also confirm these allegations.

The villagization programme is exposing its victims to deplorable conditions, leaving them without alternative land, shelter or food and vulnerable to disease. The government claims that the resettlements (evictions) carried out under the programme have made it possible for the resettled peoples to harvest all sorts of agricultural produce and have made them rich.⁷ The truth is, however, exactly the opposite. As one older person told Human Rights Watch:

*We want you to be clear that the government brought us here ... to die ... right here. We want the world to hear that the government brought the Anuak people here to die. They brought us no food, they gave away our land to the foreigners so we can't even move back. On all sides the land is given away so we will die here.*⁸

The scale of the land grab is massive and is not only taking place in Gambella but also in South Omo, Afar and Oromia. According to Human Rights Watch, in a span of three years, the government has leased out at least 3.6 million hectares of land, an area the size of the Netherlands. An additional 2.1 million hectares of land is available through the federal government's land bank for agricultural investment. In Gambella, 42 percent of the total land area is either being marketed for lease to investors or has already been awarded to investors, according to government figures. Most of the communities that have been moved for villagization are within areas slated for commercial agricultural investment.⁹

The fact that only the ancestral lands of indigenous peoples are being targeted is likely to be a question of racism and ethnic discrimination. From a human rights perspective, the Government of Ethiopia has violated not only its own Constitution, which calls for a proper legal process before evictions are conducted, but also fundamental international law, including the UN Declaration on the Rights of Indigenous Peoples. By international standards, it is absolutely essential that a process of free, prior and informed consent take place with the indigenous communities in question prior to any evictions. No form of consultation whatsoever have been conducted with the indigenous communities. Like its predecessors, the current government does not recognize the rights of indigenous communities, nor does it recognize their livelihood system as a valuable traditional way of life in Ethiopia. Pastoralism is considered inferior to farming and an unproductive livelihood system. This discourse legitimizes the leasing of their land to foreign investments without any prior consultation or compensation.

The government denies that it is forcibly evicting anyone. As claimed by the Minister of Communications Affairs, Bereket Simon:

No one is forced. This is an absolute lie. ... People around Gambella are sparsely inhabiting their place in a very scattered manner. They cannot be beneficiaries of development like electricity, water and telecom. So for all practical purposes of helping those people who are denied in the past such basic infrastructural amenities, the government has decided to settle them. But it is not [just] a decision; we have discussed the issue in a very thorough manner with the beneficiaries; they have accepted it.¹⁰

However, the members of the communities who have been evicted/resettled claim that there was no free, prior and informed consent and that, on the contrary, they were told to leave their land.

In Gambella, indigenous communities were outraged by these violations. They refused to leave their land and settle in a harsh environment somewhere else in rural Gambella where the government wanted them to. As a result, the violence of the state was unleashed against them in 2011. Women were raped, people were beaten, some to death, and many others were arrested.¹¹

Hydro-electric project in South Omo

South Omo is a very large region with very fertile land. It borders Kenya in the south and part of Lake Turkana lies within its territory. The Bodi (Me'en), Daasanach, Kara (Karo), Kwegu (or Muguji), Mursi and Nyangatom pastoralists live along the Omo River that flows into Lake Turkana and depend on it for their livelihood, having developed complex socio-economic and ecological practices that are intricately adapted to the harsh and often unpredictable conditions of the region's semi-arid climate. These communities depend on the annual flooding of the Omo for an agricultural practice of shifting cultivation in which they skilfully utilize the waters of the flooding river for farming.

A few years ago, the governments of Ethiopia and Kenya agreed to initiate a joint hydro-electric project on Lake Turkana, to be funded by the World Bank. The initial plan revealed that the impact of the power dam, dubbed Gilgel Gibe III, would have devastating consequences for the livelihoods of the indigenous com-

munities on both sides of the border, involving pastoral, fishing, hunting and gathering communities. The funding requirements of the World Bank require that an environmental impact assessment be done before the initiation of a project. However, no such assessment was done, and civil society organizations in Kenya launched a campaign against the construction of the dam arguing that no environmental impact assessment had been done and that no alternative livelihoods were being provided for the affected indigenous communities, estimated at half a million on the Kenyan side alone. The Kenyan government quickly backed down and abandoned the project. Its Ethiopian counterpart stuck with it, however, since it faced no opposition from advocacy or human rights NGOs, which have all been made defunct by the Charities and Associations Law.¹²

According to *International News*:¹³ “Hundreds of Kilometers of irrigation canals will follow the dam construction, diverting the life giving waters.” And Survival International warns that, “This will leave the tribal people without annual floodwaters to grow their crops.”¹⁴ Independent experts assert that the dam will “have an enormous impact on the delicate ecosystem of the region by altering the seasonal flooding of the Omo and dramatically reducing its downstream volume. This will result in the drying out of much of the riverine zone and eliminate the riparian forest.”¹⁵ Consequently, Survival International warns, “If the natural flood with its rich silt deposits disappears, subsistence economies will collapse with at least 100,000 tribal people facing food shortages”.¹⁶

In 2011, indigenous communities in South Omo, including the Nyangaton, protested against the construction of the dam and refused to be evicted from their ancestral land. In response to the protests by the Nyangaton community, government troops were quickly dispatched to violently punish this community for protesting. A number were killed in the incident while scores more were arrested. Recent reports indicate that violence is still continuing in other areas of South Omo.¹⁷

Donors’ complicity

A great silence prevails among donors when it comes to the deplorable situation in Ethiopia, a silence that constitutes a policy of double standards on human rights violations. The donor community is well informed of the gross human rights violations in Ethiopia, including gross violations of freedom of expression and

basic civil and political rights, the rights of women, and social and economic rights. The rural population as a whole is subjected to a great deal of violent repression, in particular the rural indigenous communities, such as pastoralists, hunters and gatherers who are oppressed and discriminated on the grounds of ethnicity. The donor community, however, tend to conveniently ignore these violations and instead tend to believe the government's claims to have "generated economic growth".

The Government of Ethiopia is also taking advantage of the situation in Somalia to present itself as fighting terrorism. It portrays itself as an ally in the war against "global terrorism" supported by the US and the rest of the donor community, and the gross human rights violations unleashed by the government are thus tolerated.

Some donors seem not only to tolerate but even to support and defend the current crimes being committed against indigenous communities, such as, for example, the "villagization" (evictions) programme. Thus USAID conducted an assessment of the villagization programme in Gambella and Benishangul Gumuz and concluded that the relocations were "voluntary".¹⁸ Jan Egeland, director of Human Rights Watch Europe and formerly a high-level UN official,¹⁹ says, however, that, "It seems that donor money is being used, at least indirectly, to fund the villagization program. ... Donors have the responsibility to ensure that their assistance does not facilitate forced displacement and associated violations".²⁰ Jan Egeland is fundamentally questioning the very motives of the villagization programme when he says the relocations take place, "... exactly in the same areas of Ethiopia where the government is leasing to foreign investors for large-scale commercial agriculture operations. ... This raises suspicions about the motives of the programme".²¹ ○

Notes and references

- 1 As per the African Commission on Human and Peoples' Rights - See Chapter four of: **ACHPR, 2005: Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities**. Copenhagen: ACHPR & IWGIA. The report can be downloaded from http://www.iwgia.org/publications/search-pubs?publication_id=116
- 2 **Central Statistics Agency, 2007: Official Census**. Addis Ababa.
- 3 A programme of villagization was introduced by the military government that ruled the country from 1974 to 1991. The purpose of the villagization programme at the time was solely political: to

- deprive the guerrilla movements in Eritrea and Tigray of a mass base by moving the rural population to elsewhere in the country and into the areas of indigenous communities, in particular.
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 - 21 **Ibid.**

Melakou Tegegn is an Ethiopian and one of the founders and the first chairperson of the Pastoralist Forum Ethiopia, a national network of indigenous NGOs. He has for many years been engaged in advocacy work on pastoral rights in Ethiopia. He had to leave the country, however, after the violence related to the 2005 elections. He is now a development consultant and is active as a member of the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights.

KENYA

In Kenya, the peoples who identify with the indigenous movement are mainly pastoralists and hunter-gatherers as well as a number of small farming communities.¹ Pastoralists are estimated to comprise 25% of the national population, while the largest individual community of hunter-gatherers numbers approximately 30,000.

Pastoralists mostly occupy the arid and semi-arid lands of northern Kenya and towards the border between Kenya and Tanzania in the south. Hunter-gatherers include the Ogiek, Sengwer, Yaaku, Waata, El Molo, Boni (Bajuni), Malakote, Wagoshi and Sanya, while pastoralists include the Turkana, Rendille, Borana, Maasai, Samburu, Ilchamus, Somali, Gabra, Pokot, Endorois and others. They all face land and resource tenure insecurity, poor service delivery, poor political representation, discrimination and exclusion. Their situation seems to get worse each year, with increasing competition for resources in their areas.

There is no specific legislation governing indigenous peoples in Kenya. The Constitution of 2010, however, specifically includes minorities and marginalized communities as a result of various historical processes. The definition of marginalized groups, being broad, encompasses most of the groups that identify as indigenous peoples. Kenya abstained from the vote when the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the UN General Assembly in 2007.

Constitutional implementation

Kenya's 2010 Constitution provides a rich and complex array of civil and political rights, socio-economic rights and collective rights that are of relevance to indigenous communities.² While important, constitutional provisions alone are not enough. They require a body of enabling laws, regulations and policies to guide and facilitate their effective implementation. In 2011, Kenya's parliament

enacted 22 laws.³ In the main, these laws are of general application and will have a bearing on the way in which the state exercises power in various sectors, some of them of fundamental importance to indigenous communities.

Laws relating to reform of the judiciary, such as the Supreme Courts Act as well as the Vetting of Judges and Magistrates' Act, are already transforming the way in which the judiciary is dealing with claims presented to it by local communities. The revamped judiciary is already opening its doors to the poorest and hitherto excluded sectors of Kenyan society. Indicative of this changed attitude on the part of the judiciary - at least at the highest level - is the fact that the deputy president of the Supreme Court met with elders from the Endorois indigenous people in July 2011 and assured them of the possibility of supporting the implementation of the African Commission's decision in favour of the community.⁴ More substantively, indigenous groups are already using the revamped judiciary to ventilate their rights. For example, in *Ibrahim Sangor Osman et al. v. The Hon. Minister of State for Provincial Administration & Internal Security*,⁵ the High Court in Embu awarded a global sum of KShs. 224,600,000 (US\$ 2,670,750), equating to US\$ 2,378, to each of the 1,123 evictees from Medina within Garissa town of Northern Kenya as damages following their forced eviction from their ancestral land within the jurisdiction of the Municipal Council of Garissa. All the petitioners were Kenyan Somalis. The court also declared that the petitioners' fundamental right to life (Article 26), right to inherent human dignity and security of the person (Articles 28 & 29), right to access information (Article 35), economic, social and specific rights (Articles 43 & 53 (1) (b) (c) (d)) and the right to fair administrative action (Article 47) had been violated by virtue of the eviction from the alleged public land and the consequent demolition of property by the Kenya police.

Additionally, the adoption of a law establishing the Environment and Land Court is important for indigenous communities given that the Court will "hear and determine disputes relating to environment and land, including disputes: (a) relating to environmental planning and protection, trade, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources; (b) relating to compulsory acquisition of land; (c) relating to land administration and management; (d) relating to public, private and community land and contracts, chooses in action⁶ or other instruments granting any enforceable interests in land; and (e) any other dispute relating to environment and land."⁷ While most indigenous communities are yet to become aware of the existence of this court, it will be an important arena for determining the land rights



challenges of indigenous communities such as the Ogiek, which have remained unaddressed for decades.

In the main, though, constitutional implementation has so far failed to take cognizance of indigenous peoples' core concerns. The Election Act, as well as the Political Parties Act, have failed to clearly articulate mechanisms for the political participation of indigenous peoples in terms of Article 100 of the Constitution. The constituency boundary reviews that started in 2011 indicate a limited commitment on the part of the state to implement important court decisions that

have a bearing on indigenous peoples' representation, such as that of Il-Chamus.⁸ Conversely, attempts to implement such decisions following limited consultation of indigenous communities have tended to exacerbate conflicts between different indigenous groups. The conflicts that have raged in Marsabit County between the Borana and Gabbra, as well as different inter-clan conflicts in Garissa among different Somali groups in 2011, are indicative of this dynamic.

The failure to institute the powerful National Land Commission (NLC) established in Article 67 of the Constitution in order, *inter alia*, to resolve land-related historical injustices, constitutes one of the greatest disappointments of indigenous communities in relation to constitutional implementation to date. This failure has mainly been driven by a fear within a section of the landholding elite that the NLC would independently implement the National Land Policy adopted in 2009, the provisions of which are very robust not only in terms of community land tenure arrangements but also in terms of requiring the Commission to review illegally acquired land.

Anticipated reforms aimed at decentralizing governance to 47 counties have also failed to take off, with crucial laws to enable this development remaining locked in intense political debate pitting the various political interests of dominant ethnicities against each other. In the end, such devolution, if not well implemented, is unlikely to yield dividends for indigenous communities. In particular, the adverse consequences of the new decentralized system, caused by an intensification of public resource competition among different communities within the counties, is already disproportionately impacting on indigenous communities, as witnessed by increasingly violent conflicts in Northern Kenya.

The new Revenue Allocation Commission, mandated by Article 204 of the Constitution to earmark 0.5% of annual state revenue to the development of marginalized areas, in addition to 15% of national revenue for direct transfer to county governments, has yet to take a specific interest in the concerns of indigenous communities.

In implementing Article 59 of the Constitution, the government has split the Equality and Human Rights Commission into three: the Human Rights Commission, the Commission on Administrative Justice and the Gender Commission. These bifurcated human rights institutions may serve to either provide increased opportunities for indigenous peoples' rights activism or to weaken the collaboration hitherto established with the previous Kenya National Commission on Human Rights.

Community-led struggles

Demands from below were the main feature of 2011, emphasizing the significance of community-led efforts in the struggle for indigenous rights in Kenya.

Attempts by a multinational company, Bedford, to acquire thousands of hectares of land in the Tana Delta, in the Coast Region of Kenya, for growing *Jatropha* and developing the bio-fuel industry, were rebuffed by indigenous communities, including Watta, Galjil, Munyoyaya, Malakote, Mijikenda, Somali, Boni, Bajuni, Wakone and Wasanya. Deploying the provisions of the new constitution on land and human rights, communities worked with the Nairobi-based legal institution Kituo Cha Sheria to obtain conservatory court orders against this bio-fuel project, which would not only impact on the biodiversity of the region but also - more adversely - affect access to grazing grounds and water resources for pastoralists.⁹ Similarly, years of community resistance to the processing of limestone from Pokot County in the Rift Valley region hundreds of miles away in Tororo, Uganda, bore fruit in 2011.

Cemtech, a subsidiary of the Sanghi Group of India, has been licensed to set up a 12 billion Kenya shillings cement manufacturing plant in Ortum in Pokot. This development will hopefully open up Pokot County to further investment, contributing to improved physical infrastructure and employment for the region. This project has received substantial support from the indigenous Pokot community because they stand to gain from it and were consulted. In contrast, resistance to another mega-development project in the area, the Turkwel Gorge Hydro-electric Project, continued from the Pokot community, who are protesting that, despite losing a substantial portion of their land to this project, they will receive limited benefits in terms of employment or electricity supply to homes in the area while paying a huge price in terms of environmental damage to their land.¹⁰

Other more recent large-scale development projects under the Kenyan government's vision 2030¹¹ that will affect indigenous groups, such as Resort cities development in Isiolo (Upper Eastern region) and Lamu (Coast region), have also been designed with little input from the communities, despite the new constitution's imperative requirement for participatory development.

Historical injustices

While the work of the Truth, Justice and Reconciliation Commission (TJRC) limped on, crippled largely by the non-engagement of Nairobi-based civil society organizations, communities in Northern Kenya offered the country a glimpse of this mechanism's potential usefulness in bringing closure to historically unresolved issues, particularly those affecting indigenous peoples. In particular, the Wagalla Somali community's grievances and the massacres perpetrated by the state against the Wagalla Somali people in Northern Kenya in the 1980s, which had been kept concealed in the state's impenetrable armory protected by the Official Secrets Act, were brought to the fore in March 2011. Women victims were finally able to bear witness to the anguish of the rapes and abuses they had endured, for all to see. The participation of the Minister for the Development of Northern Kenya, Hon. Mohammed Elmi, at the TJRC hearings in Wajir, as a victim of the massacre, underscored the importance of the TJRC for national healing. The fact that indigenous peoples' narrative of the nature and scope of violations of their individual and collective rights will constitute a part of the final report of the TJRC is an important step towards national understanding of - and perhaps empathy towards - the challenges faced by these communities in the 50 years of Kenya's turbulent post-independence history.

Endorois decision

In 2011, the most important action taken at the national level with regard to implementing the Endorois' decision¹² was Parliament's request for an implementation status report from both the Ministry of Justice and the Ministry of Land. Unfortunately, neither the Minister for Justice nor his counterpart at the Land Ministry offered any substantial response to this request, on the grounds that the Government of Kenya had not been formally presented with the ruling from the African Commission. The evasiveness of the state's response to its own parliament contrasted sharply with its commitment during the 48th session of the African Commission, as well as in the context of the UN Universal Periodic Review process, where it committed - without reservation - to implementing the decision.¹³

Despite the disappointing failure of the state to formulate a framework to implement this decision, community mobilization has continued unabated. Three women from the Endorois community submitted a moving petition to the African Commission on Human and Peoples' Rights during its 50th ordinary session in October in Banjul, The Gambia. Responding to this petition and subsequent advocacy work by IWGIA, Minority Rights Group (MRG), the Endorois Welfare Council and the Center for Minority Rights Development (CEMIRIDE), the Commission adopted an important resolution on the protection of indigenous peoples' rights in the context of UNESCO's decision to designate Lake Bogoria a World Heritage site. The Commission specifically found that the "inscription of Lake Bogoria on the World Heritage List without involving the Endorois in the decision-making process and without obtaining their free, prior and informed consent contravenes the African Commission's Endorois Decision and constitutes a violation of the Endorois' right to development under Article 22 of the African Charter."¹⁴ It therefore called upon the Government of Kenya, the World Heritage Committee and UNESCO to "ensure the full and effective participation of the Endorois in the decision-making regarding the 'Kenya Lake System' World Heritage area, through their own representative institutions."

Mau Forest and the Ogiek

The Mau Forest Task Force, set up in 2009 to restore the most important water tower in Kenya, and home to the Ogiek community, the Mau Forest, was succeeded in 2010 by the Interim Coordinating Secretariat (ICS). The ICS was tasked with implementing the recommendations of the Task Force's 2009 report. Relevant to the Ogiek, the ICS, constituted an Ogiek Council of Elders and mandated it to initiate a process of registration of the Ogiek to ensure that they do not suffer adversely from the eviction of illegal occupiers of the forest. Unfortunately, the Ogiek census did not proceed as intended and most members of the community remained completely unaware of the Ogiek registration being carried out by the Ogiek Council of Elders/ICS.

The Ogiek litigation before the African Commission that was initiated in 2009¹⁵ -with support from IWGIA and MRG - also received a boost when the Commission issued provisional measures urging the Kenyan government to desist from any action to remove the Ogiek from their ancestral land pending the determination of

the case by the Commission. Such provisional measures continued to provide a tool for advocacy groups within the community to engage with both the ICS and other actors within the Kenyan government as well as with the media.

Suffering on the part of pastoralists in Northern Kenya

The attack on the Turkana pastoralists by Merille militia from Ethiopia, one kilometer from Todonyang police post on the Kenya-Ethiopian border, which left more than 50 people dead, represents a gruesome reality of the insecurity in pastoralist areas of Northern Kenya. While the fighting stems from local conflicts, it also reflects a broader pattern of inter-ethnic conflict resulting from food scarcity, persistent drought, state neglect and the lifestyle alterations that artificially-imposed colonial borders have forced upon nomadic groups. The frequency of such conflicts in turn puts pressure on states, and creates tensions between states, in this case Kenya and Ethiopia. Both the Turkana (who number around 100,000) and the Merille (who number around 50,000) are traditionally nomadic. But while the Turkana remain nomadic pastoralists, the Merille have in recent years become primarily agro-pastoral.

Despite early warnings, the drought that ravaged Northern Kenya early in the year led to predictable results – the loss of thousands of livestock and hundreds of human lives. This drama of the young and the elderly dying was graphically portrayed through the media, ushering in one of the few uniting moments for the country: the Kenyans for Kenya campaign raised over 600,000,000 Kenya shillings (US\$ 7,134,680).

Displacement of Samburu pastoralists

Although designed to address land inequality by dismantling the hegemonic hold of a few politically influential families over large tracts of land, the new constitution has unwittingly led to hurried dispositions of land in order to defeat the intent of the law. Such are the circumstances under which a new national park has been established by the Kenya Wildlife Services (KWS): the Laikipia National Park situated in Laikipia near Northern Kenya. Created from 17,000 hectares hitherto occupied by over 10,000 members of the Samburu pastoralists for over 30 years,

the Park was born following a secretive deal entered into between the title holder, former President Moi, two American wildlife conservation entities - African Wildlife Foundation and Nature Conservancy - and the KWS. This deal received the presidential seal in November 2011 when President Kibaki endorsed it - despite having no legal authority to deal in land within the framework of the new constitution.¹⁶

While the creation of the park has received positive media reviews, the road towards its creation is littered with numerous human rights violations, including forced evictions, killings, the demolition of housing and numerous gender-based violence actions by state security officers, including documented rape.

Violence towards indigenous rights defenders

The brutal killing of Moses Ole Mpoke, a renowned Maasai land rights campaigner, in April 2011, ostensibly for his opposition to the government's decision to resettle 912 internally displaced families of the 2007 polls violence on a controversial 2,400-acre piece of land in Mau Narok, exposes the mortal danger faced by defenders of pastoralists' rights in Kenya. The fact that the government has taken no steps to apprehend those who executed Mpoke raises doubts as to its commitment to a culture of respectful disagreement, particularly in matters of a contentious nature affecting many indigenous groups. This event harks back to another assassination five years ago, that of Elijah Marima Sempeta, a human rights attorney, for publicly challenging a lease extension granted to the Magadi Soda Company by Kajiado County Council.

In general, threats against human rights defenders are on the rise. For instance, in February 2011, Charo wa Yaa, an indigenous rights activist from the Kenyan Coast was arrested by the Mombasa Criminal Investigation Department. He was charged with incitement to violence, having allegedly incited residents of a village in Mishomoroni, Kisauni District in Mombasa County - mostly Digo indigenous community members - not to vacate the "private" property of Trade Plus International. Similarly, armed police officers were dispatched to Olkaria in Naivasha in November 2011 to stop a planned demonstration by pastoralists, led by Andrew Korinko, against the environmental damage to their land occasioned by the geothermal projects in the area.¹⁷

Conclusion

The forthcoming elections in 2012 and the political re-alignments associated with it, as well as the activities of the International Criminal Court,¹⁸ continued to heighten political tensions in 2011, rendering constitutional implementation a high-stakes game pitting dominant communities - Kikuyu, Luo and Kalenjin - against each other. In this highly divided context, the voices of indigenous communities were muffled in 2011, rendering their advocacy efforts less than successful. This trend will continue unless there is increased unity of purpose among indigenous communities' advocacy agents. ○

Notes and references

- 1 **ACHPR 2003:** *Report of the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights*. Copenhagen: IWGIA.
- 2 Greatly inspired by the 1996 South African Constitution, as evidenced by the emphasis on rights as vehicles for the preservation of individual and communal dignity, the promotion of social justice and the realization of human potential, Kenya's Bill of Rights curtails attempts to limit rights often used by African governments - namely public order and morality. Through Article 24, the 2010 Constitution explains that constitutionally protected human rights can be circumscribed only by a specific law, and that such limitation will be permissible only if it is "reasonable and justifiable in an open and democratic society based on human dignity . . ."
- 3 The laws enacted include: the Commission on Administrative Justice Act, the Elections Act, the Judicial Service Act (No 1 of 2011), the Vetting of Judges and Magistrates Act; the Supreme Court Act; the Independent Offices Appointment; the Independent Electoral and Boundaries Commission Act; the Salaries and Remuneration Commission; the Political Parties Act; the Kenya Citizenship and Immigration Act; the Urban Area and Cities Act; the Kenya National Human Rights Commission; the National Gender and Equality Commission Act; the Commission on Revenue Allocation Act; the Environment and Land Court Act and the National Police Service Commission Act as well as the Kenya Citizens and Foreign Nationals Management Service Act.
- 4 The deputy president of the Court pointed to possibility of using the National Council on the Administration of Justice created by Article 34 of the Judicial Service Commission Act (2011) to further the implementation of the decision in the Endorois case. The Council is mandated to "ensure a co-ordinated, efficient, effective and consultative approach in the administration of justice and reform of the justice system" and is headed by the president of the Supreme Court with representatives from all the key organs of the state involved in the administration of justice.
- 5 *Ibrahim Sangor Osman & 1,122 others v The Minister of State for Provincial Administration and Internal Security & 10 others* [2011] eKLR Constitutional Petition No. 2 of 2011, High Court at Embu (per A O Machelule, Judge, judgment of 16 November 2011).

- 6 The phrase "chooses in action" refers to intangible property in land such as mortgages, property bonds etc.
- 7 Section 13(2), Environment and Land Court Act, Chapter 19 Laws of Kenya.
- 8 Miscellaneous Civil Application No. 305 OF 2004 (Judgment of 18 December 2006), IL-Chamus v Electoral Commission of Kenya and Attorney General of Kenya.
- 9 See, **Schade, Jeanette, 2011:** *Human rights, climate change, and climate policies in Kenya. How climate variability and agrofuel expansion impact on the enjoyment of human rights in the Tana Delta*; Research Mission Report of a joint effort by COMCAD (Bielefeld University), FIAN Germany, KYF, and CEMIRIDE.
- 10 **Susan Hawley, 2003:** *Turning a Blind Eye: Corruption and the UK Export Credits Guarantee Department*. London: The Corner House. pp. 28-30.
- 11 **Republic of Kenya:** *Kenya Vision 2030*.
- 12 Communication 276 / 2003 – Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, Decision on the Merits (African Commission on Human and Peoples' Rights 2010).
- 13 Report of the Working Group on the Universal Periodic Review (17 June 2010), paragraph 101.114 at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/144/88/PDF/G1014488.pdf?OpenElement>
- 14 **African Commission on Human and Peoples' Rights, 2011:** "Resolution 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" (5 November 2011).
- 15 Communication No. 381/09: Centre for Minority Rights Development, Minority Rights Group International and Ogiek Peoples Development Programme (on behalf of the Ogiek Community) v Kenya
- 16 *Capital News*, Kenya will protect its wildlife, asserts Kibaki (10 November 2011) at <http://www.capitalfm.co.ke/news/2011/11/kenya-will-protect-its-wildlife-asserts-kibaki>.
- 17 "Armed police officers were dispatched to Olkaria in Naivasha to stop a planned demonstration by pastoralists" – See **George Murage, 2011:** Pastoralists demo over Olkaria jobs called off. *Nairobi Star*. 10 November 2011 at <http://www.the-star.co.ke/local/rift-valley/48619-pastoralists-demo-over-olkaria-jobs-called-off>.
- 18 The ICC has committed four senior government officials, two of whom are leading contenders for the presidency, to trial for their role in the post-electoral violence that plagued Kenya in 2007-8.

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UGANDA

Indigenous peoples in Uganda include the traditional hunter/gatherer Batwa communities, also known as *Twa*, and the *Benet* and pastoralist groups such as the *Karamojong* and the *Ik*. They are not specifically recognized as indigenous peoples by the government.

The *Benet*, who number around 20,000 people, live in the north-eastern part of Uganda and are former hunter/gatherers. The 6,700 or so *Batwa*, who live primarily in the south-western region of Uganda, are also former hunter/gatherers. They were dispossessed of their ancestral land when the Bwindi and Mgahinga forests were gazetted as national parks in 1991.¹ The *Ik* number about 1,600 people and live on the edge of the Karamoja – Turkana region along the Uganda – Kenya border. The *Karamojong* people live in the north-east of Uganda and number around 260,117 people.²

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 who have been historically disadvantaged and discriminated against. This provision, while primarily designed or 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 169, which guarantees the rights of indigenous and tribal peoples in independent states, and it was absent in the voting on the UN Declaration on the Rights of Indigenous Peoples in 2007.



The Batwa

For the Batwa in Uganda, landlessness, illiteracy and little or no income remain major frustrations. The government has remained adamant in not recognizing Batwa as the rightful owners of the land from which they were evicted and hence it has been very difficult for them to obtain compensation. In terms of participation in political processes, very few Batwa people exercised their right to vote during the recent national and local elections in Uganda, and there was not one woman or man from the Batwa community who contested any elected office at either local or national level. Several factors explain the Batwa's low participation in the political processes in their localities. The most outstanding of these, however, are

the accounts of biased decisions made by local council courts in favor of other communities, which has instilled in the Batwa a negative perception of local councils as institutions that perpetuate their marginalization. The continued traditional perception among other communities that the Batwa are backward and primitive has also dented their civic consciousness.⁵ Their political participation thus remains limited and their socio-economic rights are still ignored by the state and society.⁶

The Batwa have, however, continued their relentless struggles against discrimination through their representative organization, the United Organisation for Batwa Development in Uganda (UOBDU), ensuring a presence in regional and international events such as the African Commission and UN meetings.

3D model of ancestral territory proves an important advocacy tool

One of the major developments welcomed by the Batwa was the unveiling of the Three – Dimensional Modeling (P3DM) of their ancestral territory, Bwindi Impenetrable National Park, in July 2011. With the number of Batwa elders slowly decreasing, producing the 3D model and populating it with cultural knowledge across generations and genders drawn from memory provided an opportunity to document and store the Batwa's unique cultural heritage. Such a store of information can be used to open up job opportunities for Batwa within Bwindi, either as tourist guides, wardens or rangers or through other tourism enterprises such as honey and beeswax, handicrafts and others. The communities also hope that the information depicted on the model can be used as a platform for discussions with protected area managers regarding increased access to Bwindi and, in particular, access to specific locations and resources which are culturally significant to the Batwa, such as sacred sites.⁷ The model was developed by Batwa community members with the support of UOBDU, and with the technical and financial facilitation of various donor organizations.

The launch of the 3D Model of their ancestral territory attracted several government leaders, both at local and national level, along with civil society organization representatives. During the event, Batwa men and women took centre stage to explain the map, displaying their amazing knowledge of the forest and requesting that the government allow them to resettle inside the park and access the forest for medicinal and spiritual purposes.

Increased school attendance

Another positive development has been an increase in the number of Batwa children who attend school - albeit through private (NGO) sponsorship. Enrolment levels have been low because Batwa live in hard-to-reach and therefore hard-to-teach areas. In 2011, however, with support from civil society organizations such as Minority Rights Group International (MRG), through UOBDO, the numbers have gone up. Lack of education is one strong factor that explains the continued marginalization of the Batwa as a community, and educating their youth and children is one way of empowering them and ensuring the quality development of their community.⁸

The Benet

Despite a landmark victory against the government in 2004, the Benet continue to suffer from the effects of their evictions from the Mt. Elgon National Park. Landlessness and its resulting negative effects continued to top the list of frustrations for the Benet community in 2011. Nonetheless, government attempts to resettle around eight landless families (approx. 132 people)⁹ of the Kapsekek, a Benet sub-ethnic group who were made landless by the evictions from the Mt. Elgon National Park, are seen as a ray of hope that there may eventually be a permanent solution.

In March 2011, the government instituted a committee to investigate how land was allocated to the Kapsekek families, and corruption and personal gratification were found to have tainted the allocation exercise. The committee's findings indicated that the governmental officials involved in the process of resettlement had allocated large chunks of land to themselves and left only small plots for the rightful beneficiaries. The land was withdrawn from the officials and, although it has not yet been redistributed to its rightful owners, it can be seen that the government is beginning to show and demonstrate an interest in issues affecting the Benet.

The Karamojong

The influx of investment and the government's ever-shifting approaches to development¹⁰ continue to affect the lifestyle of the Karamojong of Karamoja region.

The current debate on the government's sedentarization of pastoral communities¹¹ is exacerbating the problem of land insecurity given that 80% of land is already gazetted to secure wildlife reserves. Karamoja region continues to experience a prolonged drought that commenced in September 2010 and has led to degradation of the natural resources, as evidenced by considerable overgrazing and deforestation, aggravating the situation for the pastoralists. The drought, coupled with the degradation, is forcing communities to migrate and move with livestock in search of water and pasture.¹²

Uganda Pastoralists' Week

Through the representation of COPACSO (Coalition of Pastoralists' Civil Society Organizations), Karamojong pastoralists actively participated in what has become an annual event: Uganda Pastoralists' Week (UPW) celebrated from 8 to 11 November 2011 in Kampala.

The event, with the theme of "Pastoralists: our contribution to national development", aimed to showcase how the forms of life and modes of production of pastoralists and agro-pastoralists are viable economic and social resources that can be utilized in the dryland areas of Uganda. The event attracted pastoralists from all over the region and gave them an opportunity to engage with the policy makers, interact amongst themselves and showcase their rich culture in an exhibition officiated by the Minister of Trade and Industry.¹³

Signs of improved political attention to Karamoja affairs

In May 2011, the president elevated the ministry in charge of Karamoja affairs to a full ministry under the leadership of the First lady, complete with a state minister for Karamoja affairs. Although it is still too soon to review the relevance and efficiency of this ministry, its elevation can be interpreted as the government's attempt to scale-up interventions to address water scarcity, food insecurity, insecurity and poverty in Karamoja region.

Also important to note is the new breed of Karamoja parliamentarians who were ushered in by the 2011 national elections. The leaders who make up the Karamoja Parliamentary Group (KPG) show a resolve to speak out against the

predicament of the people of Karamoja region and task government and civil society to act. This has been demonstrated in the manner and style in which they have conducted press conferences and also, as a team, responded to the disasters hitting the region, such as the current drought and famine. ○

Notes

- 1 **United Organisation of Batwa Development in Uganda (UOBDU), 2004:** *Report about Batwa data*. August 2004, Uganda, p.3.
- 2 **Minority Rights Group International (MRG), 2011:** Land, livelihoods and identities; inter-community conflicts in East Africa (p.6), <http://www.minorityrights.org/download.php?id=1076>
- 3 **Minority Rights Group International (MRG), 2001:** Uganda: The marginalization of Minorities (p.9), www.minorityrights.org/download.php?id=143
- 4 *Land Act (1998)*, Articles 2, 32 and *National Environment Statute (1995)*, Article 46.
- 5 **Minority Rights Group International (MRG), 2011:** *Land, Livelihoods and Identities: Inter-community conflicts in East Africa*. <http://www.minorityrights.org/download.php?id=1076>
- 6 **Cultural Survival 2010:** *Quarterly magazine*, <http://www.culturalsurvival.org>
- 7 United Organisation for Batwa Development in Uganda (UOBDU), 2011 report.
- 8 Minority Rights Group International (MRG) – project report – 2011.
- 9 Benet Lobby Group – a representative organization for the Benet community.
- 10 **Mercy Corps, 2011:** *Pastoralists' Peace and Livelihoods: Economic interventions to build peace in Karamoja, Uganda*. <https://docs.google.com/viewer?a=v&q=cache:hx7xYuaCO-wJ:elliott.gwu.edu/assets/docs/acad/ids/capstone-2011/mercy-corps->
- 11 **Minority Rights Group International (MRG) 2011:** *Land, Livelihoods and Identities: Inter-community conflicts in East Africa*. <http://www.minorityrights.org/download.php?id=1076>
- 12 CEWARN – Karamoja Cluster, 2011 report, <http://www.cewarn.org>
- 13 **Coalition for Pastoralists Civil Society Organizations in Uganda:** *Report on Uganda Pastoralists Week - 2011*

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TANZANIA

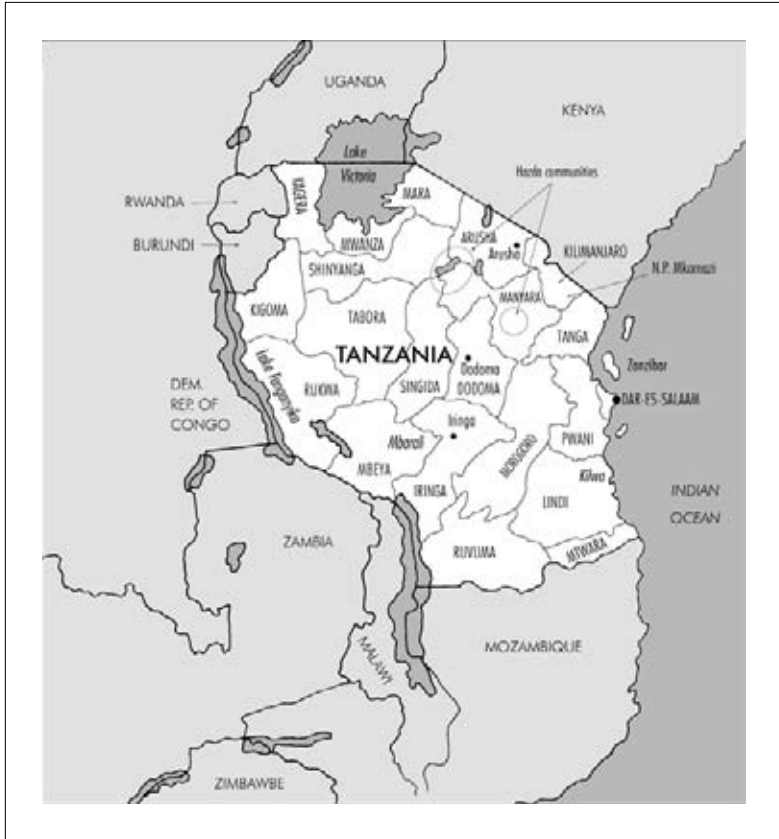
Tanzania is estimated to have a total of 125 – 130 ethnic groups, falling mainly into the four categories of Bantu, Cushite, Nilo-Hamite and San. While there may be more ethnic groups that identify themselves as indigenous peoples, four groups have been organising themselves and their struggles around the concept and movement of indigenous peoples. The four groups are the hunter-gatherer Akie and Hadzabe, and the pastoralist Barabaig and Maasai. Population 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 Akie (Ndorobo) at 5,268.

While the livelihoods of these groups are diverse, they all share a strong attachment to the land, distinct identities, vulnerability and marginalisation. They experience similar problems in relation to tenure insecurity, poverty and inadequate political representation.

Tanzania voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007 but it 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.

A proposed new constitution for Tanzania

Since it attained political independence 50 years ago, Tanzania has had five constitutions.³ All five have been characterized by a lack of legitimacy stemming from the fact that they were drafted without any consultation processes with the people of Tanzania. It is this lack of legitimacy that has fuelled the present



popular demand for a new constitution. Following sustained pressure, the government succumbed and, in 2011, initiated a process aimed at leading to the promulgation of a new constitution.

It was expected that the process would be marked by a profound break with the past, ensuring wide-scale national consultations at all stages. This was, however, not the case, as demonstrated by the first draft of the Constitution Review Bill of 2011, which provided for complicated procedures, making it very difficult for people to become involved in the drafting process. For example, the draft Constitution Review Bill was available only in English despite the fact that less than 20 per cent of Tanzanians speak English, making it difficult or completely impossible for the vast majority to understand the contents of the Bill.

Another problem was that the objectives of the Bill were not clear in terms of whether the current constitution should be amended or a new constitution enacted. Worse still, the draft Bill contained a list of “inviolable matters” in respect of which public discussion was to be excluded. These included matters related to the state of the Union between Tanganyika and Zanzibar, the presidency, and all issues of human rights; matters that essentially form the fabric of a constitution.

To make matters worse, the draft Bill was debated within unreasonably restricted and generally technocratic circles and public hearings were only conducted in Dodoma, Dar-Es-Salaam and Zanzibar.

There were widespread protests against this draft Bill, and strong and organized civil society advocacy against it until, finally - in a move that attested to the growth of democracy in Tanzania - , the draft Bill was withdrawn in order to address people’s concerns. Following some amendments, the Bill was tabled in parliament once more and, on 30 November 2011, the President signed it into law, now as the Constitutional Review Act 2011. There are two schools of thought regarding this Act. The first comprises those who believe the Act to be totally flawed, to the extent that it will give birth to the worst constitution in the history of Tanzania. One of the weaknesses of the Act is the fact that the president appoints members of the Constitutional Review Commission and issues the Terms of Reference for them. According to the Tanzanian Peace and Justice Commission, the Act starts and ends with the president, meaning that it is likely to produce a “president’s” constitution and not a “people’s constitution. For its part, the Tanganyika Law Society (the Bar Association of mainland Tanzania) envisages going to court to invalidate the Act.

Another school of thought comprises those who believe that, despite some weaknesses in the Act, the proposed new constitution will be far better than the current one. This belief is pegged on the conviction that, since this is the President’s last term in office, he wants to leave a long-lasting and consequential legacy. His predecessors did the same; for example, the founding president agreed to the inclusion of the Bill of Rights in the Constitution in 1984, one year before leaving office, although the people had been demanding this since 1961. Now that the Act is in force, indigenous peoples are, first and foremost, interested in effectively engaging in the process.

Indigenous peoples' engagement with the constitutional process and their expectations

For the purpose of synergy and creating a strong and focused group, pastoralist and hunter-gatherer organizations created a Technical Working Group in December 2011 charged with coordinating their meaningful participation in the constitution-making process. This Technical Working Group is called the *Pastoralists and Hunter-Gatherers Katiba Initiative* (PHGKI). The Convener/Chair of the Initiative is an umbrella organization known as the Tanzania Pastoralists and Hunter-Gatherers Organization (TAPHGO). Another umbrella organization, namely PINGOs Forum, is the secretariat for the Technical Working Group. Member organizations of the Initiative's Steering Committee are: the Association for Law and Advocacy for Pastoralists (ALAPA); Ujamaa Community Resource Team (U-CRT); Ngorongoro NGOs Network (NGONET); Ngorongoro Youth Development Organization (NYDA); Tanzania Pastoralist Community Forum (TPCF) and Tanzania Natural Resource Forum (TNRF). In addition to the Technical Working Group, community focal points have also been elected in each Zone. In the context of Tanzania, a Zone is an administrative unit comprising three or more provinces (called regions). These community focal points are expected to attend intensive Training of Trainers courses in order to be able to train others on the ground. The overall objective of the initiative, which is staffed on a full-time basis by Advocate William Olenasha (former advisor to the Government of South Sudan on land and customary law issues), is to ensure that pastoralists' and hunter-gatherers' concerns are integrated into the final constitution.

Indigenous peoples' main demand relates to protection of land and natural resource rights by making land tenure security a constitutional category and not leaving it to normal legislative procedures. This is not the case in the current constitution and this permits the enactment of laws that undermine both individual as well as collective land rights for Tanzanians, in particular indigenous pastoralists and hunter-gatherers. If land tenure security were a constitutional category, it would be difficult to enact a law that undermines Tanzanians' land rights, for doing so would be tantamount to a contravention of the constitution itself.

Similarly, indigenous peoples demand that the proposed new constitution should address historical land injustices. They believe that, without the redressing of historical injustices, the proposed new constitution will not bring about a sense

of fair treatment of and equality among all Tanzanians. Instead, land conflicts involving small-scale producers, on the one hand, and foreign direct investors and government departments, on the other, will escalate.

The Universal Periodic Review

The Universal Periodic Review (UPR) is the latest human rights reporting mechanism created by the United Nations Human Rights Council. Under this mechanism, states examine other states. This is different from treaty bodies such as the International Covenant on Economic Social and Cultural Rights (ICESCR) in which 18 independent experts (the Committee on Economic Social and Cultural Rights) review a country's periodic report and issue Concluding Observations.

In terms of periodicity, each member of the United Nations is to be examined over a 4-year cycle. The main weakness of the mechanism is that critical issues can be influenced by politics. This can be seen, for example, in alliances between countries with shared interests.

This weakness apart, the UPR gives great room for civil society participation via the submission of stakeholder reports with additional information and suggestions for questions to be raised, and by participating and lobbying before and during the UPR sessions. Another advantage is that all human rights-related issues can be raised, as opposed to examinations by treaty bodies where issues must be confined to matters covered by that particular treaty. In 2011, indigenous peoples in Tanzania made use of the UPR mechanism by submitting a stakeholder report. In preparation for this, indigenous organizations in Tanzania formed a stakeholder coalition made up of more than 20 pastoralist and hunter-gatherer organizations.

In their stakeholder report, indigenous peoples raised issues pertaining to non-recognition, recurrent forced evictions without compensation, land dispossession, lack of access to health care and education, and forced destruction of cultural heritage. Tanzania was reviewed by the UPR Working Group during its 12th session held in Geneva from 3 to 14 October 2011. After the Review, recommendations were issued, and a number of good recommendations were made with regard to the rights of indigenous peoples.⁴ These recommendations focused on the recognition of indigenous peoples in Tanzania, the adoption of measures to protect the cultural heritage and way of life of indigenous peoples, the applica-

tion of the right to free, prior and informed consent, the credible investigation of forced evictions, the drafting of an effective legal framework for the protection of indigenous peoples' rights and the setting up of effective consultation mechanisms with organizations working with indigenous peoples.

The Government of Tanzania, however, did not immediately accept the recommendations relating to the human rights of indigenous peoples but stated that these would be examined by the government and that it would provide responses to the recommendations no later than the 19th session of the Human Rights Council in March 2012. These responses will be included in the final UPR outcome report.

In view of the above, indigenous peoples immediately launched lobbying and advocacy strategies to ensure that the recommendations that were put on hold are adopted by the Government of Tanzania ahead of the 19th session of the Human Rights Council. As part of this advocacy strategy, two important meetings were held in 2011. The first was held in Dar-Es-Salaam on 1 December 2011 and was organized by the Commission for Human Rights and Good Governance (CHRAGG), which is the national human rights institution for Tanzania. The meeting was organized with financial assistance from PINGOS Forum and participants included members of academia and civil society, senior government officials and commissioners from the CHRAGG. Another meeting, involving mainly senior government officials, regional representatives of the Office of the UN High Commissioner for Human Rights (OHCHR) and selected NGO representatives took place in Morogoro from 12 to 14 December 2011, organized by the Directorate of Constitutional affairs (DCA) under the Ministry of Justice and Constitutional Affairs (MJCA).

At the first meeting, a presentation was made by the Coalition of Pastoralist and Hunter-Gatherer Organizations with a view to highlighting the UPR recommendations relating to indigenous peoples. A concrete outcome of the meeting was that a national UPR Coalition was formed under the CHRAGG which promised to champion pastoralists' and hunter-gatherers' issues for adoption.

At the second meeting, there was a presentation by indigenous peoples followed by an interactive dialogue on a wide range of issues, including the contextual applicability of the term "indigenous peoples".

The next step before the 19th session of the Human Rights Council is for the DCA under the MJCA to come up with a cabinet paper which encompasses all recommendations for approval by the Cabinet. Indigenous peoples are optimistic that their issues will be adopted.

The International Covenant on Economic, Social and Cultural Rights

Tanzania has signed and ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR). In its pre-sessional working group, which was held in Geneva from 5 to 9 December 2011, the Committee on Economic Social and Cultural Rights (CESCR) prepared a list of questions for the United Republic of Tanzania, and indigenous peoples operating under the Coalition of Pastoralists and Hunter-Gatherer Organizations (“The Coalition”) sent a “list of issues” to the Committee as input for the questions.

In the “list of issues”, which is available in the website of the Office of the High Commissioner for Human Rights,⁵ the coalition asserts that Tanzania is in violation of the ICESCR as reflected in the recurrent incidences of forced evictions without compensation, and elaborates that evicted indigenous families are still landless, homeless and subjected to conflicts with other land users. This situation makes them more vulnerable to poverty and makes it nearly impossible for them to access fundamental social services such as education and health facilities. Tanzania is scheduled to be examined by the CESCR at its 51st session in November 2012.

A historic achievement

According to the laws of Tanzania, a village is the only legally-recognized autonomous entity on land matters, meaning that in order to get a land certificate for the whole community, members of the community concerned must form themselves into a village for the purposes of recognition. In the case of a village, a certificate called a “Certificate of Village Land” is issued by the Commissioner for Lands. Once a Certificate of Village Land is issued, the village authorities, in collaboration with the Commissioner for Lands, can issue Certificates of Customary Right of Occupancy (CCROs) to individual villagers.

While this arrangement works well for pastoralists, hunter-gatherers are a numerical minority wherever they live and they cannot constitute the number required by law to form a village. As a result, hunter-gatherers in Tanzania have, for 50 years, been subjected to decisions made on their behalf by mainstream communities who have invaded their lands, and they have never been able to acquire a land certificate for their community.⁶

The Hadzabe hunter-gatherer people have found themselves in such a situation. However, in November 2011, they were granted a Collective Community Land Certificate, which is equivalent to the Certificate of Village Land issued to a community which forms itself into a village. This certificate was issued in the name of the Hadzabe hunter-gatherers. Some members of the Hadza community were also issued with Certificates of Customary Right of Occupancy (CCRO). This is an historical development in Tanzania, and it can serve as a precedent to the effect that a numerical minority within a village can in fact be granted its own land certificate without necessarily meeting the qualification for forming a village, taking into account their unique lifestyles and minority status. This successful decision was the outcome of persistent lobbying and advocacy work carried out by the NGO Ujamaa Community Resource Trust (U-CRT).

Developments on indigenous peoples' involvement with REDD in Tanzania

During 2011, indigenous peoples in Tanzania continued to engage in the REDD+ (Reducing Emissions from Deforestation and Forest Degradation in Developing Countries) process both locally and internationally, with a view to ensuring that different plans and strategies for the implementation of REDD are indigenous peoples' rights compliant. ALAPA, for example, represented the indigenous peoples of Tanzania in the Global Dialogue of Indigenous Peoples on the Forest Carbon Partnership Facility (FCPF), which was held in Gaigirgurdub, Guna Yala, Panama from 27 to 29 September 2011.

An important outcome of this meeting was the formulation of a Global Action Plan which aims to ensure that the FCPF implements the Cancún agreement on REDD+, particularly in relation to the full and effective participation of indigenous peoples. Other aspects of the Cancún Agreement to be implemented by the FCPF include respecting the rights of indigenous peoples and their traditional knowledge as well as ensuring the timely provision of information and safeguards for Monitoring, Reporting and Verification (MRV). It was also agreed in Panama that there was a need to hold such consultations at the regional level. ALAPA is a member of the regional steering committee tasked with preparing the Pan-African Indigenous Peoples Consultation with the Forest Carbon Partnership Facility to be held in Arusha, Tanzania from 19 to 24 April 2012.

A milestone achievement following consistent lobbying is the government's appointment of ALAPA to represent the indigenous pastoralists and hunter-gatherers of Tanzania in the Legal, Governance and Safeguards Unit of the National REDD Technical Working Group. This Technical Working Group is under the National REDD Taskforce, which is coordinated by the Vice-President's Office (Division of Environment) and the Ministry of Natural Resources and Tourism (MNRT) of the Government of Tanzania respectively. ○

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, **Madsen, Andrew, 2000: *The Hadzabe of Tanzania. Land and Human Rights for a Hunter-Gatherer Community***. Copenhagen: IWGIA.
- 3 These are: the Independence Constitution of 1961, the Republican Constitution of 1962, and the Interim Constitution of the United Republic of Tanganyika and Zanzibar of 1964; the Interim Constitution of 1965 and the Constitution of the United Republic of Tanzania of 1977.
- 4 Draft Report of the Working Group on the Universal Periodic Review. Human Rights Council Working Group on the Universal Periodic Review. Twelfth session. Geneva, 3-14 October 2011. A/HRC/WG.6/12/L.2
- 5 <http://www2.ohchr.org>
- 6 For example, NAPILUKUNYA in Kiteto where the Akiye hunter-gatherers live does not meet the requirements for becoming a fully-fledged village, and it is currently a sub-village of KIMANA village. In this village, owing to their numerical minority, the Akiye have no say on the village council and its decisions, including on land matters.

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CENTRAL AFRICA

RWANDA

The indigenous Batwa population of Rwanda is known by various names: ancient hunter-gatherers, Batwa, Pygmies, Potters, or the “historically marginalized population”. The Batwa live throughout the country and number between 33,000 and 35,000 people out of a total population of around 11,000,000, i.e. 0.3% of the population.¹ They have a distinct culture, often associated with their folkloric and traditional dance and the intonation of their specific language.

Prior to 1973 when national parks were created in Rwanda, the Batwa lived mainly from hunting and gathering in the territory’s natural forests. They were expelled from their ancestral lands with no warning, compensation or other means of subsistence and they now constitute the poorest and most marginalized ethnic group in Rwanda.

Their complete lack of representation in governance structures has been a great problem for the Batwa. However, Article 82, para 2 of the Rwandan Constitution, amended by revision no. 2 of 8 December 2005, stipulates that eight members of the Senate must be appointed by the President of the Republic, who shall also ensure representation of historically marginalized communities. However, at the moment the Batwa have only one representative in the Senate.

The Rwandese government still does not recognise the indigenous or minority identity of the Batwa and, in fact, all ethnic identification has been banned since the 1994 war and genocide, even though the government voted in favour of the UN Declaration on the Rights of Indigenous Peoples. Because of this unwillingness to identify people by ethnic group, there is no specific law in Rwanda to promote or protect Batwa rights.

The situation of the Batwa in Rwanda continued to be a cause for great concern in 2011. Their major problems were a lack of land, a lack of employment and income opportunities, a lack of food, extremely poor housing and sanitation conditions, poor health, a lack of education, a lack of attention from local authori-



ties, a lack of access to justice and a lack of influence over the decision-making processes that affect their daily lives.

Housing

The government programme to destroy traditional thatched huts and build modern houses for Batwa families continued in 2011. The authorities did not consult COPORWA before starting to destroy the Batwa huts. Most of the donors in Rwanda criticised the policy and programme implementation since, in many cases, it led to the destruction of traditional Batwa homes without any new modern

houses being constructed in their place, thus leading to complete homelessness and increased vulnerability on the part of the Batwa people. Due to pressure from donors and to the advocacy actions of the Batwa organisation, the *Communauté des Potiers du Rwanda* (COPORWA) and others, the Rwandan government had to stop destroying the traditional Batwa huts and put greater efforts into building sufficient modern houses for these people.

It is estimated that 80% of traditional Batwa huts have now been destroyed, and that around 70% of the Batwa have been provided with newly constructed houses. By the middle of 2011, the authorities started to consult COPORWA and they appointed a focal point who is now in charge of the problems of marginalised groups within MINALOC (Ministry of Local Administration).

Education

Around 95% of Batwa children attend primary school, as the Government of Rwanda facilitates basic education; however, only around 45% of Batwa children are in secondary school and very few (5%) Batwa youth go on to study at university. In 2011, however, 11 Batwa youth completed their university studies, with 22 more continuing their studies into 2012.

Universal Periodic Review of Rwanda

Rwanda was up for review during the tenth session of the UN Working Group on the Universal Periodic Review (UPR), on 24 January 2011. Of the 73 recommendations made by states, one mentioned the Batwa and one related to indigenous peoples. Chile made a recommendation to “Adopt measures aimed at reducing poverty in the Batwa community and its full integration in society”. This recommendation enjoyed the support of Rwanda, which considered that it was already in the process of being implemented. On the other hand, the recommendation made by Malaysia to “Intensify measures to improve access by minority groups and indigenous people to basic social services, such as health, education, employment, and occupation” was immediately rejected by Rwanda, which considered it either not applicable or irrelevant.²

UN expert reports on widespread discrimination of the Batwa

In January 2011, the UN Human Rights Council dispatched a senior expert to Rwanda on an eight-day fact-finding mission to examine the situation of the “different population groups reflecting the ethnic, religious and linguistic diversity in the country”.³

The independent expert on minority issues, Gay McDougall, visited Rwanda from January 31 to 7 February. In Rwanda she organised a press conference and visited different institutions and ministries. She also visited Batwa families in the field together with a COPORWA delegation. The outcome of the mission was a report to the United Nations and the Government of Rwanda recommending, in particular, that the problems of Batwa be addressed by ensuring that the education of Batwa is assured and facilitated, that they are represented in different institutions and that income-generating activities are increased as a way of reducing the extreme poverty in which they live. The report, which was presented to the General Assembly of the Human Rights Council on November 28, contains a section on the situation of the Batwa which summarizes the following:

*There are numerous communities in Rwanda that identify themselves as Batwa. The Government has categorized them as “historically marginalized people”. They currently live in conditions of great hardship and poverty on the margins of mainstream society. As a population group, they have extremely low levels of education and health care, live in dwellings that offer no protection from harsh climatic conditions and they are virtually absent from the public life of the country. They were removed from their ancestral forests without consent or compensation, face widespread discrimination, particularly in employment, and have no viable means of livelihood. While the Government has instituted assistance programmes, those programmes have failed to be effective for the Batwa as a whole.*⁴

COPORWA is now regularly invited to different important meetings organised by the Rwandan government, and different ministers visit COPORWA's office to find out how to improve the conditions of the Batwa population.

Roundtable meeting

In June 2011, a roundtable meeting, organised by COPORWA, was held between the government, represented by the Ministry of Local Government, civil society, the Rwandan Human Rights Commission and international partners and donors such as IWGIA, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), Norwegian People's Aid (NPA), the European Union, TROCAIRE and different embassies based in Kigali.

The roundtable meeting discussed the situation of the Batwa in general and specifically focused on housing and land, with regard to which strong criticism was voiced by civil society regarding the destruction of traditional Batwa huts by local authorities.

The meeting agreed that much still needs to be done in terms of improving the living conditions of the Batwa people. It was suggested by the Ministry of Local Government that an assessment study of the situation and needs of the Batwa – including issues of access and rights to land - should be carried out in partnership between the ministry and civil society, through which best practices could also be identified and the Batwa people themselves be empowered to identify their own solutions.

COPORWA activities in 2011

COPORWA continued its activities in 2011, including advocacy and dialogue with the government, general awareness raising and assistance to Batwa communities, including:

- National awareness raising on the situation of the Batwa people through radio programmes;
- Protection of the rights of Batwa people in Nyaruguru District in the southern province of Rwanda, who were the victims of land confiscations and other violations;
- Organisation of a 16-day campaign against gender-based violence in Nyaruguru District;

- Training of 33 community workers in Nyaruguru District to focus on advocacy and monitoring/verification of whether the local authorities are carrying out activities/providing support to Batwa communities in terms of education, health, human rights and income-generating activities;
- Initiation of collaboration with the Ministry of Commerce and Trade, which donated six motorcycles and 20 bikes to help COPORWA's field staff work with Batwa people all over Rwanda;
- Supporting Batwa cooperatives in farming, pottery and the construction of bricks and roofs;
- Supporting Batwa youth in secondary schools, university and vocational training (sewing, carpentry and construction);
- Training Batwa communities, their leaders and local authorities in the fight against poverty. ○

Notes and references

- 1 According to a socio-economic survey carried out in 2004 by CAURWA (Community of Indigenous Rwandans) now known as COPORWA (Community of Rwandan Potters) in collaboration with the Statistics Department of the Ministry of Finance and Economic Planning.
- 2 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/117/93/PDF/G1111793.pdf?OpenElement>
- 3 http://www.iwgja.org/news/search-news?news_id=98
- 4 See more on: http://www.iwgja.org/news/search-news?news_id=442

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BURUNDI

The Batwa are the indigenous people of Burundi. A census conducted by UNIPROBA (*Unissons-nous pour la Promotion des Batwa*) in 2008 estimated the number of Batwa in Burundi to be 78,071¹ or approximately 1% of the population. These people have traditionally lived by hunting and gathering alongside the Tutsi and Hutu farmers and ranchers, who represent 15% and 84% of the population respectively.

The Batwa live throughout the country's provinces and speak the national language, Kirundi, with an accent that distinguishes them from other ethnic groups. No longer able to live by hunting and gathering, they are now demanding land on which to live and farm. A census conducted by UNIPROBA in 2008 showed that, of the 20,155 Batwa households in Burundi, 2,959 were landless, or 14.7% of the total. And, of these landless households, 1,453 were working under a system of bonded labour, while the other 1,506 were living on borrowed land. It should, moreover, be noted that those households that do own land have very small areas, often no more than 200 m² in size.

Some positive actions are being undertaken in Burundi, aimed at encouraging the political integration of the Batwa. This integration is the result of the implementation of a number of laws and regulations in force in Burundi, including the Arusha Accord of 28 August 2000, the National Constitution of 18 March 2005 and the 2010 Electoral Code, which explicitly recognise the protection and inclusion of minority ethnic groups within the general system of government.² The 2005 Constitution sets aside three seats in the National Assembly and two seats in the Senate for Batwa. Burundi abstained from the vote on the UN Declaration on the Rights of Indigenous Peoples.

The main human rights violations in Burundi in 2011

A number of serious human rights violations took place in Burundi over the course of 2011: restrictions on the right to freedom of expression, extrajudicial



arrests and executions perpetrated by the security forces, death threats against human rights defenders, cases of torture and ill-treatment during questioning, the arbitrary detention of members of the opposition parties, rapes, restrictions on the right to a fair hearing, and judicial harassment of leaders of civil society associations, journalists, etc. on the basis of unfounded allegations. Serious cases of corruption and financial embezzlement were also raised but not addressed.

In terms of the Batwa more specifically, during 2011 they also suffered different human rights violations. The information below offers an overview with regard to the Batwa's access to fair justice, right to education, participation in decision-making bodies and land situation in Burundi.

Access to fair justice

The Batwa suffer from oppression and a lack of fair justice. In the summer of 2011, a young Batwa “maid” (domestic servant) was tortured with burns by her employer in Musaga commune, Bujumbura municipality, simply for asking for her wages. Under pressure from UNIPROBA, the woman in question was arrested and detained but, unfortunately, she was released a few days later.

On 18 August 2011, a Batwa Senator, Vital Bamanze, and a Batwa official from the State Inspectorate Office, Léonard Habimana, were beaten up by the police and intelligence services for denouncing the unlawful trade in fuel being conducted under cover of these same services. A complaint was lodged but the case has made no legal progress so far.

A Batwa Member of Parliament, Alfred Ahingejeje, had insults hurled at him by a primary school teacher in his native province of Cibitoke. He informed the police, and the person in question was arrested, admitting his guilt. The Public Prosecutor in the province decided, however, to free the guilty party without trial because he was a member of the ruling party. Mr Ahingejeje continues to receive anonymous phone calls threatening him unless he drops the legal proceedings.

Also during 2011, UNIPROBA became aware that Mpimba central prison was now holding 105 Batwa prisoners, most of them youths accused of robbery. Some of these inmates have spent years behind bars with no family visits, no trials, court appearances or files. This minority thus requires specific attention, particularly with regard to the consideration of their cases in the different courts. This would seem to be a common situation in all of the country’s prisons.

In response to this problem of access to justice, UNIPROBA recently recruited two legal facilitators to encourage civic mobilisation and provide legal assistance to the Batwa.

The right to education

Another major problem that affects the Batwa more than other groups in Burundi is illiteracy. The roots of this problem stem from the marginalisation, discrimination and extreme poverty from which they suffer. The consequences of this fundamental problem are felt in the lack of Batwa intellectuals, their failure to legalise

their marriages, their failure to register their children with the Registry Office, and their failure to register their properties, for those who own them. With many of them unable to read or write, they have little knowledge of the law (administrative and legal procedures) or of their rights.

Participation in decision-making bodies

In terms of their participation in decision-making bodies, the Batwa are co-opted into parliament. They are also represented in the State Inspectorate Office and the National Commission for Land and Other Assets. At the local level, there are some representatives on the communal councils of the areas in which the Batwa live.

UNIPROBA regrets the fact that there was no effective consultation on the part of the National Electoral Commission during the 2010 elections and that some of the provisions of Burundi's national constitution clearly prevent the Batwa from participating in decision-making bodies, for example, Article 129 that stipulates that the government of Burundi should be composed of 40% of Tutsi Ministers and Vice-Ministers and 60% of Hutu Ministers and Vice-Ministers without specifying a percentage for Batwa peoples. It should also be noted that the make-up of the National Independent Human Rights Commission has completely failed to include any Batwa representatives.

The Batwa fear that they will not be represented on the Truth and Reconciliation Commission and that changes expected to the national constitution in 2012 risk disadvantaging the Batwa yet further.

Land situation of Batwa in Burundi

The issue of access to land and natural resources lies at the root of the Batwa's vulnerability. Many Batwa have no farmland: some of them live on tiny plots, while others are subjected to a feudal system (Ubugererwa) that remains in existence to this day.

The Batwa land distribution project implemented by UNIPROBA with funding from IWGIA came to an end in 2011. Through this project, 12,167 Batwa households benefited from land in 14 of the country's provinces. These lands will, however, require regular monitoring to ensure their beneficiaries do not sell them. It is

also extremely important that they are recorded in the land registry and certificates issued as this is a requirement of the new Land Code adopted by the Burundi government on 9 August 2011, which specifies that all landowners must have a land title. Issues regarding the protection of vulnerable groups (widows, orphans, landless and Batwa) were not, however, taken sufficiently into account in this code. The issue of the marshlands, for example, was decided without taking account of the Batwa's traditional use of these lands. ○

Notes

- 1 **UNIPROBA:** *Rapport sur la situation foncière des Batwa du Burundi*, August 2006 - January 2008, Bujumbura, p16.
- 2 See Law No. 1/10 of 18 March 2005 implementing the Constitution of the Republic of Burundi.

Vital Bambanze is a Mutwa from Burundi. He is a founding member of UNIPROBA and Chair and Central Africa Representative of the Indigenous Peoples of Africa Coordinating Committee (IPACC). He is now a member of the Senate and of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). He has a degree in Social Arts from the Department of African Languages and Literature, University of Burundi.

DEMOCRATIC REPUBLIC OF CONGO

Indigenous Peoples is the term accepted by the government and civil society organisations when referring to the Pygmy people of the Democratic Republic of Congo (DRC). The Pygmy presence pre-dates that of other ethnic groups and they represent a vulnerable and threatened minority with human and socio-economic characteristics distinct from those of other local populations. They are thus also Indigenous Peoples within the meaning of international law.

The government estimates that there are around 600,000 Pygmies in the DRC (1% of the 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 ten of the country's eleven provinces and are divided into four main groups: the Bambuti (Mbuti), the Bacwa (Baka), the Batwa (Twa) of the west and of the east.

The life of indigenous peoples in the DRC is closely linked to the forest and its resources, but in the face of external pressure, especially from logging and ongoing forest reforms, the indigenous peoples are increasingly being stripped of their ancestral land and forced to adopt a sedentary life under marginal conditions. This is leading to a weakening of their traditional economy, the irreparable abandonment of their cultural practices and increasing poverty.

There is no law or policy for the promotion and protection of indigenous peoples' rights in the DRC. However, in 2009, a report delineating a strategic framework for the preparation of a Pygmy development programme and suggesting the creation of an Indigenous Peoples Act, was validated through a national workshop organised by the Ministry of Environment, Nature Conservation and Tourism. The DRC is a signatory to the UN Declaration on the Rights of Indigenous Peoples.

There is no law or policy for the promotion and protection of indigenous peoples' rights in the DRC. However, in 2009, a report delineating a strategic framework for the preparation of a Pygmy development programme was validated through a national workshop organised by the Ministry of Environment, Nature Conservation and Tourism (MECNT). This report suggested the creation of an Indigenous Peoples Act. The DRC is a signatory to the UN Declaration on the Rights of Indigenous Peoples.

Forest zoning

The DRC has been engaged since 2002 in a process of forestry reform, with the support of the World Bank. This commenced with the adoption of a new Forest Code regulating the forestry sector, which was to be followed by forest zoning and community forestry. However, since the adoption of the Forest Code, indigenous peoples have been in favour of continuing the moratorium on the allocation of new forest titles until the issue of indigenous peoples' land rights has been taken into account, particularly in the process of forest zoning. Forest zoning is a method that will help the Congolese government to produce a detailed plan of the national territory in order to clarify land rights, establish a new policy for land allocation, recognise and conserve community spaces, and classify and declassify forest in protected areas and parks. This zoning process is defined in the context of the forest sector recovery programme, included in the priority agenda and law implementing the 2002 Forest Code.

The indigenous peoples support the moratorium because they want to see this process commence with participatory micro-zoning (mapping) aimed at identifying and recognising existing property, management and use rights, including customary rights or those based on the traditional practices of indigenous peoples. It could then move on to a macro-zoning process (detailed planning of the territory), bearing in mind all the elements collected during the participatory micro-zoning. The decision to use any given plot of land for a particular purpose would thus be the result of a combination of all this information and would require the consent of the people affected.



In 2011, indigenous peoples' organisations unsuccessfully called on the government to enact the Decree and Order on local community forests, developed in 2008 by the Ministry of Environment Conservancy, Nature and Tourism, the Ministry of Agriculture and Rural Development and the Ministry of Mining, in collaboration with the international organisation Forest Monitor. This issue is currently at the heart of the discussions between indigenous peoples and the political-administrative authorities. The Decree and Order on local community forests would be a very useful legal instrument in recognising the traditional land rights and customary use rights of indigenous peoples and local communities over ancestral lands. It defines the communities' right of ownership over lands they have long occupied and continue to occupy and also defines how these spaces will be managed according to tradition and custom. If enacted, it should enable indigenous

communities to preserve their lands, which have long been ravaged by government land allocation policies and logging companies. So far, the government has responded by stating that an enactment is not a priority on its agenda.

REDD+

Discussions on the traditional land rights and customary use rights of indigenous peoples to ancestral land, mainly forest, are essential before pilot projects can be put in place for the Reducing Emissions from Deforestation and Forest Degradation (REDD+) process and the Forest Investment Programme (FIP). After producing its REDD Readiness Preparation Plan (R-PP), the DRC this year embarked on the experimentation phase accompanied by case studies on, for example, factors and engines of deforestation and forest degradation and the institutional framework. The DRC also established thematic groups, including one on indigenous peoples.

Within the REDD+ process, the DRC's indigenous peoples are striving to guarantee their effective involvement and ensure respect for their free, prior and informed consent before any pilot or sector project is implemented that could affect their natural forest environment. The aim of this preliminary work on REDD+ is to enrich the DRC's National REDD+ Strategy, which is to be produced in 2012.

National Indigenous Peoples' Forum

Aware of the challenges, opportunities and risks facing them, influential indigenous individuals from all over the DRC decided to organise a National Forum on 20 November 2011 in Kinshasa, with the following aims: "Placing the protection and promotion of indigenous Pygmy rights at the heart of the Head of State's action, along with official recognition of their rights, as given in the UN Declaration on the Rights of Indigenous Peoples, including their traditional right to their lands, territories and natural resources". The meeting had the following specific objectives:

- To offer influential Pygmies from all provinces an opportunity to meet and discuss their common problems, and come up with a message and appropriate recommendations for decision makers;

- To bring eminent political figures and other civil society actors together to reflect on and discuss the issue of the protection and promotion of indigenous peoples in the DRC;
- To explore ways and means of consolidating the Head of State's personal involvement in protecting and promoting indigenous peoples, ensuring respect for their rights as full citizens of the DRC;
- To reflect on the experiences of some Central African countries with regard to the protection and promotion of indigenous peoples and to explore the possibilities of drawing on these experiences and adapting them to the DRC context.

By the end of this National Forum, a clear message and recommendations had emerged for the Head of State, which included:

- Placing the decree and order on local community forests, which are already with the Prime Minister's Office, on the agenda of the forthcoming meeting of the Council of Ministers for their enactment.
- Deciding that the forest zoning process being undertaken by the country under the direction of the Ministry for the Environment, Nature Conservation and Tourism should adopt a methodological approach based on recognition of the rights of indigenous peoples and local communities ("micro-zoning").
- Beginning to draft a national law on the rights of indigenous peoples in the DRC, on the basis of national consultations of Pygmies and the involvement of the ministries in question.
- Supporting and guiding the country towards ratifying ILO Convention 169 on Indigenous and Tribal Peoples.
- Establishing a specific Ministry on Indigenous Peoples.
- Creating a post of Special Advisor to the Presidency on Indigenous Issues.
- Organising a multi-donor round table to review the National Indigenous Peoples' Strategy developed in 2009 by the Ministry of the Environment, with World Bank funding.

After the National Forum, a joint commission of indigenous organisations and relevant ministries was established to monitor and ensure achievement of the recommendations. The government promised to consider indigenous issues during 2012 and to propose appropriate solutions to each problem identified. A sub-

regional workshop on indigenous peoples' rights will be organised in 2012 to define a common sub-regional strategy, under the auspices of the Head of State, in order to raise awareness among all political-administrative actors with regard to the living conditions of indigenous peoples. ○

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REPUBLIC OF CONGO

The Republic of Congo covers an area of some 342,000 km². It has an estimated forest cover of 22,471,271 hectares (or approx. 2/3 of its total area) and a deforestation rate of 0.08%. A 2007 estimate put the Congolese population at 3.8 million inhabitants. This is made up of two different groups of people: the indigenous peoples and the Bantu. There has been no systematic census of the Congo's indigenous peoples, but the 1984 census established that they accounted for 2.29% of the population.¹ They include the Bakola, Tswa or Batwa, Babongo, Baaka, Mbendjele, Mikaya, Bagombe, and Babi, and mainly reside in the departments of Lékoumou, Likouala, Niari, Sangha and Plateaux. The indigenous peoples are traditionally nomadic or semi-nomadic hunter-gatherers, although some of them have now become settled and are employed in farm work, livestock raising, commercial hunting or as trackers, prospectors or workers for logging companies.

Legislative texts that form the legal framework applicable to indigenous peoples include: the Law on Wildlife and Protected Areas, the Law on the Forest Code, the Law on Environmental Protection, the Law establishing the general principles applicable to state land and land regimes, the Law on Agricultural Land, and the Decree establishing the conditions for the management and use of forests. In 2011, the Republic of Congo became the first country in Africa to promulgate a specific law on indigenous peoples: *Law on the promotion and protection of the rights of indigenous populations in the Republic of Congo*². The Republic of Congo has not ratified the ILO Convention 169 but it voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007.

The situation of indigenous peoples in the Republic of Congo

Congo's indigenous peoples suffer discrimination in such major areas as access to education, health and employment. In this latter case, the discrimina-

tion is often flagrant: the work or service provided by an indigenous person is not duly remunerated and sometimes the person is even forced to provide the service for no payment at all.³ Traditional forms of slavery still exist among the Congo's indigenous populations, alongside practices similar to slavery and forced labour, although officially such practices are denied.

In addition, indigenous peoples have virtually no representation on village or neighbourhood committees, or on municipal or departmental councils. Those indigenous representatives who are appointed to formal bodies such as village committees, consultation committees, etc. often have no possibility of being involved in the decision-making. Indeed, in the village committees, their role is limited to receiving instructions from the Bantu and relaying them to the indigenous community.

Villages inhabited only by indigenous peoples are not recognised by the administration. They are instead considered as districts of Bantu villages, even if these latter have fewer inhabitants. Few of them possess civil registry documents.

It is difficult for indigenous communities to access basic social services (drinking water, electricity, medical care, schools...) and they are often unaware of their rights or, indeed, of the justice system, and thus are unable to claim these rights or defend themselves.

The land law disregards local land management mechanisms. In general, the Congolese population recognises the Bantu land and village chiefs as the main customary authorities involved in allocating land and resolving land conflicts. Moreover, according to the law, only registered lands are considered private property. Registration is a very complex and expensive procedure done in three steps: first it has to be acknowledged by an ad hoc customary land rights' commission chaired by the sub prefect, then it has to be recognized by a customary land rights' commission chaired by the president of the departmental council and finally it has to be registered at the land title registry office. This registration procedure is technically and financially out of reach for indigenous peoples. The way of life of indigenous populations, along with their traditional use of land and natural resources, is not taken into account in the land law and therefore the land law does not protect land and natural resource rights for the indigenous population⁴.

Even though the Law on the promotion and protection of the rights of indigenous populations counteracts the injustices of the land law, it is not yet being enforced because neither the indigenous people themselves nor those responsible



for its application are fully aware of the law and no implementing regulations have been issued.

Legislative events and processes affecting indigenous peoples

Revision of codes

The Republic of Congo has commenced a process of revising some of its legal texts, including the Family Code, the Criminal Code and the Code of Criminal Procedure. Committees have been established for this purpose but the process

has, however, been temporarily suspended. This means that the legal gaps of these instruments in terms of indigenous rights will remain for the time being.

The effectiveness of the Poverty Reduction Strategy Document

The Poverty Reduction Strategy Document (PRSD)⁵, approved by Decree No. 2008/944 of 31 December 2008, does take the specific features of the country's indigenous population into account. The consultations conducted with regard to this vulnerable category when producing the document did not, however, follow principles of free, prior and informed consent. In a report published in June 2010 on the situation of the right to food in the Congo, RAPDA⁶ emphasised that the indigenous population remained the poorest sector of society.

Law on the rights of indigenous populations

In 2011, the President of the Republic of Congo promulgated *Law No. 5-2011 of 25 February 2011 on the promotion and protection of the rights of the indigenous populations of the Republic of Congo* following a participatory process that lasted almost eight years.

This law, which was produced by the Ministry of Justice in collaboration with civil society and with the involvement of the indigenous community, is the first in Africa of its kind and expectations among indigenous organisations and civil society organisations are high with regards to its impact on diminishing marginalisation and discrimination of indigenous peoples.

There is, however, one challenge that will need to be overcome if this law is to be effective: all those involved, both those responsible for applying the law and the indigenous peoples themselves, need to be made aware of the legislation. The indigenous peoples need to make it their own if they are to be able to use it to their advantage.

The National Indigenous Peoples' Network (RENAPAC)

In 2007, through the Ministry for Sustainable Development, Forest Economy and the Environment and UNICEF, and in partnership with civil society, the Congolese government facilitated the creation of the National Indigenous Peoples' Network

(RENAPAC). This network has enabled indigenous NGOs to organise and to better coordinate their activities.

The weak capacity of those involved in organising this structure in terms of their ability to independently implement their activities should, however, be noted. Their ability to design, produce and implement projects is a challenge that will need to be overcome. They also need to take up ownership of the Law on indigenous peoples in a more forceful way.

The International Forum for the Indigenous Peoples of Central Africa

In 2007, at the initiative of the Congolese government, the Central African countries created the International Forum for the Indigenous Peoples of Central Africa (FIPAC), the second meeting of which took place in March 2011 at Impfondo in Likouala department.

This forum had the potential to facilitate an exchange of experiences between indigenous peoples, Central African governments and the international institutions but, in truth, it has become more a folkloric and touristic event. Most of the indigenous peoples involved do not see what benefits this meeting offers. Moreover, there is no follow-up mechanism to ensure implementation of the forum's recommendations.

The FLEGT VPA process and indigenous peoples

The European Union has finalised the process for forest law enforcement, governance and trade (FLEGT) through an action plan the implementation of which requires the signing of voluntary partnership agreements (VPAs). This process, which the Congo has been involved in since June 2007, culminated in the signing of an agreement in May 2009.

Civil society was involved in the negotiation process through the Sustainable Forest Management Platform.⁷

Several legal texts will need to be promulgated for the implementation of this agreement, particularly with regard to consultative and participatory forest management and community forests.

Although civil society contributed to the negotiations, there was a notable lack of consultation of the indigenous communities in this process. There is therefore a fear that, in the context of implementing this agreement, the anticipated legislative reforms may also be brought in without the knowledge of the indigenous people, for whom the forest forms their natural living environment.

The REDD+ process and indigenous peoples

In October 2008, the Republic of Congo was selected as one of the countries to participate in the Forest Carbon Partnership Facility (FCPF).⁸ A national plan for participating in the mechanism (Readiness Preparation Proposal/R-PP) first had to be produced. The REDD National Coordination was established in August 2009⁹ and the official launch of the REDD+ preparation process took place in January 2010.

Civil society did contribute to producing this R-PP through the Sustainable Forest Management Platform. Its proposals were often not taken into account, however, and there was no effective consultation. Indigenous rights issues were often the subject of controversy and the principle of free, prior and informed consent, as enshrined in international texts, was not taken into consideration in the World Bank directives, which are not in line with international standards on indigenous rights.

The Republic of Congo's RPP was approved, with amendments, on 29 June 2010. The government was asked to consult further with civil society and the forest communities. The Congo is currently at the stage of producing its national REDD+ strategy.

The process as it stands is moving too fast and is not enabling civil society and the local communities to provide their contributions under the best conditions. It is clear that a REDD+ strategy will only be effective if the local communities and indigenous populations are closely involved; yet these communities will find themselves unable to cooperate in a REDD+ strategy unless they also gain benefits from it. With the current state of lack of formal recognition of the customary land rights of indigenous populations, however, the REDD process runs the risk of failing to resolve the poverty problem of the country's indigenous peoples¹⁰.

Conclusion

There is an urgent need to create a context favourable to the eradication of all forms of discrimination suffered by indigenous peoples and to enable them to enjoy their fundamental rights. From this perspective, it is essential that the legal arsenal in this regard is reformed in line with national and international legislation. The implementing regulations for the Law on the promotion and protection of indigenous populations in the Republic of Congo need to be adopted as a priority. A law that has no implementing regulations will be ineffective, inapplicable even. These implementing regulations need to be drafted participatively, in consultation with civil society and the indigenous communities.

Once implemented, this law should be able to resolve many of the problems noted in this article, namely:

- The abolition of slavery, practices similar to slavery and forced labour;
- The participation of indigenous populations in decision-making with regard to policies that directly or indirectly affect them;
- The enforcement of the indigenous peoples' right to land and to natural resources;
- The requirement to respect the free, prior and informed consent of indigenous peoples before implementing any project or programme that has an impact on their culture, their way of life or their territory.

In a letter sent to the Congolese Observatory for Human Rights (OCDH) in February 2012, the Ministry of Justice and Human Rights stated that the implementing regulations were in the process of being drafted and that consultations would take place as soon as possible.

In addition, the government has a duty to conduct an awareness raising campaign with regard to the law, particularly aimed at the indigenous peoples themselves and those responsible for implementing it. ○

Notes and references

- 1 If this percentage is applied, the indigenous population comes to 84,783 members.
- 2 Law No. 5-2011 of 25 February 2011 on the promotion and protection of the rights of indigenous populations in the Republic of Congo
- 3 Rapport Peuples Autochtones de la République du Congo: Discrimination et esclavage, OCDH, November 2011.
- 4 *Etudes sur les droits fonciers des populations forestières*, Forum pour la gouvernance et les droits de l'Homme (FGDH) and Rainforest Foundation UK, August 2010
- 5 Poverty Reduction Strategy Document for the Republic of Congo, January 2007
- 6 African Network for the Protection of the Right to Food.
- 7 Network of more than 20 Congolese civil society organisations working in different areas such as human rights promotion, indigenous rights, biodiversity protection and local development. OCDH is a member of this platform.
- 8 The Forest Carbon Partnership Facility, created by the industrialised states and run by the World Bank to contribute to mitigating climate change.
- 9 It comprises a WCS representative, the national coordinator and his/her assistant.
- 10 *Analyses et commentaires sur le R-PP de la République du Congo*, Plateforme pour la gestion durable des forêts, November 2010

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CAMEROON

Among Cameroon's more than 17 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 whom this refers to. 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. These communities live along the forested borders with Gabon, the Republic of Congo and the Central African Republic.

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 Northern Region of Cameroon; the Jafun, who live primarily in the North West, West, Adamawa and Eastern 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 number is not known.

The country has adopted a Plan for the Development of the "Pygmy" Peoples within the context of its Poverty Reduction Strategy Paper. A Plan for Indigenous and Vulnerable Peoples has also been developed in the context of the oil pipeline carrying Chadian oil to the Cameroonian port of Kribi. Cameroon voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007.

Major legislative changes in 2011

Cameroon implemented many large infrastructure projects during 2011, such as the construction of dams and sea ports. The country's social policies provide a certain level of protection for the social and economic rights of populations living in zones where infrastructure projects are taking place, including the protection of indigenous peoples. Such social protection was improved in 2011 as, on the instructions of the Prime Minister,¹ the Minister of Social Affairs elaborated a draft law on the inclusion and management of the social and economic effects of large infrastructure projects. In relation to this law, decrees have been put in place which provide for:

- The establishment of an inter-ministerial committee for the follow-up and monitoring of the application of the social and economic effects of large infrastructure projects;
- The production of modalities for social impact studies related to large infrastructure projects and;
- The establishment of a roadmap indicating the conditions, technical modalities and operational guidelines for managing the consequences of large infrastructural projects.

All these texts have been completed and submitted to the various bodies responsible for adopting them.

2011 also saw the revision of the 1994 Law on Forest and Fauna intensify, a law that limited the access of hunter/gatherer communities to non-timber products and produce from hunting – products which are their main source of livelihood. This revision was influenced by civil society, the international community and indigenous peoples' organisations. The revised law will permit hunter/gatherers to sell some of the produce from their hunting activities, something that was prohibited by the 1994 law.

Another very important legal text that was completed last year was the Pastoral Code. This code has three main sections:

1. A section on access to land, which deals with the demarcation of boundaries between pastoral land and farmland, and which provides for grazing corridors;



2. A section on access to water;
3. A section on access to roads.

The process of drafting a Pastoral Code was initiated by the Netherlands Centre for Development (SNV), in partnership with the Ministry of Livestock and Fisheries, and it enjoyed the active participation of Mbororo leaders and the Mbororo Social and Cultural Development Association (MBOSCUDA) Executive. This legislation will be the first of its kind in Cameroon and the Pastoral Code will go a long way to resolving the longstanding conflicts between farmers and pastoralists and to securing the rights of the Mbororo pastoralists to their grazing lands. Hopefully, the new legislation will be a useful tool with which to overcome the negative stereotyping of the Mbororo pastoralists in Cameroon, who are currently considered strangers wherever they are found.

Parliamentary dialogue on indigenous peoples

A parliament/government dialogue workshop on the issue of Indigenous Peoples in Cameroon was held on 1 and 2 September 2011 in the House of Parliament through the initiative of the “*Network of Parliamentarians for the Protection of the Forest Ecosystem in Central Africa*” (REPAR). This dialogue was prompted by the fact that the efforts made thus far in Cameroon on the question of indigenous issues are still confused and precarious. Indigenous peoples remain highly marginalised, their interests are not taken into consideration by public policies and they are at risk of assimilation and a loss of their distinct cultural identities. Unless proper action is taken, the fear is that their vulnerability will increase and that their spaces will be progressively reduced through increasing commercial exploitation.

The workshop was supported by international development agencies such as the UN Centre for Human Rights and Democracy in Central Africa, ILO Central Africa and the German development agency (GIZ). The workshop saw the massive participation of government departments, indigenous representatives, civil society and parliamentarians. Indigenous representatives from Kenya, Latin America, Canada and New Zealand also participated.

Indigenous leaders were involved in the process from start to end, including the initial consultation phase, organisation phase, participation and follow-up. The workshop concluded with recommendations, and a follow-up committee has been nominated by the President of the Parliament. Two indigenous leaders have been appointed as members of this follow-up committee. This committee held its first meeting in November when it validated the roadmap for its forthcoming work.

Debate on the concept of indigenous peoples

The concept of *indigenous peoples* has, for several years, been at the centre of a debate and controversy between the government, UN agencies, indigenous organisations and civil society. In 2009, this controversy prompted the Ministry of External Relations to initiate a study² on the question in order to identify and characterise indigenous peoples and their problems in a Cameroonian context and to arrive at an accepted appellation and definition. The study was completed in 2011 and validated in the coastal town of Kribi in the Southern Region of Cameroon at a workshop in which indigenous peoples’ representatives also partici-

pated. The study proposed that the groups to be considered as indigenous should include groups such as the Mbororo pastoralists and the hunter/gatherers (Pygmies); however, it was also suggested that the study should be expanded to allow for consultations with the groups recognised as indigenous peoples and with public administrations, the international community and civil society.

Celebration of the International Day of the World's Indigenous People

The government celebrated the International Day of the World's Indigenous People on 9 August 2011 in the southern town of Kribi. The Southern Region has a large Bagyeli population, and the ceremony saw the massive participation of this community and of the Mbororo people.

Elections

The presidential elections were another important political event that took place in October 2011. To ensure the effective participation of all components of Cameroonian society, the UN Centre for Human Rights and Democracy organised a workshop for civil society on electoral observation and respect for human rights before, during and after the electoral period. Indigenous representatives used the opportunity to present the problems they were encountering, and important resolutions were taken to ensure their effective participation in the forthcoming legislative and local government elections in 2012.

Access to land and resources

Indigenous communities continued to suffer from difficult access to land and resources in 2011, and to be treated like strangers on the lands they have occupied for more than a century. This situation was particularly bad in Adamawa Region of Djerem Division in northern Cameroon, where human rights abuses took place involving the expropriation of Mbororo land and the extortion of large amounts of money and cattle by the traditional ruler (Lamido) of Tibati, the main town in the area. With the assistance of MBOSCUDA, the Mbororo community has mobilised to denounce this unacceptable practice, which has gone on for far too long.

Climate change

Cameroon is a signatory to the Convention on Biological Diversity, the Convention to Combat Desertification and the Rio Protocol and it is a REDD pilot country. Consultations on how to effectively implement the objectives of the different conventions were held this year in a series of workshops organised by the Ministry of Environment and Nature Protection. Indigenous peoples were involved at all levels as the Ministry has an obligation to respect the fundamental UNDRIP principle of free, prior and informed consent.

Mbororo mobilisation

During 2011, the “Dan Broadcasting System” television, a local TV belonging to Mr Ahmadou Baba Danpullo, ran a campaign against MBOSCUDA and its leaders. Mr Ahmadou Baba Danpullo is a multi-millionaire who has been abusing the rights of the Mbororo with impunity for the past two decades. Mbororo from home and abroad mobilised to counter this campaign through law suits and information campaigns via the Internet and human rights bodies.

In December 2011, MBOSCUDA mobilised Mbororo leaders in the town of Bertoua in the Eastern region of Cameroon during a seminar on “Regional and International Processes for the Promotion and Protection of Indigenous Peoples’ Rights”. The seminar enjoyed the massive participation of Mbororo leaders as well as some leaders from the hunter/gatherer communities. ○

References

- 1 N° B70/d-2/SG/PM of 27 January 2011
- 2 N° DIPL/D3/SDUN/ESH December 2009

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CENTRAL AFRICAN REPUBLIC

There are two groups of indigenous people in the Central African Republic (CAR), the Mbororo and the Aka. The indigenous Mbororo are essentially nomadic pastoralists in constant search of pastureland. They can be found in the prefectures of Ouaka, in the centre-west region; M'bomou, in the south; Nana-Mambéré in the north-west; and Ombella-Mpoko and Lobaye in the south-west. The 2003 census gave an estimated Mbororo population of 39,299 individuals, or 1% of the total population. A higher proportion of Mbororo live in rural areas than in urban areas, accounting for 1.4% and only 0.2% of the population respectively. The indigenous Aka population is also known by the pejorative name of Pygmies. The exact size of the Aka population is not known but it is estimated at several tens of thousands of people. The Aka live primarily (90%) in the forests, which they consider their home and where they are able to carry out their traditional activities of hunting, gathering and fishing. The Aka are found in the following prefectures: Lobaye and Ombella M'poko in the south-west; Sangha Mbaéré in the south-west; and Mambéré Kadie in the west.

The Central African Republic voted in favour of the UN Declaration on the Rights of Indigenous Peoples in September 2007 and ratified ILO Convention 169 on tribal and indigenous peoples in August 2010. It is the first and only African state to have ratified this Convention which, under the terms of the ILO Constitution, entered into force on 11 August 2011. Since then, the country has been in the process of implementing it.

Indigenous involvement in decision-making bodies

Parliamentary and presidential elections were held in the CAR in January 2011. No legal or political provisions were made to encourage indigenous candidates to stand or to promote their election. Some members of indigenous communities did nonetheless stand on an individual ticket, in particular three

Bororo, just one of whom was elected in the pastoral commune of Orou-Djafoum, Ouaka prefecture.

Nor have any major legal or political measures been taken to ensure indigenous involvement in political processes of concern to them, with the exception of issues such as climate change and reducing emissions from deforestation and forest degradation (REDD), where indigenous populations, with the help of their support NGOs, have been able to participate in the different consultations on an equal footing with other stakeholders.

It is, however, important to note the growing interest in: a) involving indigenous peoples in political processes and other political and legal initiatives; and b) taking their rights into account in these initiatives. This is due largely to the work of non-governmental organisations (NGOs).

Implementation of ILO Convention 169

The High Commission for Human Rights and Good Governance is responsible for the process of implementing ILO Convention 169 and is going to receive funding from the United Nations Indigenous Peoples' Partnership (UNIPP) in this regard. The aim is to support implementation of the convention and respect for indigenous rights by ensuring that indigenous peoples themselves take ownership of this international instrument. It will also be a question of raising awareness among state actors and the general public in order to improve the national legal and institutional framework and the day-to-day lives of indigenous populations. The project will be implemented by the High Commission for Human Rights and Good Governance, UN agencies, indigenous peoples, unions and NGOs.

National law on the promotion and protection of indigenous peoples' rights and reform of the legal framework

The High Commission for Human Rights and Good Governance is introducing a bill of law on the promotion and protection of indigenous rights. It has issued a decree establishing a committee to draft such a bill of law, comprising the relevant ministries, representatives of civil society and NGOs, and indigenous representatives (1 Mbororo and 1 Aka). The bill is at the pre-approval stage.



The CAR is also in the process of reforming its current legal framework. Reforms are taking place both in the context of the Voluntary Partnership Agreement (VPA) and the implementation of ILO Convention 169 and other international legal instruments ratified by the CAR. A number of these reforms commenced during the course of 2011. Stakeholders including civil society and the indigenous communities have been involved in this process, although civil society continues to deplore the lack of consultation and its weak representation in the governance bodies. These reforms will affect the Land Code, the Wildlife Protection Code, the Agro-Pastoral Land Code, the forest code and the Law on decentralisation and regional government. Throughout the reform process, government actors and other stakeholders have been devoting substantial attention to the indigenous

rights enshrined in the international instruments ratified or adopted by the country, most specifically ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples. This attention is largely the result of civil society's efforts, through post-workshop position statements submitted to the authorities and published in the national press.

As far as the Land Code is concerned, indigenous rights to land still cause problems insofar as the Land Code dates from colonial times and makes no reference to the communal land rights that indigenous peoples can claim. Although the Bororo have lived in the savannahs and the Aka in the forests for many years, the two groups still have no collective property right to these lands. The Land Code is in the process of being reformed to take this concern into account.

On a positive note the 2008 Forest Code includes the concept of community forestry, although this has yet to be implemented in practice. In fact, the Forest Code offers forest communities the possibility of creating community forests, provided they gain the approval of the relevant state departments.

Indigenous civil society organisations

With NGO support, indigenous peoples are increasingly establishing organisations and participating in national and international meetings during the course of which they are able to independently express their points of view and jointly make statements that can have a positive impact at national and international levels.

In December 2011, a regional office of the Network of Central African Indigenous and Local Peoples for the Sustainable Development of Forest Ecosystems (REPALEAC) was established in the CAR, under the Conference on Central African Moist Forest Ecosystems (CEFDHAC) and the Central African Forests Commission (COMIFAC). It will act as a contact point for REPALEAC in the country. It has both indigenous and Bantu members and the assistant coordinator is an Aka.

General situation of indigenous peoples in the CAR in 2011

With the greater will that has begun to be shown in this regard, and the fact that indigenous peoples have begun to organise to promote and protect their rights,

discrimination against them has begun to decline. Violations of indigenous fundamental rights and freedoms do nonetheless continue to be reported.

Although national insurgencies are affecting parts of the territories in which indigenous populations live, they are neither directly involved nor specifically affected by these conflicts. Rebellions outside of the CAR that are spilling over onto the national territory are, however, leading to serious violations of their rights, due to seizures of their cattle, ransoms and even murders. In fact, one insurrection which started in Chad has now taken hold in the north-west of the country and is seriously affecting Mbororo pastoralists because of cattle ransoms. This is exacerbated by the presence of this rebellion in the centre-east of the country, particularly in Ouaka prefecture, which has a significant pastoral commune and is one of the country's main suppliers of cattle. The rebels are invading the livestock markets with arms and equipment, holding the pastoralists to ransom then forcing them to sell their cattle and hand over the cash. ○

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SOUTHERN AFRICA

NAMIBIA

The indigenous peoples of Namibia represent some 8% of the national population. It is generally accepted that the San (Bushmen), who number between 32,000 and 38,000,¹ are indigenous to the country. There are six different San groups in Namibia, each speaking their own language and with distinct customs, traditions and histories. They include, among others, the Khwe, 4,400 people mainly in Caprivi and Kavango Regions, the Hai||om in the Etosha area of north-central Namibia (9-12,000), and the Ju|'hoansi (7,000), who live mainly in Tsumkwe District East in the Otjozondjupa and the Omaheke Regions.² The San were, in the past, mainly hunter-gatherers but, today, many have diversified livelihoods, working as domestic servants or farm labourers, growing crops and raising livestock, doing odd jobs in rural and urban areas and engaging in small-scale businesses and services. Over 80% of the San have been dispossessed of their ancestral lands and resources, and today they are some of the poorest and most marginalized peoples in the country.³

Other indigenous peoples are the Himba, who number some 25,000 and who reside mainly in the semi-arid north-west (Kunene Region) and the Nama, a Khoe-speaking group who number some 70,000. The Himba are pastoral peoples who have close ties to the Herero, also pastoralists who live in central and eastern Namibia. The Nama include the Topnaars of the Kuiseb River valley and the Walvis Bay area in west-central Namibia, a group of some 1,800 people who live in a dozen small settlements and depend on small-scale livestock production, use of *!nara* melons (*Acanthosicyos horrida*), and tourism.

Namibia voted in favour of the UN Declaration on the Rights of Indigenous Peoples but has no national legislation dealing directly with indigenous peoples nor are they mentioned in the Constitution. In 2010, the Namibian cabinet approved a Division for San Development under the Office of the Prime Minister,⁴ which is an important milestone in promoting the rights of indigenous peoples/marginalised communities in Namibia.⁵

the 1991 Namibia census indicated that there were 12,921 San on commercial farms (47.5%), 14,024 in communal areas (51.5%) and 284 in urban areas (1%).⁷

The living conditions differ significantly in commercial and communal areas. While the majority of San on commercial land have no right to the land and have to make a living as farm labourers, domestic workers or urban squatters, San, Himba and Nama on communal areas have – albeit limited – access to land and its resources.

Rural communities have the option of establishing conservancies and community forests on communal land.⁸ The San living in the conservancies are fortunate in comparison to most other San in Namibia in that they have access to land, are managing the natural resources of the land and are able to practise, to varying degrees, their traditional lifestyles.

In 2011, the Namibian government continued its land reform programme aimed at giving the historically disadvantaged majority access to some of the commercial land. Until 2011, under the government's San Development Programme, six farms were bought for the resettlement of the Hai||om San on the southern border of the Etosha National Park (the ancestral land of the Hai||om) and one farm in the Otjozondjupa Region for other San groups.⁹ Many Hai||om from the surrounding commercial land area and the towns in the vicinity moved to these farms. However, as on other resettlement farms in Namibia, establishing sustainable livelihoods independent of government food aid and massive external support is difficult, if not impossible, at the moment.

Tourism and other income-generating activities

Tourism represents one of Namibia's most important sources of income. In 2011, indigenous communities throughout Namibia were attempting to cash in on tourism-related projects. At least ten indigenous communities in conservancies are involved in joint venture tourism agreements with lodges and other tourism companies.¹⁰ Additionally, in the conservancies and on San resettlement farms, a number of other projects addressing issues of poverty and hunger are taking place, including village gardens, the harvesting and marketing of indigenous plants (e.g. Devil's Claw) and craft production. For example on the three San resettlement farms in Omaheke supported by Desert Research Foundation of Namibia and HABITAFRICA Foundation in 2011, 104 producers were active in craft

production and the total annual income was N\$149,178 with an average annual income per producer of N\$ 1,750 (approx. US\$ 223).¹¹

Towards human resource development and training

As part of the San Development Programme, the Office of the Prime Minister established the “Back to School and Stay at School Campaign” in 2010 with its main objective of encouraging learners from marginalised communities to attend school and remain in school, and receive a good education like other citizens in Namibia. In 2011, the campaign toured several Ovatie and Ovatiimba community settlements in Kunene Region.

The Working Group of Indigenous Minorities in Southern Africa (WIMSA) continued its special education programme for the San, which specifically supports Early Childhood Development but also helps with bursaries for San students in different fields. Various craft production training projects took place in different regions throughout the year in order to enable San women and men to produce high quality products for the national and international market.

In 2011, three San students from Namibia took part in a nine-month training course at the San cultural and education centre, !Khwatlu, located 70 km north-west of Cape Town in South Africa, in which they developed their skills in community-based tourism and hospitality. Additionally, they learned about life skills, San issues, rock art, botany and environmental issues. The trainees had the opportunity to apply their newly acquired knowledge and skills during on-the-job training at the weekends. The training also offered the opportunity to meet San students from other parts of the sub-continent and to share experiences and common issues.

The field of indigenous education and capacity building, however, requires far more support than it currently receives in Namibia.

The indigenous peoples’ organisations and support organisations

In Namibia, there are many community-based organisations (CBOs), some of them initiated and managed by indigenous peoples. However, a strong grassroots indigenous peoples’ movement is still lacking. On a regional level, the San

are represented by the Working Group of Indigenous Minorities in Southern Africa (WIMSA), which comprises the national San Councils of Botswana, Namibia and South Africa.

Many non-governmental organisations (NGOs) are assisting indigenous peoples in Namibia in various aspects (e.g. education, human rights, and livelihoods). Most of these NGOs are part of the San Support Organisations' Forum (SSOF), which was established in 2009 as a platform of stakeholders working with San in Namibia. This platform offers the opportunity to present ongoing activities in the various regions, to discuss and negotiate matters with government agencies, to share ideas, lessons learnt and best practices and to improve the coordination of the various San support initiatives. Moreover, the SSOF - where possible - intends to contribute to policy development on the development of San communities. The platform further gives the opportunity to align the work of the different stakeholders with international standards, such as the UNDRIP.

Threats to indigenous peoples' rights in 2011

Several issues are of concern with regard to the rights of the San:

The Nyae Nyae Conservancy is seeking ways to limit the number of outside Herero farmers settling in Tsumkwe (the central town in the area is excluded from conservancy land). These farmers are illegally using conservancy resources for grazing, firewood etc.¹² There are two strategies being used at the moment: (1) enforcing a Council by-law which forbids livestock within the township area where the Herero are keeping their cattle at night; and (2) applying a new Veterinary Law which enables stray livestock (i.e., Herero livestock which daily leave the township and illegally graze in the Conservancy area) to be impounded. Both of these strategies are aimed at encouraging the Herero to leave the area under threat of legal fines and possible loss of livestock.

Unauthorized fencing of land within the N~~z~~a Jaqna Conservancy is threatening conservancy development and excluding San individuals from their usufruct rights to the land. The Ministry of Environment and Tourism has agreed to help by obtaining the GPS coordinates of these unauthorised fences. These fences, with coordinates, can then be reported to the Communal Land Board, which has the mandate to investigate and determine their legitimacy, and the powers to have them removed if they are unauthorized.

The Government of Namibia wants the approximately 350 Hai||om San still living in Etosha National Park to reallocate to resettlement farms south of the park. The Hai||om still living in the park are of the opinion that they have not been properly consulted or involved in the planning of the relocation. They prefer to stay and be employed in the National Park. They are also concerned that the government will not provide enough post-resettlement support on the farms. Additionally, there is the fear that they will lose access to their ancestral land.

Another concern for, particularly, the Himba in Kunene Region, is the plan by the governments of Angola and Namibia to build the N\$7 billion (US\$ 1 billion) Baynes Dam, 50 km west of the Epupa falls on the Kunene River. There is a great deal of opposition from most of the Himba community against the building of the dam. The Himba are concerned that the anticipated influx of outsiders will force them to abandon their tradition and culture. The potential removal or destruction of ancestral graves located along the Kunene River is another major concern.¹³ A meeting with all Himba Chiefs from Angola and Namibia was held in October 2011, organised by the feasibility study team under the direction of Urban Dynamics, based in Windhoek, to discuss the way forward regarding construction of the dam. The Legal Assistance Centre in Namibia continues to advise the community on what steps to take. The construction has not yet started and no agreed plan has been finalized.

Promoting indigenous peoples' rights in Namibia in 2011

The project "Promoting & Implementing the Rights of the San Peoples of the Republic of Namibia"¹⁴ continued its activities in 2011. For instance, within the programme, a Guide to Indigenous Peoples' Rights in Namibia, a booklet on child labour amongst San communities and a mobile exhibition on marginalised communities in Namibia were developed.¹⁵ Furthermore, the website of the Division for San Development of the Office of the Prime Minister was launched within the project¹⁶ and a policy framework for marginalised communities in Namibia is in the process of being developed, with its finalisation planned for 2012.¹⁷

The Open Society Initiative of Southern Africa (OSISA) and Natural Justice: Lawyers for Communities and the Environment (a South African non-profit organization) held a workshop with indigenous community representatives and other stakeholders in August 2011 on bio-cultural protocols ("community proto-

cols” or BCPs), which are instruments that facilitate culturally-rooted, participatory decision-making processes within communities with the aim of asserting rights over their communally managed lands and traditional knowledge. The workshop has led to proposals for them to initiate bio-cultural protocols in Namibia’s indigenous communities. The initiative will start in the Nyae Nyae Conservancy in 2012. ○

Notes and references

- 1 **Suzman, James, 2001b:** *An Introduction to the Regional Assessment of the Status of the San in Southern Africa*. Windhoek: Legal Assistance Centre. Report Series. April 2001.
- 2 Available figures on the number of San mostly date back to censuses in the 1990s. A new comprehensive census is still outstanding.
- 3 The extent of San marginalisation is clearly evident in the United Nations Development Programme’s (UNDP) socio-economic indicators of human development, where the situation of the San is consistently worse than for other groups in Namibia – see **UNDP, 2007:** *Trends in Human Development and Human Poverty in Namibia: Background paper to the Namibia Human Development Report*. Windhoek: UNDP.
- 4 <http://www.sandevlopment.gov.na/index.htm>.
- 5 The author would like to thank Mr Aaron Clase from the Office of the Deputy Prime Minister, Mr Friedrich Alpers from IRDNC, Ms Lara Diez from NNDF, Mr Willem Odendaal and Mr John Hazam from the LAC for updates on 2010 and 2011 from their respective organizations and other useful information and comments.
- 6 **Werner, Wolfgang and Willem Odendaal, 2010:** *Livelihoods after land reform. Namibia country report*. Windhoek: LEAD, Legal Assistance Centre: 18.
- 7 **Suzman, James, 2001a:** *An Assessment of the Status of the San in Namibia*. Windhoek: Legal Assistance Centre: 6. REPORT SERIES. January 2001.
- 8 In Namibia, conservancies are locally-planned and managed multi-purpose areas on communal land, where land users have pooled their resources for wildlife conservation, tourism and wildlife utilization. All in all, there are now 65 registered conservancies in Namibia.
- 9 **Office of the Deputy Prime Minister, 2008:** *The San Development Programme Report 2007/2008*. Windhoek: Office of the Deputy Prime Minister. **Office of the Deputy Prime Minister, 2011:** *Draft Annual Report for the Year 2009/2010*. Draft report. <http://www.sandevlopment.gov.na/index.htm>.
- 10 **Namibian Association of CBNRM Support Organisations, 2010:** *Namibia’s communal conservancies: a review of progress and challenges in 2009*. Windhoek: NACSO.
- 11 This is minimal compared to the estimates of per capita GDP (US\$6,900). However, the high per capita GDP hides one of the world’s most unequal income distributions, as shown by Namibia’s 70.7 GINI coefficient. (see <https://www.cia.gov/library/publications/the-world-factbook/geos/wa.html>). For San, however, every source of cash income is needed in order to make a living.
- 12 See **IWGIA, 2010:** *The Indigenous World 2010*. Copenhagen: IWGIA. P. 550. Also personal communication with John Hazam, 3.1.2012
- 13 See **Muranga, Elvis, 2011:** Epupa Déjà Vue. In *Insight Namibia*. December 2010, January 2011: 37

- 14 The Namibia component of the Indigenous Peoples' Programme under the 2008/12 partnership programme of the Spanish Agency for International Development Cooperation and the International Labour Organisation, in cooperation with the Office of the Prime Minister.
- 15 **Unpublished list of deliverables 2010 & 2011:** "Promoting & Implementing the Rights of the San Peoples of the Republic of Namibia".
- 16 <http://www.sanddevelopment.gov.na/index.htm>.
- 17 **Unpublished list of deliverables 2010 & 2011:** "Promoting & Implementing the Rights of the San Peoples of the Republic of Namibia".

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BOTSWANA

The Botswana government does not recognize any specific groups as indigenous to the country, maintaining instead that all citizens of the country are indigenous. 3.3% of the population, however, identifies as belonging to indigenous groups, including the San (known in Botswana as the Basarwa) who, in July 2010, numbered some 54,000.

The San in Botswana were traditionally seen as hunter-gatherers but, in fact, the vast majority of them are small-scale agro-pastoralists and people with mixed economies who reside both in rural and urban areas, especially in the Kalahari Desert and in the eastern part of the country. The San in Botswana are sub-divided into a large number of named groups, most of whom speak their own mother tongue. Some of these groups include the Ju/'hoansi, Bugakhwe, //Anikhwe, Tsexakhwe, !Xoo, Naro, G/ui, G//ana, Tsasi, Tshwa, Deti, †Khomani, †Hoa, //Xauṽesi, Balala, Shua, Danisi and /Xaisa. The San are some of the poorest and most underprivileged people in Botswana, with a high percentage of them living below the poverty line.

In the south of the country are the Balala, who number some 1,400 in Southern (Ngwaketse) District and extending into Kgalagadi District, and the Nama, a Khoekhoe-speaking people who number 1,700 and who are also found in the south, extending into Namibia and South Africa. The majority of the San, Nama, and Balala reside in the Kalahari Desert region of Botswana.

Botswana is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples, but there are no specific laws on indigenous peoples' rights in the country and nor is the concept of indigenous peoples included in the Constitution.



Indigenous peoples' rights in Botswana

Issues relating to indigenous peoples' rights continued to form a focal point of public discussions and debates in Botswana in 2011.

Some of the discussions centered around the issue of water for residents of the Central Kalahari Game Reserve (CKGR). At the end of 2011, there were some 600 San people living in five communities in the CKGR. On January 27, 2011, the Court of Appeal of Botswana issued a judgment which, in effect, gave the people of the CKGR the right to drill for water, a right which had been denied them by government decisions in 2006 and 2010.¹ By the end of the year, one

successful borehole had been drilled, at Mothomelo, and people in the CKGR were able to drink water from a water point of their own for the first time since 2002, nine years previously, when the Botswana government removed the pump and sealed the borehole. A celebration was held there to commemorate the availability of water in the CKGR.

An ongoing challenge for the indigenous peoples of the CKGR in 2011 was the continued unwillingness of the Government of Botswana to fully implement the decisions reached in 2006 in the Botswana High Court legal case involving the rights of residents of the CKGR. The judgments in the case allowed for the right of the former residents to return to the reserve, and confirmed their rights to Special Game Licenses (subsistence hunting licenses). In 2011, there were instances in which former residents of the reserve were refused entry into the CKGR, ostensibly because of the lack of a permit, in contradiction with the 2006 court ruling. In addition, as of December 31 2011, not a single individual had been issued a hunting license, something that would allow them to hunt legally and without fear of arrest by officials of the Department of Wildlife and National Parks. Relatively few people were, however, arrested for hunting in the CKGR in 2011.

There were no meetings of the CKGR Negotiating Group in 2011, despite Botswana government promises that they would be held. This Group consists of Botswana government representatives, members of the Residents Committee of the CKGR (two representatives each from five communities), and the CKGR NGO Coalition. Instead, two government ministers, the Minister of Foreign Affairs and International Co-operation and the Minister of Environment, Wildlife and Tourism visited some of the CKGR communities in February. The two ministers did not discuss the issue of water at these meetings. They did, however, say that the land in the CKGR was a game reserve and that people were therefore not supposed to be living there. They allegedly suggested that there was going to be a “third relocation”. In reaction to these remarks, the communities of the CKGR called for a meeting with the government, but there had been no response to this request as of the end of 2011.

Diamond and copper mining, a railway and the Central Kalahari

The Botswana government announced in 2011 that the diamond mine at Gope, in the south-eastern sector of the CKGR, would go ahead. Gem Diamonds, which

holds the license for Gope, has begun the process of establishing the mine. It was decided that the community of Lephepe, outside the CKGR and on the border between Central District and Kweneng District, would serve as the mining community, where workers and their families would reside. Some of the former residents of Gope returned to the area from Kaudwane, the resettlement site to the south-east of the reserve, in the hope of getting a job at the mine. As of the end of 2011, however, no San had been offered any work there.

Also in 2011, three major copper mining exploration activities were ongoing in the Ghanzi and North West Districts of Botswana. One copper mine, the Boseto Copper Project, owned by Discovery Metals, was slated to go ahead in North West District, between the Okavango Delta and the Kgwebe Hills. A second copper mine, the Ghanzi Copper Project of Hana Mining (Vancouver, Canada), which will affect a part of the CKGR near Tsau Gate in the north-western sector of the reserve, was undergoing an Environmental Impact Assessment (EIA). In addition, copper prospecting activities were ongoing in Ghanzi and North West District, being carried out by at least five other foreign companies. There are San, Bakgalagadi and other groups in all of the areas slated for copper mines who are or will be directly affected by the mining activities. Some of these effects include: (1) loss of access to land; (2) loss of access to natural resources important for subsistence, income generation and medicinal purposes; (3) loss of livelihoods as some of the farms on which they worked will become part of the copper mine; and (4) environmental effects, including loss of access to water as boreholes and springs dry up when groundwater is extracted for the copper mines.

Only a few San have been given jobs with the mining prospecting crews, and these have been mostly as laborers, using hand tools to clear areas in preparation for exploratory drilling activities to take place. As of December 31, 2011 there had been no efforts on the part of the government to consult the people of the CKGR or the remote area settlements in the region occupied by a number of different San and Bakgalagadi groups about the copper mines or prospecting activities.

As of the end of 2011, the results of the EIA for the Trans-Kalahari Railway, which is planned to run from Mahalapye in Central District through the Central Kalahari, Ghanzi District and on to the Namibian port of Walvis Bay, had not been announced, and there have been no efforts on the part of the Government of Botswana to consult local people about the proposed railway.

Community-based natural resource management, tourism and livelihoods

Botswana's Community-Based Natural Resource Management (CBNRM) program continued in 2011 with at least a dozen new community trusts being formed. While communities in the CKGR, such as Molapo and Mothomelo, have discussed the formation of community trusts in the CKGR, no progress has been made on allowing these communities to establish them. Instead, the Government of Botswana has been working with people from two of the resettlement sites, Kaudwane and New Xade, both of which have formed community trusts (Kuan-goo Management Trust and Kgoesakani (New Xade) Management Trust). Government officials told the residents of these communities that they would be given rights to tourism sites inside the CKGR, whereas the residents of the reserve have been given no such rights. This has caused consternation among the people who returned to the CKGR to live and who were hoping that they would get rights over their areas so that they could benefit from tourism under the government's CBNRM program.

One of the objectives of the CBNRM policy in Botswana is to allow local communities to benefit from wildlife and tourism opportunities. In 2011, there were some San and Nama communities which were seeking to expand their involvement in tourism by hosting tourists, engaging in activities such as dances and demonstrations of how people use the resources in the local environment, and selling crafts to tourists. This included communities in Ghanzi, North West District, Kgalagadi and Central District. Some of these CBNRM programs have been very successful in generating income for the communities involved, sometimes over one million Pula per annum. As it stood at the end of 2011, however, there were less than 200 San and Nama people employed directly in the tourist industry in Botswana, most of them as laborers and service personnel in tourism lodges and safari companies.

As was the case with many indigenous people in southern Africa and around the world, the incomes and standards of living of San and Nama in Botswana generally declined in 2011, with the global economic downturn. Women, youth and the elderly in particular faced difficulties.

Efforts to promote development in indigenous and other communities continued to be made throughout 2011 by non-government organizations and commu-

nity-based organizations, such as, for example, in Ghanzi District, with the Kuru Family of Organizations and other NGOs working closely with the local people in areas ranging from livestock and agriculture to craft production and sale. NGOs, like local people, were, however, having difficulties in raising the funds to meet ongoing demands.

Representation issues

Only two San advocacy organizations were active in Botswana in 2011: the Botswana Khwedom Council and First People of the Kalahari (FPK) who both made statements in the local media about matters affecting indigenous peoples. In March, FPK spoke out on behalf of the people of New Xanagas in Ghanzi District in response to statements in the media to the effect that an influential government representative who wished to establish a commercial farm had told people that they would have to leave their homes and land - a situation that underscored the ongoing threats to land tenure security and livelihoods being experienced by indigenous peoples in Botswana.

World Heritage Sites

On December 16, 2011, a celebration was held at Tsodilo in north-western Botswana to commemorate the first ten years of the Tsodilo Hills as a UNESCO World Heritage Site. Ju/'hoan San in the Tsodilo Hills were resettled away from the Hills in 1995 in preparation for the enhancement of the national monument status of Tsodilo and in order to pave the way for World Heritage Site status. Some of the people in Botswana, aware that the government hopes to declare other places in the country as World Heritage Sites, such as the Okavango Delta, raised questions about whether this status would affect plans to extract water, minerals and other natural resources from these areas, and what effects this land tenure status would have on the well-being of local people, many of whom are indigenous. ○

Note

- 1 High Court of Botswana, Appeal Judgement (2011) *In the Court of Appeal of Botswana held at Lobatse. Court of Appeal No. CACLB-074-10. High Court Civil Case No. MAHLB 000 393-09 In the matter between Matsipane Mosethanyene, First Appellant, and Gakenyatsiwe Matsipane, Second Appellant, and the Attorney General Respondent. Heard 17 January, 2011 and delivered 27 January, 2011. Appeal Court Judges J.A. McNally, J.A. Ramodibe, Dr. J.A. Twum, J.A. Foxcraft, and J.A. Howie.* For analyses of the judgment, see Australian Indigenous Law Review (2011) Mosethanyene vs the Attorney General of Botswana. *Australian Indigenous Law Review* 14(2):143-144; Bonolo Ramadi Dinokopila (2011) The Right to Water in Botswana: The Review of the Matsipane Mosethanyane Case. *African Human Rights Law Journal* 11(1):282-295; and Maria Sapignoli (2011) Local Power through Globalized Indigenous Identities: The San, the State and the International Community. PhD dissertation, University of Essex, Colchester, United Kingdom.

Maria Sapignoli is an Italian anthropologist who has just completed a doctorate on indigenous peoples' issues in southern Africa at Essex University in the United Kingdom. **Robert K. Hitchcock** is an American anthropologist who is on the board of the Kalahari Peoples Fund, a non-profit organization working on behalf of the peoples of southern Africa.

SOUTH AFRICA

South Africa's total population is around 50 million, with the indigenous groups comprising just over 1%. The various First Indigenous Peoples groups in South Africa are collectively known as Khoe-San, comprising the San people and the Khoekhoe. The San groups include the ǀKhomani San residing mainly in the Kalahari region, and the Khwe and !Xun residing mainly in Platfontein, Kimberley. The Khoekhoe include the Nama residing mainly in the Northern Cape Province, the Koranna mainly in Kimberley and Free State Province, the Griqua residing in the Western Cape, Eastern Cape, Northern Cape, Free State and Kwa-Zulu-Natal provinces and the Cape Khoekhoe residing in the Western Cape and Eastern Cape, with growing pockets in Gauteng and Free State Provinces. 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 the space for a deconstruction of the racially-determined apartheid social categories such as the Coloureds. Many previously so-called Coloured people are now exercising their right to self-identification and embracing their African heritage and identity as San and Khoekhoe or Khoe-San. San, Khoekhoe and Khoe-San are used interchangeably depending on the context. First Nations indigenous San and Khoekhoe peoples are not recognized in the 1996 Constitution but they are being accommodated in the Traditional Leadership and Governance Framework Act of 2003, as amended in 2009.

South Africa is a signatory to the UN Declaration on the Rights of Indigenous Peoples.

2011 was a busy year for South Africa. Its ruling party, the ANC, witnessed countless internal battles, causing the political agenda to shift continuously and affecting negotiation processes with First Indigenous Khoe-San¹ Peoples' organisations. The question on most people's lips, after 17 years of democracy, is, "Has

the country delivered on its promise of democracy as laid out in its 1996 Constitution?”

Changes in legislation

In 2011, the Department of Cooperative Governance and Traditional Affairs (Cogta) engaged in a national consultation process with Khoe-San groups regarding the National Traditional Leadership Bill of 2011. This bill replaces the Traditional Leadership Acts of 2003 and 2009, and now accommodates Khoe-San leadership structures and existing traditional leadership structures. It provides for the recognition of existing traditional and Khoe-San leadership positions, including governance and customary law in terms of the powers and functions of traditional leaders, councils and communities. It further provides for the formation of a Commission on Traditional Leadership Disputes and Claims and an Advisory Committee on Khoe-San Matters. It does not support the Khoe-San peoples as First Nations and ignores their right to sovereignty.

During the consultation process, the bill created some ambivalence amongst the First Indigenous Khoe-San groups. Whilst some welcomed the Bill, others felt that another process should be put in place to constitutionally recognise the Khoe-San as First Nation Indigenous peoples with sovereign status, thereby addressing their right to self-determination, and not only as assimilated traditional leaders. They argue that they would continue to experience marginalisation in terms of numbers and agency if they joined the structures of existing traditional leadership, as the current traditional leaders far outnumber Khoe-San leaders and have strong political influence. They reiterate the fact that First Indigenous Khoe-San peoples remain indigenous in South Africa according to ILO 169 and the UNDRIP, which the Traditional Affairs Act does not recognise. A further challenge is that there exists no officially recognized criterion for identifying Khoe-San peoples and groups.² Cogta will submit the bill, including the Khoe-San concerns raised, to Parliament in January 2012, after which it will go out for broader public consultation.

The above mentioned processes have inspired the establishment of the Khoe-San First Nations Company. This company has a mandate from the National Khoe-San Council and is representative of the five Khoe-San groupings. It aims to set a process in place for attaining First Nation Indigenous status and recognition of their sovereignty.



Population census

A population census took place in 2011. The census questionnaire offered Apartheid-style categories of Black, White, Coloured, Indian/Asian and Other, thus forcing Khoe-San peoples to identify as Coloured or “Other”. Many refused to fill in the census form and called for a re-census with appropriate categorisations that would truthfully reflect the country’s population. However, there has been no re-census and this has led to Khoe San disappointment with the current political parties. Khoe-San peoples are therefore rallying for their own political parties to stand at the next national elections in 2014. There are already four nationally-registered Khoe-San parties: the Khoisan Party, the First Nation Liberation Alliance, the Khoisan United Front and the Khoisan Kingdom and All People.³

Land reform

Land reform has been painfully slow. A few Khoe-San groups have received rural farmlands but are struggling due to a lack of start-up resources. Urban Khoe-San are continuing to fight for housing and, on 2 September 2010, they marched to Parliament to hand over a memorandum in this regard (see *The Indigenous World 2011*). On 20 September 2011, the Mayor of Cape Town and the Houtbay community signed a Peace and Mediation Accord, which includes a housing development scheme for the residents.

The Richtersveldt Nama community, recipients of the largest land claim in South Africa in 2007, is in a dilemma over the use of its reclaimed lands. A part of the community prefers to build up their mining capacity whilst others prefer live-stock farming as a means of sustainable development. In October 2010, the Richtersveldt Communal Property Association (CPA) asked the Minister of Rural Development to appoint an independent mediator. Instead, in March 2011, the Northern Cape High Court appointed an attorney to temporarily take over the duties of the CPA. The community remains divided and in conflict.

COP 17

Through the Indigenous Peoples of Africa Coordinating Committee (IPACC), an appeal was made to the South African government to provide resources for First Nation Indigenous peoples to travel to and attend COP 17, which could have provided a platform for the Khoe-San peoples to share their knowledge and experience regarding the environmental preservation and management of this specific geographical region. South Africa's host department for COP 17, the Department of International Relations, failed to assist, however, resulting in the First Nations Indigenous Khoi-San peoples of South Africa being largely absent from COP17.

The National Legacy Project

The Constitution of South Africa and the DAC White Paper set out the framework and policies in place for the preservation of the culture and heritage of all South

Africans. The Government of South Africa has initiated national legacy projects to create commemorative symbols of South Africa's history and celebrate its heritage. Its line functionary departments/institutions such as the National Department of Arts and Culture (DAC), embarked on a Khoe-San legacy project in 2000. In 2011, the DAC continued its engagement with the National Khoe-San Conference Facilitating Agency (Khoe-San Agency) (see *The Indigenous World 2009*) regarding assistance to Khoe-San projects, and sought to enter into a Memorandum of Understanding (MOU) with the Khoe-San agency. By September, the Khoe-San agency had submitted all necessary documentation for the finalisation of the MOU. As of December 2011, however, it was unable to obtain any information regarding the status of this MOU.

The issue of non-recognition of Khoe-San peoples' socio-political heritage seems a blatant one on the national agenda for reconciliation. In 2011, the National Heritage Council of South Africa (NHC) engaged in a series of public consultations concerning the National Liberation/Struggle Heritage Route.⁴ The NHC did not, however, include Khoe-San groups and claimed that the Khoe-San were not relevant to this project as they never took part in the struggle against oppression and domination. Khoe-San activists, on the other hand, argue that their Khoe-San forebears laid the foundations for the struggle at the onset of European settlement, as evidenced during wars dating back to the 14th and through to the 19th century.

On a positive note

The first specific Khoe-San museum, run by Khoe-San, was launched in Cape Town on 16 December 2011, namely the South African First Nations Indigenous Museum. The museum will address Khoe-San history, knowledge and heritage in school curricula and public discourse. It is situated at the foot of Table Mountain at a water source long used by the early inhabitants, the Khoe-San.

Advocacy on First Nations Indigenous Khoe-San-related cultural awareness has also increased. The South African Broadcasting Association (SABC) now shows more programmes regarding Khoe-San cultural heritage, and filmmaker Weaam Williams released the first of three documentaries: *A Khoe Story Part One: Reclaiming the Mother Tongue* in 2011.

Social networks, including electronic networks, have seen a growing number of individuals, especially those still identifying as Coloured, discussing issues related to being Khoe-San. This is giving rise to increased political mobilisation. ○

Notes

- 1 Khoe-San activists argue that the terms Khoekhoe and San are imposed names and they therefore prefer the collective term “First Indigenous Peoples or First peoples”. Out of respect, the author therefore chooses to use both collective terms in this article.
- 2 Country report of the Research Project by the ILO and the African Commission on Human and Peoples’ Rights on the constitutional and legislative protection of the rights of indigenous peoples in South Africa.
- 3 See www.iec.org.za
- 4 The National Liberation/Struggle route is one of the National Legacy Projects led by the National Heritage Council, a government institution dealing specifically with the country’s heritage.

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PART II

INTERNATIONAL
PROCESSES

UN PERMANENT FORUM ON INDIGENOUS ISSUES

Established in 2000, the UN Permanent Forum on Indigenous Issues (UNPFII) is an advisory body to the UN Economic and Social Council (ECOSOC) and is composed of 16 independent experts functioning in their personal capacity who serve for a term of three years as Members and may be re-elected or re-appointed for one additional term. Eight are nominated by governments and eight by indigenous peoples. It addresses indigenous issues in the areas of economic and social development, environment, health, human rights, culture and education. In 2008, the Forum expanded its mandate to include the responsibility to “promote respect for and full application of the Declaration and to follow up the effectiveness of the Declaration”. According to its mandate, the UNPFII provides expert advice to ECOSOC and to UN programmes, funds and agencies; raises awareness about indigenous issues; and promotes the integration and coordination of activities relating to indigenous issues within the UN system.

The annual session of the UNPFII is held in April or May, at the UN Headquarters (or any other venue decided by the UNPFII) for two weeks. The UNPFII has a biannual working method that comprises of one year devoted to a theme and one year devoted to reviewing the recommendations made by the UNPFII.

At its session, the UNPFII provides the opportunity for indigenous peoples from around the world to have direct dialogue and communication with the members of the Forum, the UN system, the Special Rapporteur on the Rights of Indigenous Peoples, as well as other Human Rights Special Rapporteurs and other expert bodies, and Member States.

Preparatory Meeting

The UNPFII holds pre-session meetings every year, prior to its annual sessions, which is usually hosted by a Member State. These meetings allow the members of the UNPFII the opportunity to discuss and prepare for the session as

well as elect the Bureau for the forthcoming session. It also enables the members the opportunity to meet with Government representatives, partners and stakeholders in the host country to strengthen their linkages and cooperation as well as discuss issues that are important to, indigenous peoples and UN agencies at the local levels.

In 2011, the pre-sessional meeting was held in Ottawa, Canada at the invitation of the governments of Canada and the United States of America.

10th Annual Session of the UNPFII

The 10th session was held in New York from 16 to 27 May, 2011 and was devoted to reviewing the recommendations and the work of the UNPFII. More than one thousand participants attended the session representing governments, indigenous peoples' organizations, UN agencies, NGOs and academic institutions. The UN Secretary-General, Mr. Ban Ki-Moon, opened the session, stressing the importance of making the principles of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) a reality for indigenous peoples.

In line with its review year the UNPFII followed up on its recommendations on economic and social development, the environment and free, prior and informed consent. The various thematic studies undertaken by UNPFII members were presented at the session and included reports on Study on the of implementation of the Chittagong Hill Tracts Accord of 1997; Study on international criminal law and the judicial defence of indigenous peoples' rights and Study on indigenous peoples and corporations to examine existing mechanisms and policies related to corporations and indigenous peoples and to identify good practices.

The UNPFII held a half-day discussion on the Right to Water and Indigenous peoples. This discussion was important to the UNPFII as indigenous peoples are still being marginalized in debates about State water-management policies and strategies to address other water issues. Indigenous peoples' right to water is not limited to access to safe drinking water and sanitation but also closely linked to a range of other rights including self-determination, subsistence, health, land and resources and cultural and spiritual practices. The UNPFII through its work has always advocated for the active consultation with indigenous peoples in order to obtain their right to free, prior and informed consent in all matters affecting them. The UNPFII urged States to recognize and protect indigenous peoples' cultural

right to water and, through legislation and policy, support the right of indigenous peoples to hunt and gather food resources from waters used for cultural, economic and commercial purposes.

A high level delegation from the UN Children's Fund (UNICEF) engaged in the in depth-dialogue during the tenth session. UNICEF presented a detailed report on their programmes, followed by questions and comments from UNPFII members, as well as from States and indigenous peoples' organizations. The UNPFII issued 15 recommendations to UNICEF including a recommendation that UNICEF operate and implement its strategic framework on indigenous children and report to the UNPFII in 2012 on measures taken to that end.

For its future work, the UNPFII held a discussion on the World Conference on Indigenous Peoples, to be held in 2014. The General Assembly during its sixty-fifth session in 2010, decided to organize a high-level plenary meeting of the Assembly, under the auspices of the UN, to adopt measures to pursue the objectives of the UNDRIP (UNGA Resolution 65/198). The UNPFII also held discussions on the UN Conference on Sustainable Development, known as Rio +20 to be held in June 2012. The conference is seen as the prime opportunity for the world community to strengthen the role of all key segments of humanity, including indigenous peoples, in achieving sustainable development, particularly in a world threatened by climate change.

International Expert Group Meeting

The UNPFII organizes annual international expert group meetings, where indigenous experts from the seven socio-cultural regions are invited to present on global relevant topics.

In 2011 the topic of the International Expert meeting was Indigenous Peoples and Forests, and was held from 12 to 14 January 2011, at United Nations Headquarters. The conclusions and recommendations of the expert group meeting which, among other things, called upon States to recognize indigenous peoples' rights to forests; for the inclusion of indigenous peoples in the United Nations Conference on Sustainable Development (Rio+20) and in the commemoration of the International Year of Forests, 2011; and for United Nations agencies to undertake a compilation of good practices on forests and indigenous peoples as well as a compilation of relevant provisions of United Nations human rights instruments

for advocating, defending and promoting indigenous peoples' rights to lands, territories and resources.

International Meetings, Conferences and Events

In 2011, UNPFII members participated in various meetings, workshops and events, including the International Day of Indigenous Peoples, which since 1995 has been observed every year on 9 August. The special theme for the commemoration in 2011 was "*Indigenous designs: celebrating stories and cultures, crafting our own future*". The theme was chosen for its current relevance in many indigenous communities in the world, which are confronted with competition posed by market and mass industrial production, globalization of fashion trends and infringement of indigenous peoples' intellectual property rights. The panel organized for the event addressed all these issues, with a particular focus on the appropriation of indigenous cultures in the form of designs, textiles and other forms of cultural expression and artistic tradition. In some cases, designers draw inspiration for their collections from indigenous traditions, without the knowledge or consent of indigenous communities. The panelists highlighted the spiritual aspect of designs in traditional wear as a way for expressing identity, art, intellectual knowledge and culture. They also considered the need of cultural preservation and revitalization. Cases where indigenous peoples have participated in promoting their cultural designs were also reviewed and a special attention was devoted to the need to raise indigenous peoples' awareness on their rights in regards to the ownership of their cultures, identities and traditions. Celebrations to commemorate this day were also held in other parts of the world.

From 4 to 6 September 2011, UNPFII member, Dr. Dalee Sambo Dorough was the keynote speaker at the 6 Northern Research Forum Open Assembly titled "*Our Ice Dependent World*" which was held in Hverageroi, Iceland. She presented a paper on the inter-related implications of ice melt for indigenous peoples.

The UNPFII Chair, Ms. Myrna Cunningham Kain attended the Food and Agricultural Organization (FAO) expert meeting in Paris, from 5 – 7 September, and contributed to discussions on the technical review of documents relating to Greening the Economy with Agriculture (GEA). Ms. Cunningham Kain also participated in the expert group meeting title: "*Enabling rural women's economic em-*

powerment: institutions, opportunities and participation” which took place on Accra, Ghana from 20 to 23 September. She spoke on the role of institutions in rural areas addressing women’s needs, with a focus on indigenous women.

In October 2011, the UNPFII Chair, together with staff from the Secretariat and other members of the editorial board, staff from Office for the High Commissioner for Human Rights, UN Development Programme and Inter-Parliamentary Union met in New York to discuss the draft Handbook for Parliamentarians on the UNDRIP. This handbook will serve as a guide for Parliamentarians to promote the implementation of the declaration in parliaments of their respective countries.

The UN Indigenous Peoples Partnership (UNIPP) held its second policy board meeting in New York from 27 to 28 October 2011. UNPFII member and co-chair of UNIPP, Mr. Devasish Roy and other indigenous experts attended the meeting to review and approve proposals for the UN country programs designed in partnership with indigenous peoples.

UNPFII members and Secretariat staff also participate in meetings and events organized within the UN system. The three UN indigenous mechanisms participated in a side-event which was part of the celebration of World Science Day 2011 for Peace and Development organized by the UN Educational, Scientific and Cultural Organization (UNESCO) on 10 November 2011. The Chair of the UNPFII in her address to UNESCO, highlighted the important relationship that exists between indigenous peoples’ traditional knowledge and the World Heritage processes, due to the conservation role that indigenous peoples play in the managing of World Heritage sites. She also raised a number of issues in relation to the World Heritage processes, such as the lack of recognition of the rights of indigenous peoples in the World Heritage Convention and its operational guidelines.

UNPFII member, Ms. Valmaine Toki participated in an event organized by the World Intellectual Property Organization (WIPO) on 18 July 2011 in Geneva on the theme: *“Best Practices in Community-Led Strategies for the Protection of Traditional Knowledge and Traditional Cultural Expressions”*. Ms. Toki joined other indigenous panellists in looking at the importance of protecting indigenous knowledge and cultural expressions.

The UNPFII and Secretariat staff participated in a meeting of indigenous women, held in Chiapas, Mexico from 1 to 4 December 2011. The objective of the meeting was to strengthen the experience of indigenous women by reflecting on the content and implementation of the UNDRIP, and to discuss best practices and lessons learned.

United Nations Country Team Training

The Secretariat of the UNPFII has been involved in the development of a strategy for capacity development on indigenous peoples' issues since 2006 including building capacities of UN staff, government officials and representatives of indigenous peoples' organizations; and enabling the creation of spaces for consultation and dialogue between UN Country Teams and indigenous peoples. The objective is to ensure greater incorporation of indigenous peoples' issues into the policy and programming process at the national level including the Common Country Assessment (CCA) and UN Development Assistance Framework (UN-DAF) processes and to assist the UN system to mainstream and integrate indigenous peoples' issues in operational activities and programmes, following the normative and programmatic framework presented in the UNDG Guidelines on Indigenous Peoples' Issues (operational since 2008). During 2011-2012, trainings were conducted in the Philippines, Argentina, Central African Republic and the Republic of Congo.

The Secretariat of the UN Permanent Forum also worked with other UN agencies in coordinating some of the trainings

Inter-Agency Initiatives

The UN Permanent Forum and its Secretariat works very closely with other UN agencies through joint collaboration on research, outreach, compilation of publications, contribution to agency reports, meetings and events. Below are some examples of inter-agency initiatives that the Secretariat contributed to in 2011 and early 2012:

- Participation in the Intergovernmental open-ended Working Group on the Right to Development, with the objective to further consider, revise and refine the right to development criteria and operation sub-criteria. Contributing to the drafting of a guide on how to handle consultations which include the perspectives of indigenous peoples for the UN Development Programme (UNDP), which has initiated a project through the UN Development Group MDG Task Force on Building the Post-2015 Development

Agenda. As part of these discussions, UNDP intends to launch national consultations with all relevant stakeholders, including the civil society. .

- Contributing to the following reports: Report on Women, the girl child and HIV and AIDS; report on ending female genital mutilation; report on Eliminating Maternal Mortality and Morbidity through the empowerment of Women and to the report on Women's Economic Empowerment, prepared by UN Women in preparation for the fifty-sixth session of the Commission on the Status of Women.
- Joining the Task Force on Gender, Migration and Development, established at the eleventh session of the Inter-Agency Network on Women and Gender Equality (IANGWE), which will have as primary objective to ensure that the gender dimensions of migration are integrated into global norm setting and global policy development in ways that influence the post 2015 Development agenda.
- Joining the Inter-Agency Task Force on Rural Women, established at IANWGE's 10th session. The Task Force contributed to the preparations for the priority theme of the fifty-sixth session of Commission on the Status of Women 2012, while its work will also feed into the Rio +20 UN Conference on Sustainable Development and the Sustainable Development Goals, as well as the MDG Summit in 2015.¹

The Secretariat of the UN Permanent Forum is also part of the UN Inter-Agency Support Group (IASG) of Indigenous Peoples' Issues, which is a mechanism for inter-agency cooperation on indigenous issues in relation to the UNPFII. It is formed by focal points/units of the departments or organizations of the UN system whose work is relevant to indigenous peoples.

In 2011, the UN Population Fund (UNFPA) who was the Chair of the IASG hosted the meeting from 21 to 23 November at its headquarters in New York. ○

Note

- 1 The contributions are available on the WomenWatch website at:
<http://www.un.org/womenwatch/feature/ruralwomen/spfii-comparative-advantage.html>;
<http://www.un.org/womenwatch/feature/ruralwomen/spfii-good-practice.html>

Written by the Secretariat of the UN Permanent Forum on Indigenous Issues.

UN EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES

In December 2007, the UN Human Rights Council decided to establish the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). EMRIP reports directly to the Human Rights Council (UNHRC - the main human rights body of the United Nations). Its mandate is to assist the UNHRC in the implementation of its mandate by providing thematic expertise on the rights of indigenous peoples and making related proposals to the UNHRC for its consideration and approval.

EMRIP consists of five independent experts. They are appointed by the UNHRC for, from 2011, terms of three years and may be re-elected for one additional period.

EMRIP meets in a plenary session once a year for up to five days and these sessions are open to representatives of indigenous peoples, states, NGOs, UN bodies and agencies etc. The sessions of EMRIP provide a unique space for focused multilateral discussions on the scope and content of the rights affirmed to indigenous peoples under international law, and how the implementation of these rights can be advanced.

New members

In March 2011, the UNHRC appointed three new experts: Vital Bambanze (Burundi), Anastasia Chukhman (Russian Federation) and Wilton Littlechild (Canada), replacing outgoing members John Henriksen (Norway), José Mencio Molintas (Philippines) and Catherine Odimba Kombe (Congo). Jannie Lasimbang (Malaysia) and José Carlos Morales Morales (Costa Rica) successfully sought a new term. All five members of EMRIP are indigenous. Vital Bambanze was elected as Chairperson at the fourth session in July 2011 for a one-year term and Anastasia Chukhman as Vice-Chairperson.

The UNHRC decided to stagger the membership of EMRIP this year, by ballot, to ensure that, in future, not all members' terms finish at the same time, thereby guaranteeing continuity in the future composition.

Expert workshop on indigenous peoples and the right to participate in decision-making

The Office of the High Commissioner for Human Rights hosted an expert workshop on indigenous peoples and the right to participate in decision-making in March 2011 in Geneva, Switzerland to assist EMRIP in the preparation of its final report on the topic, for presentation to the UNHRC in September 2011. The workshop was attended by experts from all regions of the world, including indigenous individuals, academics and EMRIP members.

As the UNHRC had requested EMRIP to “give examples of good practices at different levels of decision-making” in resolution 15/7 of 2010, the participants focused on assessing the participation of indigenous peoples in decision-making at the international, national and local level.

EMRIP’s final report on its study on indigenous peoples and the right to participate in decision-making

EMRIP completed the final report on its study on indigenous peoples and the right to participate in decision-making in August 2011. It includes advice to assist states, indigenous peoples and others in implementation and makes, *inter alia*, the following points:

- internal decision-making facilitates indigenous peoples’ participation in public affairs in ways that are philosophically and culturally consistent with their understanding of governance;
- examples of indigenous peoples’ participation in external decision-making processes include:
 - guaranteed representation of indigenous peoples in parliaments
 - institutions permitting direct indigenous participation in governance
 - consultation with indigenous peoples, including consent seeking

- shared governance with state bodies
- participation in regional and international forums and processes
- the right to participate in decision-making is a substantive as well as a procedural right;
- consultations with indigenous peoples need to allow for the full expression of indigenous peoples' views, in a timely manner and based on their full understanding of the issues involved, so that they may be able to affect the outcome and consensus can be achieved;
- consultations should be undertaken in good faith, mutual trust and transparency, allowing indigenous peoples sufficient time to engage their own decision-making processes and the objective should be to achieve agreement or consensus;
- the duty to consult applies whenever a measure or decision specifically affecting indigenous peoples is being considered (for example, affecting their lands or livelihood), even where the state is considering measures that potentially affect the wider society, in particular where measures have a disproportionately significant effect on indigenous peoples;
- indigenous peoples have the right to develop and maintain their own decision-making institutions and authority parallel to their right to participate in external decision-making processes that affect them; and
- indigenous peoples' consent is required in matters of fundamental importance for indigenous peoples' rights, survival, dignity and well-being. In assessing whether a matter is of importance to the indigenous peoples concerned, relevant factors include the perspective and priorities of the indigenous peoples in question, the nature of the matter or proposed activity and its potential impact on them, taking into account, *inter alia*, the cumulative effects of previous encroachments or activities and the historical inequities faced by them.

EMRIP's fourth session, 11-15 July 2011

EMRIP's fourth session was opened by the High Commissioner for Human Rights and attended by hundreds of delegates from states, indigenous peoples, civil society, academia, international organisations and national human rights institutions. A representative of the Permanent Forum on Indigenous Issues (UNPFII)

and the Special Rapporteur on the rights of indigenous peoples participated in the session.

The session focused on: a follow-up to its previous thematic studies and advice; discussion of the study on indigenous peoples and the right to participate in decision-making; the Declaration on the Rights of Indigenous Peoples (UNDRIP); and proposals to be submitted to the UNHRC.

EMRIP proposed to the UNHRC that, *inter alia*, it:

- request EMRIP to continue its work on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries, in cooperation with the thematic work of the Special Rapporteur on the rights of indigenous peoples, and to communicate and to share knowledge and good practices with the Working Group on the issue of human rights and transnational corporations and other business enterprises;
- hold panel discussions on indigenous peoples' issues on a permanent basis;
- encourage the UN General Assembly to adopt appropriate permanent measures to ensure that indigenous peoples' governance bodies and institutions are able to participate at the UN as observers with, as a minimum, the same participatory rights as non-governmental organisations in consultative status with the Economic and Social Council; and
- request EMRIP to undertake a questionnaire on measures for applying the UNDRIP in order to provide further detail on possible appropriate measures and implementation strategies to ensure respect for and full application of the UNDRIP.

Human Rights Council's 18th session, September 2011

EMRIP conducted its first interactive dialogue with the Human Rights Council (UNHRC) during its September session, as authorised in the UNHRC's resolution 15/7 of 2010, together with the Special Rapporteur on the rights of indigenous peoples, James Anaya. The work of EMRIP was presented by the Chairperson, Vital Bambanze, and Wilton Littlechild, who then fielded questions and comments from states and UNHRC accredited organisations. The interactive dialogue provided a rich opportunity for EMRIP to engage directly with states on its work in an open and transparent format.

The interactive dialogue was followed by a three-hour panel devoted to the role of languages and culture in the protection and promotion of the rights and identity of indigenous peoples, in which Vital Bambanze participated together with James Anaya, Lester Coyne (Australia) and Javier López Sánchez (Mexico). The panel, coupled with the interactive dialogues, meant that the UNHRC devoted a significant portion of its time to indigenous peoples' issues, certainly more time than it has in the past.

The UNHRC adopted resolution 18/8 entitled *Human rights and indigenous peoples* during its 18th session. The resolution:

- welcomed the work of EMRIP and took note with appreciation of its fourth session report;
- welcomed EMRIP's practice of devoting specific time to the discussion of updates relevant to past mandated thematic studies of EMRIP during its sessions and recommended that EMRIP adopt such a practice on a permanent basis;
- encouraged states to consider initiating and strengthening, as appropriate, legislative and policy measures that prioritise education in the design and implementation of national development strategies affecting indigenous peoples, on the basis of the past advice of EMRIP;
- welcomed EMRIP's completion of its final study on indigenous peoples and the right to participate in decision-making and the inclusion of good practices in the study, including those in connection with the activities of extractive industries. It encouraged all interested parties to consider them a practical guide on how to attain the goals of the UNDRIP;
- requested EMRIP to continue to build on its previous studies, including its study on indigenous peoples and the right to participate in decision-making, as laid out in EMRIP's latest report;
- also requested EMRIP to prepare a study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples, and to present it to the UNHRC at its 21st session;
- further requested EMRIP to undertake, with the assistance of the Office of the High Commissioner, a questionnaire to seek the views of states on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the UNDRIP; and
- requested EMRIP to discuss the upcoming World Conference and, together with other relevant mechanisms on indigenous peoples' issues, to

contribute to an exploration of the modalities for the meeting, including indigenous peoples' participation in the World Conference and its preparatory process.

As the above illustrates, EMRIP's proposal to the UNHRC that it continue its study on indigenous peoples and the right to participate in decision-making with a focus on the extractive industries, in its report of its fourth session, was not explicitly endorsed. Instead, the UNHRC mentioned the examples of good practices cited in EMRIP's final report on its study on participation in decision-making in relation to the extractive industries and then requested that EMRIP "build on its previous studies".

The UNHRC's support for EMRIP is reflected in the increasing number of requests it made in 2011. They include, in addition to the annual request for EMRIP to examine a specific thematic area, the questionnaire on the implementation of the UNDRIP and a contribution to the exploration of the modalities for the World Conference on Indigenous Peoples. The questionnaire was prepared and sent to states in November 2011. It is available on EMRIP's website.¹

Coordination

A coordination meeting between EMRIP, the Special Rapporteur and a representative of the UNPFII took place in July 2011 in Geneva, Switzerland. In addition, representatives of EMRIP attend the UNPFII sessions and vice versa. In a practice that has evolved in recent years, the Special Rapporteur on the rights of indigenous peoples hears communications from indigenous peoples during EMRIP's annual sessions.

Visibility and outreach

EMRIP is working to enhance its visibility and outreach. To this end, it has, for example, informed the UN human rights treaty bodies of its studies and their relevance to the treaty bodies and their monitoring of states' compliance with the UN's human rights treaties, and it will continue to do so in 2012.

In addition, EMRIP has prepared comprehensive PowerPoint presentations on its work and its studies, which are available from its website, as well as sum-

maries of its studies and a brief guide on how the studies can be used in the UNHRC's Universal Periodic Review process and before the UN human rights treaty bodies.

Further, EMRIP engages with a number of other international institutions inter-sessionally, including, in 2011, with the UNPFII, the UN's Forum on Minority Issues and the African Commission on Human and Peoples' Rights. ○

Note

- 1 The website of the Expert Mechanism can be visited at : <http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/EMRIPIndex.aspx>

***Dr. Claire Charters**, Secretary of the United Nations Expert Mechanism on the Rights of Indigenous Peoples and Human Rights Officer, United Nations Office of the High Commissioner for Human Rights. Claire is Ngati Whakaue, Nga Puhi, Tainui and Tuwharetoa (Aotearoa/New Zealand).*

UN SPECIAL RAPPORTEUR ON THE RIGHTS OF INDIGENOUS PEOPLES

In 2001, the then Commission on Human Rights decided to appoint a Special Rapporteur on the situation of the human rights of indigenous peoples. In September 2010, the mandate was renewed for a period of three years, and the title of the mandate was changed from “Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people” to “Special Rapporteur on the Rights of Indigenous Peoples” (A/HRC/15/14).

The Special Rapporteur’s mandate is to gather information and communications from all relevant sources – including governments, indigenous peoples and their communities and organizations – on violations of human rights and fundamental freedoms of indigenous peoples; to formulate recommendations and proposals on measures and activities to prevent and remedy violations of the basic human rights and fundamental freedoms of indigenous peoples; and to work in close contact with other special rapporteurs, special representatives, working groups and independent experts of the United Nations Human Rights Council.

Under his mandate from the Human Rights Council, the Special Rapporteur is authorized to take complaints from indigenous individuals, groups or communities, including requests for urgent action, to investigate them, to make visits to the countries where the complaints originate, and to make recommendations to the country violating indigenous human rights and to the various human rights organs of the UN as to steps they should take to remedy the violations or to prevent future violations.

This year marked the fourth year of the mandate of Professor James Anaya as United Nations Special Rapporteur on the rights of indigenous peoples. It also marked the beginning of his second term following the U.N. Human Rights Council’s renewal of his mandate for another three-year period. During the past year, the Special Rapporteur continued focusing his work within four principle areas:

the promotion of good practices; country assessments; responding to specific cases of alleged human rights violations; and thematic studies.¹ In-depth reports on country situations and examination of specific cases carried out within the framework of the mandate of the Special Rapporteur included his reports on the situation of indigenous peoples in the Sápmi region of Norway, Sweden and Finland; in New Zealand; in the Republic of Congo; and in New Caledonia (France). The Special Rapporteur also reported on indigenous peoples affected by the proposed Diquís hydroelectric project in Costa Rica; on measures needed to secure indigenous and tribal peoples' land and related rights in Suriname; and on the situation of the rights of indigenous peoples of Guatemala in relation to extractive projects, and other types of projects, in their traditional territories.

Promotion of good practices

In accordance with his mandate, the Special Rapporteur has advocated for and provided assistance to governments, international institutions and agencies with respect to legal, administrative and programmatic reforms at the domestic and international levels in order to promote respect for the rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples and other relevant international instruments. In July 2011, the Special Rapporteur testified as an expert witness before the Inter-American Court of Human Rights during proceedings related to the case of *Sarayaku vs. Ecuador*, regarding the principles of consultation and free, prior and informed consent. The Special Rapporteur has also provided technical assistance to various governments in the development of laws and policies related to indigenous peoples at the domestic level. For example, at the request of the Government of Suriname, and of indigenous and tribal peoples in that country, the Special Rapporteur made a visit in March 2011 and subsequently prepared a report providing observations and recommendations on the development of legislation to secure indigenous and tribal peoples' rights to lands and resources in the light of binding judgments issued by the Inter-American Court of Human Rights.

In February 2011, the Special Rapporteur provided observations on an initiative by the Guatemalan government to regulate a procedure for consultation with indigenous peoples. Also in June 2011, the Special Rapporteur provided testimony at a hearing of the United States' Senate Committee on Indian Affairs enti-

tled “Setting the standard: the domestic policy implication of the UN Declaration on the Rights of Indigenous Peoples”. Throughout the past year, the Special Rapporteur also provided comments on drafts being considered by the National Assembly of Ecuador to coordinate indigenous customary justice systems with the national justice system. In this connection, the Special Rapporteur participated in a videoconference with the Ecuadorean National Assembly in June 2011, during which he addressed specific questions and concerns regarding the proposed legislation.

In addition, the Special Rapporteur provided guidance and orientation to numerous United Nations programmes and agencies, multinational organizations and other groups on the rights of indigenous peoples in various contexts including: the Organization for Economic Cooperation and Development; the United Nations Development Programme’s (UNDP) reducing emissions from deforestation and forest degradation (REDD) programme; the Pan-American Health Organization; the Federal Ministry on Economic Cooperation and Development of Germany; the International Finance Corporation; the World Intellectual Property Organization; and the United Nations Educational, Scientific and Cultural Organization (UNESCO). The Special Rapporteur has also been collaborating with the UNDP to prepare a manual on indigenous peoples’ rights in the context of development to be used by UNDP staff and others working with indigenous peoples.

Country Assessments

In February 2011, the Special Rapporteur visited New Caledonia, a territory under the jurisdiction of France, to examine the situation of the indigenous Kanak people. In September 2011, the Special Rapporteur made public his report on that visit, which made a number of observations and recommendations, in the light of relevant international standards, to assist with the ongoing efforts to advance the rights of the Kanak people in the context of the implementation of the Nouméa Accord and the United Nations-supported decolonization process. In November 2011, Professor Anaya visited Argentina to examine the situation of indigenous peoples in the country. This visit marked the first time that a United Nations expert had visited the country to specifically examine the situation of indigenous peoples.

Specific cases of alleged human rights violations

The examination of specific cases of alleged human rights violations represents the main area of the Special Rapporteur's work, in accordance with his mandate. The Special Rapporteur has continued the practice of providing detailed observations and recommendations regarding the action that he believes states, indigenous peoples or other actors could take to address particular situations under consideration.²

Detailed observations and recommendations were issued by the Special Rapporteur regarding the following situations, among others: the protests for land and autonomy rights by Rapa Nui people in Easter Island (Chile); the effects of the Gilgel Gibe III hydroelectric project on indigenous peoples in Ethiopia; the situation of indigenous land rights in Sarawak, Malaysia; the situation of proposed mining activities on a site that is sacred to the Wixárika (Huichol) people in Mexico; the relocation of unrecognized Bedouin villages in the Negev desert in Israel; and the effects of proposed artificial snowmaking from recycled wastewater on a mountain considered sacred by Native Americans in the state of Arizona, United States of America.

As has been the practice since the beginning of his mandate, the Special Rapporteur has occasionally made on-site visits to examine issues raised in communications with governments in greater depth. In April 2011, the Special Rapporteur travelled to Costa Rica to examine the situation of indigenous peoples affected by the potential construction of the Diquís hydroelectric project. Following the visit, Professor Anaya provided the government of Costa Rica and indigenous stakeholders with observations and recommendations focusing mainly on the need for consultation mechanisms. The Special Rapporteur continues to maintain a constructive dialogue with the government and indigenous peoples regarding the implementation of his recommendations.

In addition, the Special Rapporteur also issues media or other public statements on situations of immediate concern in particular countries. During the past year, public statements were issued concerning protests by indigenous peoples in Peru against extractive industry activities in the Puno region; indigenous protests against a proposed road construction project through the TIPNIS indigenous reserve in Bolivia; concerns over proposals presented before the Norwegian National Parliament calling for the repeal of key laws and policies dealing with the

rights of Sami people; and the dire social and economic conditions of members of the Attawapiskat First Nation in Canada.

Thematic study on extractive industries

Building on his previous studies on the duty to consult with indigenous peoples³ and the responsibility of corporations to respect the rights of indigenous peoples,⁴ the Special Rapporteur dedicated his 2011 thematic study to the examination of issues associated with large-scale extractive industry activities on or near indigenous lands.⁵

As the Special Rapporteur explained in his last annual statement to the United Nations General Assembly in New York, the issue of extractive industries is of major and immediate concern to indigenous peoples all over the world. In numerous country-specific and special reports, and in reviews of particular cases, the Special Rapporteur has examined various situations in which extractive industry activities have caused negative, even catastrophic, impacts on the social, cultural and economic rights of indigenous peoples. There have been various examples of negligent projects implemented in indigenous territories without proper guarantees and without the involvement of the peoples concerned. There are also several cases in which disputes related to extractive industries have escalated and erupted into violence. In many areas, there is an increasing polarization and radicalization of positions about extractive activities.

In the view of the Special Rapporteur, a lack of common understanding about key issues related to extractive industries and about applicable standards, among all actors concerned, is a major barrier to the effective protection and realization of indigenous peoples' rights in this context. Additionally, significant legal and policy gaps and a lack of coherence in standards related to extractive industries can be observed in countries across all regions.

There is need for change in the current state of affairs if indigenous rights standards are to have a meaningful effect on state and corporate policies and action as they relate to indigenous peoples. An initial step towards such change would be the establishment of a common understanding among indigenous peoples, governmental actors, businesses enterprises and others. Without such understanding, the application of indigenous rights standards will continue to be

contested or ignored, and indigenous peoples will continue to be vulnerable to serious abuses of their individual and collective human rights.

Future thematic studies by the Special Rapporteur will thus further develop the analysis of these issues, based on international human rights standards and examples of good practice in this area.⁶

In 2011, the Special Rapporteur collaborated with the Expert Mechanism on the Rights of Indigenous Peoples in the development of its study on indigenous peoples' right to participation in decision-making. During a meeting of experts convened by the Expert Mechanism in March 2011, the Special Rapporteur shared examples of good practices of indigenous participation that have come to his attention as part of his mandate.

Coordination with other United Nations mechanisms

In addition to the work outlined above, the Special Rapporteur regularly collaborates with the other United Nations mechanisms dealing with indigenous peoples – the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples. The Special Rapporteur participates in annual coordinating meetings with these mechanisms to discuss and exchange information on their respective agendas and activities. In the annual sessions of these mechanisms, the Special Rapporteur has held parallel meetings with representatives of indigenous peoples, states, and other United Nations agencies to discuss specific cases or issues of concern to indigenous peoples and other matters of interest to the mandate of the Special Rapporteur. ○

Notes and references

- 1 Further details of specific activities within these areas over the past year are described in the fourth annual report of the Special Rapporteur to the United Nations Human Rights Council (A/HRC/18/35). All documents related to the work of the Special Rapporteur are available at www.unsr.jamesanaya.org
- 2 Summaries of the letters sent by the Special Rapporteur to governments regarding particular situations, responses from governments, along with the Special Rapporteur's observations, are included in his communications report (A/HRC/18/35/Add. 1) which can be accessed at: <http://www.unsr.jamesanaya.org/cases-examined/communications-cases-examined-2010-2011-full-report>
- 3 (A/HRC/12/34) See:

<http://unsr.jamesanaya.org/annual-reports/report-to-the-human-rights-council-a-hrc-12-34-14-july-2009>

4 (A/HRC/15/37) See:

<http://unsr.jamesanaya.org/annual-reports/report-to-the-human-rights-council-a-hrc-15-37-19-july-2010>

5 See:

<http://unsr.jamesanaya.org/annual-reports/report-to-the-human-rights-council-a-hrc-18-35-11-july-2011>

6 The Special Rapporteur presented these and other observations in his annual statement to the United Nations General Assembly in New York on the 17 October 2011. See the complete statement at: <http://unsr.jamesanaya.org/statements/statement-of-special-rapporteur-to-un-general-assembly-2011>

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UN HUMAN RIGHTS COUNCIL

The UN Human Rights Council was created by the UN General Assembly in March 2006 to replace the Commission on Human Rights. Its mandate is to promote universal respect for the protection of all human rights and fundamental freedoms for all, to address situations of human rights violations and to promote the effective coordination and mainstreaming of human rights within the United Nations system. The current mechanisms under the HRC that are specifically mandated to deal with the promotion and the protection of indigenous peoples' rights are the UN Special Rapporteur on indigenous peoples' rights (Special Procedures) and the Expert Mechanism on Rights of Indigenous Peoples (Advisory body). However, human rights mechanisms and bodies such as the Universal Periodic Review (UPR), the Committee on the Elimination of Racial Discrimination (CERD), the Committee on Economic, Social and Cultural Rights (CESCR) and others are also relevant for indigenous peoples. The Human Rights Council meets three times a year for three weeks. In 2011, the HRC met for its 16th (February), 17th (June) and 18th (September) session. Indigenous issues were put on the agenda as a separate item for the 18th session.

18th session of the UN Human Rights Council

On 20 and 21 September, under agenda item 3, the UN Human Rights Council (HRC) considered the reports on indigenous peoples' rights presented by the UN Special Rapporteur on the rights of indigenous peoples (SR), James Anaya, and the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) (*see the articles on the SR and the EMRIP in this edition*). A Panel on Indigenous Languages also took place. The practice of consolidating the HRC's consideration of indigenous issues into one joint annual session has thus been established. This is positive in that it means that the HRC will devote several hours to consid-

ering indigenous issues in some depth but, as various indigenous organisations noted during the session, it also limits the possibility of indigenous participation by reducing the opportunity to speak to just one interactive dialogue at which all the reports are discussed. This year, the number of observers (NGOs) able to respond to the SR and EMRIP's reports was thus greatly restricted due to lack of time and only a few indigenous representatives were allowed to present statements. Over the course of the week, the HRC's annual resolution on indigenous peoples was also negotiated.¹

Interactive dialogue on indigenous peoples

Countries referred to in the SR's country visit reports are the first to speak during the interactive dialogue. Furthermore, and as a new practice, following the state's intervention, the national human rights institution of that country can also speak.

Countries covered by the Special Rapporteur in 2011 included Guatemala, New Zealand, the Republic of Congo, France (in relation to his visit to New Caledonia), Costa Rica, and Norway, Sweden and Finland (in relation to Sápmi - the Sami territory in the three countries). In their responses, many of the countries referred to legal reforms and developments in the implementation of existing policies and laws, as well as to consultations with indigenous organisations and communities.

The Republic of Congo, for example, stated that it had implemented policies to take account of the specific features of indigenous populations. The government representative described the country's history and the generally difficult socio-economic situation, which means the whole population needs to be targeted by poverty reduction measures. He indicated that the SR's report was correct with regard to the Congolese reality and, in terms of moving forward with and implementing the recommendations, he described the adoption of the law on indigenous peoples' rights. He stated that the recommendations had been well noted and that the government was hoping to obtain support in order to be able to implement these, and for implementation of the above law, which the state was committed to.

France described the situation in its colony (New Caledonia), and the existence of the customary senate, which ensures indigenous representation. The government representative noted that France had supported recognition of indigenous rights and the adoption of the Declaration. He described the terms of the

Noumea Agreement which, in his opinion, reflected the rights contained in the Declaration and the Kanak identity. He described the actions being taken to return land and recognize the collective property of the clans and he also described future actions.

During the interactive dialogue with both mechanisms, other states such as Guatemala, Bolivia, Mexico, Peru and Denmark also asked questions and made comments. Denmark asked EMRIP how it was going to continue the work on decision-making and the extractive industries that it was proposing in its report and noted the importance of cooperation between the UN mechanisms dealing with indigenous peoples' rights. Another important issue raised by Denmark, Bolivia, and the European Union (EU) referred to the 2014 World Conference on Indigenous Peoples and the need to ensure full indigenous participation in the preparatory process. Several governments welcomed the SR's intention to work on the issue of the extractive industries. Among these, Mexico, the EU and Peru noted the relevance of the new framework adopted by the Council and supported Ruggie's focus on dialogue with all parties.

In the second part of the interactive dialogue, Venezuela, Chile, Australia, Uruguay, Russian Federation, Ecuador and Germany also stated their support for the SR's decision to work on the issue of the extractive industries during the second period of his mandate. While some states referred to and stated their support for EMRIP's report and work in their presentations, others such as Colombia, Ethiopia, Venezuela, Australia, Chile, Brazil, Russian Federation, Panama and Ecuador presented information on specific developments regarding their national situations. Ethiopia, for example, referred to the communication received from the SR relating to the construction of the Gilgel Gibe III dam, and indicated that they had sent detailed information on this matter to the SR and that the work would not displace or harm indigenous populations. Like China, however, Ethiopia stated in its presentation that there were no indigenous peoples on its territory.

Several indigenous representatives took the floor after the presentations of the states. They referred to the reports by the SR and the EMRIP and made further reference to the situation in their particular countries, many of which targeted the issue of the impact of the extractive industries on indigenous lands.

The session concluded with the final observations made by the SR and Wilton Littlechild, member of EMRIP. The SR welcomed the expressions of support for his proposal to work on the issue of the extractive industries, which he considered to be of utmost importance in relation to indigenous peoples' human rights. He

indicated that he wanted to continue focusing on positive and negative experiences, from which conclusions could then be drawn. He added that he would work in coordination with EMRIP and stated that he considered the CDH framework and principles on the issue highly relevant to his work as they provide a common ground on which to elaborate more specific obligations relating to indigenous rights. In relation to consultation, he insisted on the need for clear procedures because, without these, there would be confusion as to the duties and responsibilities of states and other actors and he recommended that the governments continue working on the issue in full cooperation with the indigenous peoples.

Mr. Littlechild referred to EMRIP's intention to focus on the issue of indigenous participation in decision-making with reference to the extractive industries; he indicated that it would work with the SR and also with the Ruggie report, using it as a framework. In relation to the World Conference and indigenous participation in all of the preparatory stages, he recalled the precedents of indigenous participation in all preliminary stages of previous UN conferences and also referred to the issue of the equal participation of indigenous women.

Panel on indigenous languages

The decision to hold a discussion panel on a specific indigenous issue as part of the HRC's regular sessions was adopted in 2010 with the intention to devote more time to indigenous issues within the context of the HRC's work. In 2011, the panel focused on the importance of indigenous languages in preserving the culture and identity of indigenous peoples.² It was followed by an interactive dialogue between the participating experts and the audience.

The HRC resolution on human rights and indigenous peoples

During the week, negotiations also took place to finalise the HRC's annual resolution on human rights and indigenous peoples. The resolution was written and proposed by Mexico and Guatemala. Negotiations were held with the indigenous caucus and interested states. The resolution addresses various issues relating to indigenous rights and the HRC's work, including the following:

- The work of the SR and a call for the specialised mechanisms to continue to work together;
- Notification of the next session of EMRIP and a decision regarding the theme of its next report (role of indigenous languages and cultures in promoting their rights), in addition to a request to conduct follow-up work on previous reports;
- The World Conference on Indigenous Peoples (2014), which will be a new agenda point for EMRIP for the coming year. The HRC will ask for it to consider indigenous participation in this;
- The annual panel on indigenous issues, which next year will focus on the issue of “indigenous peoples’ access to justice”.
- A request for the UN’s competent bodies (such as the Legal Unit and the OHCHR) to examine how indigenous peoples’ representatives (their representative institutions, governments, etc.) can participate in a special way in the UN’s work, given their different status from civil society organisations.

Indigenous concerns regarding the draft resolution

The indigenous organisations expressed their concern at a number of aspects of this resolution. Firstly, they understood that, as good practice, it had been agreed that the Council would choose the future issues for EMRIP reports from among those proposed by the EMRIP itself. One of the agenda items during the sessions of the EMRIP is a discussion of its future work. Under this agenda point, both states and indigenous representatives can reach agreement on priority issues. However, in the proposed resolution, the HRC had decided on an independent issue while ignoring EMRIP’s own proposal to do further work on participation in decision-making with a focus on extractive industry projects, in cooperation with the work of the SR and the recently-established Working Group on human rights and corporations.

The indigenous organisations felt that this set a bad precedent and stripped all meaning from the discussions that had been held in good faith during the EMRIP session. Similar arguments were made with regard to the panel. The resolution calls for a panel of experts to be established for the HRC’s session, an idea that was adopted by the HRC in 2010 and which enables greater space for

debate on indigenous issues during the Council's regular session, as already indicated. However, the indigenous organisations reiterated the point that, when deciding on the theme for the Panel, EMRIP's opinion should have been sought. They felt that the issue chosen (access to justice) was not without merit but that the procedure for deciding on issues without consulting the specialised mechanisms was unacceptable. In his final observations to the HRC, the representative of EMRIP made a similar point, urging the HRC to respect indigenous participation in decision-making. These observations were, however, not taken into account in the final draft of the resolution. In its intervention in the interactive dialogue, only Denmark was in favour of establishing procedures by which these decisions could be taken jointly with EMRIP.

The 18th session of the Human Rights Council ended on 30 September with the debate and adoption of resolutions. The resolution on Indigenous Peoples and Human Rights was adopted by consensus by the states.³

The UN Working Group on human rights and corporations

In March 2011, after an eight-year long process, the UN Secretary-General's Special Representative on business and human rights, Professor John Ruggie, issued the "*Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*".⁴ In June 2011, the HRC adopted its "three pillar" framework on business and human rights, addressing the responsibilities of both governments and the private sector. At the same time, via Resolution 17/4, on 16 June 2011, it agreed to establish the UN Working Group on the issue of human rights and transnational corporations and other business enterprises.⁵

The 18th session of the HRC decided upon the composition of the new Working Group and appointed five independent experts to be its members. The experts appointed were:

1. Mr. Michael ADDO (for Africa)
2. Mr. Puvan Selvanathan (for Asia)
3. Mr. Pavel Sulyandziga (Eastern Europe)
4. Ms Alexandra Guaqueta (Latin America and the Caribbean)
5. Ms Margaret Jungk (Western Europe and others)

The issue of the impact of corporations on the human rights of indigenous peoples is now higher up the multilateral agenda than ever before and the first meeting of the newly established Working Group, which took place in January 2012, allows for hope that indigenous peoples will be high up on the agenda of this body.⁶ The Working Group should develop a regular dialogue with the relevant UN bodies and specialized agencies, funds and programs dealing with the situation of indigenous peoples and indigenous peoples' rights, such as the UNPFII, the EMRIP and the UN Special Rapporteur and others, and take full account of their authoritative findings and reports.

The Working Group should also adhere to and fully respect indigenous peoples' rights, as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, whenever providing advice and recommendations regarding the development of domestic legislation and policies relating to business and human rights. ○

Notes and references

- 1 The session can be followed via the United Nations webcast at the following link:
<http://www.unmultimedia.org/tv/webcast/2011/09/part-i-clustered-interactive-dialogue-on-indigenous-peoples-16th-plenary.html>
- 2 The panel on indigenous languages: can be accessed at:
<http://www.unmultimedia.org/tv/webcast/c/week2-tuesday.html>
- 3 Text of the HRC resolution on indigenous peoples and human rights adopted at the 18th session of the HRC can be found at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/18/L.23
- 4 A/HRC/17/31
- 5 <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/G11/141/87/PDF/G1114187.pdf?OpenElement>
- 6 For a brief introduction to the issue of indigenous peoples and transnational corporations, including recommendations for the Working Group on Human Rights and Transnational Corporations and other Businesses, see IWGIA's briefing note at: http://www.iwgia.org/publications/search-pubs?publication_id=566

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UN HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW

The creation of the Universal Periodic Review (UPR) was one of the most significant innovations of the Human Rights Council (HRC). Under this system, the human rights records of all UN member states will, for the first time, be regularly examined through a common mechanism. Its creation is based on the UN General Assembly Resolution¹ that established the HRC. Consequently, in June 2007, the HRC decided to establish the UPR as one of the key elements of its institution-building package.²

The goal of the UPR mechanism is to improve the human rights situation on the ground; assess the fulfilment of states' obligations and commitments; enhance the states' capacity; and share best practices among states and other stakeholders.

A country review is based on three official documents: the National Report, a compilation of UN information, i.e., reports from UN mechanisms and special procedures relating to the human rights situation of the country under review, and a ten-page summary of stakeholders' information, the latter two being compiled by the Office of the High Commissioner for Human Rights (OHCHR).

Each state is reviewed once every four years, in a three-hour session consisting of the presentation of its report and an interactive dialogue with all member states. Only states have the possibility of taking the floor during the review. The report from the review is adopted by the Human Rights Council at one of its subsequent sessions.

Indigenous issues in the UPR

2011 marked the end of the first cycle of the UPR. This means that, since 2008 and in 12 sessions, all 192 UN member states have undergone a review during which their human rights records were examined and a total of 18,889 recom-

mendations were made.³ Of these, 372 (1.97%) recommendations directly referred to the situation and rights of indigenous peoples. This is a rather low figure and, even considering that indigenous peoples' issues might also have been covered under the heading of "minorities" (758 recommendations), there is a need for further awareness raising and advocacy to promote indigenous issues and make the situation of indigenous peoples more visible in this process.⁴

2011 saw the 10th, 11th, and 12th sessions of the UPR take place. During the three sessions in January, May and October 2011, various countries with indigenous populations were up for review⁵ and almost all of them received recommendations regarding indigenous peoples.

The number of recommendations and the responses of the states were, however, very diverse. For example, the review of Paraguay included 20 recommendations on indigenous peoples and Paraguay accepted all of them. Namibia (5 recommendations), Nepal (3), Venezuela (6) and Uganda (1) all accepted the recommendations as well.

On the other hand, Rwanda, to give just one example, received one recommendation: "Intensify measures to improve access by minority groups and indigenous peoples to basic social services, such as health, education, employment, and occupation", which it rejected. Myanmar and Niger also rejected the one recommendation on indigenous peoples that each of them received.

Suriname received 13 recommendations on indigenous peoples. Whereas it accepted five of them referring to discrimination of indigenous peoples and Maroons and to dialogue, it rejected the eight recommendations that referred to the collective rights of indigenous peoples, to international instruments and, particularly, those referring to decisions by the Inter-American Court of Human Rights.⁶

Tanzania received five recommendations, which it needed to take back home for further consideration. The country's final acceptance or rejection will be made public at the 19th session of the Human Rights Council in March 2012.

Unfortunately the review of Thailand did not see any recommendations by states with specific regard to indigenous peoples, although their situation may be reflected in general references to ethnic minorities and most vulnerable groups.⁷

At the time of writing, the responses of states to recommendations made during the 12th session had not yet been received.⁸

Common threads throughout the recommendations include the ratification or proper implementation of ILO Convention 169, the adoption or implementation of the UNDRIP, constitutional recognition of indigenous peoples, addressing all

forms of discrimination against indigenous peoples and guaranteeing the participation of indigenous peoples in public affairs.

States under review can also make voluntary pledges and highlight the reforms they are undertaking in order to adhere to human rights standards.

Indigenous peoples' involvement in the UPR process

Involvement in the UPR process needs to be considered in the following phases: the preparation and submission of the State and Stakeholder Reports to the OHCHR; participation in the interactive dialogue session; participation in the adoption of the report; and follow-up on implementation of the recommendations accepted by the state.

Various organisations representing indigenous peoples did prepare and submit reports that were included in the stakeholder summary prepared by the OHCHR. In recognition of the fact that NGOs are not permitted to make interventions during the interactive dialogue sessions, many organisations conduct side events in Geneva to generate awareness and garner support for various recommendations among the working groups that would undertake the reviews of their respective states.

During 2011, IWGIA mainly worked with its indigenous partner organisations in Tanzania to prepare for and carry out lobbying work during the review, which took place during the 12th session. While the article on Tanzania in this book contains more details about this specific review, it is important to note that a well-prepared stakeholder process, including indigenous organisations as well as other civil society organisations, is crucial for strong ownership and responsibility among indigenous civil society, and this enhances the success of not only the advocacy work on a national and international level before the review but also of the monitoring and lobbying for implementation of recommendations after the review process. The second cycle of the UPR will be a challenge in this regard and will, to an even larger extent, require a concerted civil society input.

Follow-up and implementation of recommendations

As mentioned earlier, the recommendations on indigenous peoples are still few, and in order to make indigenous concerns more visible, much advocacy and

preparation is needed by indigenous peoples' organisations. In 2011, a number of NGOs published follow-up reports on the implementation of states' recommendations. As an example, the report by the Kenya UPR Stakeholder Coalition can be mentioned. This coalition produced an Annual Progress Report in September 2011, including a chapter on the implementation of the recommendations targeting indigenous peoples' rights.⁹ These reports will be useful for monitoring the human rights performance of states during the second cycle of the UPR and will help in terms of lobbying states to look further into the human rights situation of indigenous peoples.

A number of states have also provided follow-up reports on their review and, during the Human Rights Council meeting in June 2011, Canada organised a side event at which delegates from Mauritius, Mexico, Senegal, Canada and Jordan presented an update on the implementation of recommendations. States have also submitted implementation reports to the HRC, which can be found on the website.¹⁰ The NGO UPR-Info has started a follow-up project, asking states, NGOs and national human rights institutions to share information on the implementation of recommendations two years after a state has been reviewed. There are now a number of so-called Mid-term Implementation Assessment reports available on their website¹¹ and they provide a useful tool with which to monitor the implementation of recommendations. One example is the report on Russia, which shows that none of the accepted recommendations regarding indigenous peoples have been implemented so far. Indigenous organisations can provide information for these reports, thereby making sure that indigenous issues continue to be visible.

The second cycle of the UPR

The HRC adopted two resolutions, in March and June 2011 respectively. These define the modalities for the second cycle, which include the following:¹²

- It will last 4.5 years
- There will be 14 sessions
- Each session will review 14 states
- Each review will last 3.5 hours
- The order of the reviews will be the same as in the first cycle

- There will only be two sessions in 2012 (May/June and October)
- The 2nd cycle will focus on the implementation of accepted recommendations and the development of the human rights situation in the state under review.
- As for the list of speakers, states will be arranged in alphabetical order (rather than by when they put themselves on the speakers' list) although they will be able to swap places.
- For the role of NGOs, the HRC resolution states that: "States are encouraged to conduct broad consultations with all relevant stakeholders on the follow-up" and "Other stakeholders are encouraged to include in their contributions information on the follow-up to the preceding review".¹³

For many indigenous peoples, discrimination and human rights abuses will continue to be a challenge in their countries. The UPR process will not change much in terms of the realities they face on the ground, at least not in the short term. However, it is to be hoped that broader participation by indigenous peoples in this process and an increased awareness of the human rights situation in the countries in which they live may lead to more recommendations targeting indigenous rights, and will at least highlight some of the challenges faced by the most marginalised and vulnerable peoples of the world.

States that make recommendations regarding indigenous peoples' rights should, to a higher degree, make sure that those recommendations are also known to their own agencies and representations, such as embassies in the countries reviewed, and that they are used in bilateral and multilateral discussions and negotiations at all levels.

The adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in September 2007 has established the minimum standard for the recognition of the collective rights of indigenous peoples. The UNDRIP therefore needs to be mainstreamed into the work of the UPR. ○

Notes and references

- 1 General Assembly Resolution 60/251 mandates the Human Rights Council to "undertake a universal periodic review based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States".

- 2 A/HRC/RES/5/1
- 3 These numbers do not include the 12th session, as statistics are not available yet.
- 4 For data on the reviews and on the recommendations consult the UPR-Info database at <http://www.upr-info.org/database/>
- 5 These states include, among others, Rwanda, Namibia, Nepal, Burma, Niger, Paraguay, Denmark, Suriname, Papua New Guinea, Tanzania, Thailand, Venezuela and Uganda (in order of review)
- 6 <http://www.upr-info.org/database/>
- 7 Report of the Working Group on the Universal Periodic Review. Thailand. A/HRC/19/8
- 8 The final reports of the respective states are available at <http://www.upr-info.org/-Sessions-.html>
- 9 Kenya UPR Stakeholder Coalition. Annual Progress Report 22nd September 2010 – 21st September 2011. An Assessment by Stakeholders of Government's performance in implementation of UPR Recommendations. Nairobi, Kenya, September 2011. http://www.crin.org/docs/follow-up_kenya_stakeholders_annual_progress_report_2011.pdf. For more information about the review of Kenya and indigenous peoples' engagement , see *The Indigenous World 2011*.
- 10 <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx>
- 11 <http://followup.upr-info.org/>. See also their Civil Society kit: <http://followup.upr-info.org/stable/Civil%20society%20kit.pdf>
- 12 A/HRC/RES/16/21 and A/HRC/17/L.29
- 13 A/HRC/RES/16/21

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UN FRAMEWORK CONVENTION ON CLIMATE CHANGE

The United Nations Framework Convention on Climate Change (UNFCCC) is an international treaty created at the Earth Summit in Rio in 1992 to tackle the growing problem of global warming and related harmful changes in the climate, such as more frequent droughts, storms and hurricanes, melting of ice, rising sea levels, flooding, forest fires, etc. The UNFCCC entered into force in 1994, and has near universal membership, with 192 countries as ratifying parties. In 1997, the Convention established its Kyoto Protocol, ratified by 184 parties, by which a number of industrialized countries have committed to reducing their greenhouse gas emissions in line with legally binding targets.¹

In 2007, the Convention's governing body, the Conference of the Parties (COP), adopted the Bali Action Plan - a road map for strengthening international action on climate change and enabling full implementation of the Convention through an agreement covering all parties to the Convention. The elements of the Bali Action Plan (a shared vision, mitigation, adaptation, technology development and transfer, provision of financial resources and investments)² are negotiated in the Ad-Hoc Working Group on Long-Term Cooperative Action (AWG-LCA). Apart from the Kyoto Protocol's working group (AWG-KP) and the AWG-LCA, the convention has two permanent subsidiary bodies, namely the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI).³

Indigenous rights issues cut across almost all areas of negotiation but have been highlighted most significantly within the negotiations on forest conservation, known as REDD+ (Reduced Emissions from Deforestation and Forest Degradation), one of the mitigation measures negotiated under the AWG-LCA.

The advocacy efforts of indigenous peoples' organizations continued unabated in 2011 with the ultimate goal of ensuring full consideration of international indigenous peoples' rights' obligations and instruments, such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), in all climate change policies and programmes, in particular on Reducing Emissions from Deforestation and Degradation (REDD+). An increasing number of governments have joined their calls, and a meeting in Mexico, with the participation of indigenous peoples and state parties, was organized under the auspices of the government of Mexico in order to consolidate an indigenous peoples' platform and strategies for the Conference of the Parties of the UNFCCC (COP 17) in Durban in December 2011, and beyond.

This expanding support base of governments, civil society and social movements was, however, confronted with the peculiar dynamics that underpinned the whole negotiation process throughout the year and more clear-cut and stringent commitments on rights were set aside in the last frantic hours of negotiations in Durban in order to clear the way for a last-minute agreement that would save the face of the UNFCCC and allegedly save the future of the Kyoto Protocol. Once again, the significant hiatus between the urgency of reality on the ground, which calls for immediate action to reduce emissions, mitigate and adapt to climate change through a rights-based approach, and the lack of governments' resolve to commit accordingly, became obvious. It became clear in Durban that governments were entrenched in a "hard power" negotiating battle in which "brinkmanship" was the rule, and strategic positioning the endgame. The whole issue of rights, while acknowledged in form, was considered as a hurdle or irritant in already very tense negotiations, and thus succumbed to *"realpolitik"*. In the background is a dire economic and financial crisis that is eroding the capacity of governments to commit to a significant change in the development paradigm and to invest in supporting countries on their path towards a low carbon future.

Building blocks towards a global climate regime

Negotiators in Durban knew that the stakes were high, and opted for a strategy that would deliver at least some institutional outcomes. They decided to start assembling the institutional structure upon which to subsequently build the global climate governance architecture. In this sense, Durban delivered some concrete

results, such as the launch of the Green Climate Fund, the Transfer of Technology Secretariat, the Adaptation Committee and capacity building bodies. These will create a first pillar upon which the rest of the global climate governance will be developed. In terms of future negotiations, a new negotiating track (the so-called Durban Platform for Enhanced Action) was launched. A global commitment to emissions reductions will be negotiated, and possibly finalized by 2015 in order to enter into force by 2020. Within this broader goal, the EU and its allies, consisting of the groups of the Least Developed Countries (LDC) and Small Island States (AOSIS), joined by China and a reluctant India managed to keep the second commitment period of Kyoto afloat. As regards the key issue of financing, no clear commitments have yet been undertaken to disburse the USD 100 billion per year contributions that the international community should guarantee to support mitigation and adaptation actions until 2020. Nevertheless, the Green Climate Fund was launched and the Board will hold its first meetings in 2012.⁴

UNFCCC: a narrowing space for rights holders

One element to be taken into account in the overall negotiations was the shrinking space for interaction on the part of civil society and other stakeholders. As a matter of fact, calls for an enhanced role for observers and stakeholders had already been dismissed in an earlier preparatory session that took place in Bonn in June 2011. At that time, governments rejected any possibility of stakeholders providing a more concrete and effective contribution in the negotiations by participating in all negotiating sessions and possibly tabling language, as is the case in the negotiations under the Convention on Biological Diversity. Indigenous peoples had called upon Parties to recognize their unique contribution and role in climate change policies and response measures by establishing modalities for their direct engagement in the negotiations, direct access to financing and capacity building to attend the UNFCCC processes, and the setting up of an expert group of indigenous peoples within the UNFCCC. These calls went unheeded in spite of the adoption by the UN Economic and Social Council (ECOSOC) of the report of the 10th Session of the UN Permanent Forum on Indigenous Issues (May 2011) which called upon the UNFCCC and its Parties to “develop mechanisms to promote the participation of indigenous peoples in all aspects of the international dialogue on climate change”.⁵

REDD+ and safeguards, two steps backwards, one step forward

REDD+ negotiations in Durban developed along two streams, one at the subsidiary body level (SBSTA) focusing on adopting guidance on a System of Information on how Safeguards (SIS) are implemented and considered in REDD+, and on reference levels and reference emission levels. And the other in the debate on REDD+ financing modalities developed in the Ad Hoc Working Group on Long-Term Cooperative Action (LCA).⁶ One of the key contentious issues in the SBSTA negotiations was the different interpretation of the safeguard reporting requirements. Most governments were hesitant to adopt guidance that would include performance-related information, and instead limited their discussion to the modalities for reporting. The Indigenous Peoples' Caucus lobbied to have specific reference to indigenous peoples' rights and to international obligations in the final text, but the only noteworthy outcome was the text on international obligations and a general reference to the package of safeguards adopted in the Cancún Agreement in 2010.⁷ The COP decision on the SIS does not provide any guidance on the need to ensure reporting on the implementation of safeguards at the international level nor to develop performance indicators, while specifying that respect for safeguards should support national strategies and be ensured in all phases of the REDD+ cycle. This means that REDD+ governments' would have to ensure that a safeguards compliance and implementation system is in place in the readiness and implementation phases before embarking on results-based payments. As to the latter, Parties acknowledged the fact that the results upon which payments would be made need to encompass non-carbon benefits, such as livelihoods, biodiversity and poverty alleviation.

The final agreement on REDD+ finance also acknowledges that, regardless of the sources of financing, any REDD+ action has to be consistent with the established safeguards, and that any action should promote and support safeguards, as requested by REDD+ countries that are seeking financial and technical support on the matter. Indeed, a key challenge deriving from the Durban decision is that of ensuring that agencies and programmes involved in REDD, such as the UNREDD, the Forest Carbon Partnership Facility and the Forest Investment Programme, commit to supporting and implementing a robust and effective architecture with which to implement safeguards and indigenous peoples' rights at the

national level as a necessary pre-condition before projects can possibly start on the ground.

Green Climate Fund launched but no money yet

As for the Green Climate Fund (GCF), indigenous peoples have - among other things - called for a separate REDD window to be set up, and for the adoption of modalities to ensure direct access to financing in order to support adaptation and mitigation projects developed and implemented by indigenous peoples, and based on their traditional knowledge. The Parties decided to set up two financing windows, one for mitigation and another for adaptation, REDD being part of the former. Ensuring direct access to financing, the adoption of safeguards anchored to international obligations and instruments, such as the UNDRIP, acknowledging indigenous peoples' right to Free, Prior and Informed Consent (FPIC) and their participation in the activities and governance bodies of the Green Climate Fund will be among the outstanding priorities for indigenous peoples' advocacy in relation to the newly-established GCF Board.⁸

Indigenous peoples from all over the world gather to adopt common agenda on climate

Outside the official process, a remarkable development took place in 2011 as a follow-up to a first gathering of the kind held under the auspices of the Mexican government in Xcaret, before the Cancún COP in 2010 (see *The Indigenous World 2011*). In October 2011, indigenous peoples' self-selected representatives of regions from all over the world attended the *Second Technical Workshop of Indigenous Peoples and States in the UNFCCC* together with a group of Parties' delegates in Oaxaca, Mexico. The *Oaxaca Action Plan Of Indigenous Peoples: From Cancún To Durban And Beyond*⁹ represents the common platform for advocacy and lobbying of indigenous peoples in the post-Durban processes, spanning the Rio+20 Conference on Sustainable Development, the Qatar COP18 of the UNFCCC and the World Conference on Indigenous Peoples scheduled in 2014. Among other things, indigenous peoples identified a series of key challenges for the Durban negotiations, such as the lack of implementation/operation-

alisation of the positive elements of the Cancún Agreement, particularly relating to respect for the rights of indigenous peoples, and the establishment of mechanisms for their full and effective participation in climate change processes on all levels. Moreover, the Cancún Agreement carried a very weak reference to “the holistic ecosystems approach and the recognition of the collective rights of Indigenous Peoples in accordance with the UN Declaration on the Rights of Indigenous Peoples as a human rights framework for all actions and activities relating to climate change”.

The lack of any possibility of indigenous peoples directly accessing finance for capacity building and to support mitigation and adaptation actions based on their traditional knowledge and livelihoods was also underlined, together with the lack of commitment by Parties to support the second commitment period of the Kyoto Protocol and to allocate funding for the Green Climate Fund. Indigenous peoples agreed – among other things - to promote a chapter on Indigenous Peoples’ Traditional Knowledge in the Durban Outcome document and to initiate mechanisms to gather indigenous peoples’ proposals and responses on a national/regional level in this regard. The Oaxaca document reiterated indigenous peoples’ position that financing of REDD+ should be based on public funds and not on the carbon market, and should be subject to full respect for indigenous peoples’ rights (in accordance with international obligations and instruments such as the UNDRIP) and relevant safeguards. Furthermore, indigenous peoples should be given options for directly accessing financing in the Green Climate Fund in each of the approved windows. The Oaxaca plan of action will further strengthen indigenous peoples’ capacity to act in a coordinated fashion and exploit the space that still exists at the international level to advocate for more rights-based approaches and instruments within the climate change negotiations. This will apply in particular to the Green Climate Fund and indigenous peoples’ participation in the various bodies that have been launched in Durban. Such calls will indeed benefit from the critical mass of support from countries and civil society accumulated over the years. In parallel, much of the focus will necessarily have to shift at national level onto the implementing agencies, in particular as regards REDD+. The ultimate goal would be that of capitalizing on gains achieved thus far in the consideration of indigenous peoples’ rights at the UNFCCC, and ensuring that countries act consistently when implementing climate programmes and policies such as those on REDD+.

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Notes

- 1 The Kyoto Protocol entered into force in 2005 and, during its first commitment period from 2008-2012, 37 industrialized countries and the European Union committed themselves to reducing their greenhouse gas emissions by an average of 5 percent by 2012, in relation to the 1990 level.
- 2 The Bali Action Plan can be downloaded from the UNFCCC website: <http://unfccc.int/resource/docs/2007/cop13/eng/06a01.pdf#page=3> (accessed on 9 March 2009).
- 3 Sources: UNFCCC's website (<http://unfccc.int/press/items/2794.php>), **International Institute for Environment and Development (IIED), 2009: COP15 for journalists: a guide to the UN climate change summit** (available at: <http://www.iied.org/pubs/display.php?o=17074IIED>).
- 4 The full text of the COP decision establishing the Green Climate Fund can be found at http://unfccc.int/files/meetings/durban_nov2011/decisions/application/pdf/cop17_gcf-pdf
- 5 http://www.un.org/esa/socdev/unpfii/en/session_tenth.html
- 6 The decision on a System of Information on Safeguard can be downloaded at http://unfccc.int/files/meetings/durban_nov2011/decisions/application/pdf/cop17_safeguards.pdf - The text of the COP decision, including a section on REDD, can be found at the following URL (pages 12-13) http://unfccc.int/files/meetings/durban/nov_2011/decisions/application/pdf/cop17_lcaoutcome.pdf
- 7 Indigenous Peoples' Organizations statements at the Durban COP can be found at <http://www.forestpeoples.org/topics/climate-forests>
- 8 A report on the Green Climate Fund, prepared for Durban by FPP and JOAS can be found at: <http://www.forestpeoples.org/topics/un-framework-convention-climate-change-unfccc/publication/2011/green-climate-fund-and-transit>
- 9 http://ccmin.aijppnet.org/index.php?option=com_content&view=article&id=734:the-oaxaca-action-plan-of-indigenous-peoples-from-cancun-to-durban-and-beyond&catid=1:news

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CONVENTION ON BIOLOGICAL DIVERSITY

The Convention on Biological Diversity (CBD) is an international treaty under the United Nations. The CBD has three objectives: to conserve biodiversity, to promote its sustainable use and to ensure the equitable sharing of the benefits arising from its utilization.

The Convention has developed programs of work on thematic issues (such as marine, agricultural or forest biodiversity) and cross-cutting issues (such as traditional knowledge, access to genetic resources or protected areas). All these programs of work have a direct impact on indigenous peoples' rights and territories. The CBD recognizes the importance of indigenous knowledge and customary sustainable use for the achievement of its objectives (articles 8(j) and 10(c)) and emphasises their vital role in biodiversity.

The International Indigenous Forum on Biodiversity (IIFB) was established in 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.

After several years of intense negotiations on access to genetic resources and benefit sharing and on the Convention's new programme of work, objectives and goals, which culminated in October 2010 in Nagoya (see *The Indigenous World 2011*)¹ with the adoption of the new Multiyear Programme of Work, the Ai-

chi Targets and the Nagoya Protocol, various meetings were held during 2011 with the aim of implementing what had been adopted.

A brief overview of the most important meetings in relation to indigenous organisations' participation in this process follows, along with references as to where more information can be obtained.²

The Nagoya Protocol

Following its adoption at the COP10³ and its deposit in New York, the Nagoya Protocol⁴ was opened for signature by the Parties in February 2011.⁵ In the period, prior to its entry into force, the most significant events in the context of the CBD were, on the one hand, activities aimed at promoting its ratification and, on the other, the first meeting of the **Open-Ended Ad Hoc Inter-governmental Committee for the Nagoya Protocol** (ICNP), established in Decision X/1 as an interim body until its entry into force, when the COP/MOP that will govern its implementation will be established.

The ICNP held its first meeting in Montreal, from 5 to 10 June 2011, chaired by Fernando Casas (Colombia) and Janet Lowe (New Zealand).⁶ The agenda for the ICNP meeting had already been agreed in the COP decision and, accordingly, the following issues were considered, and recommendations made in their regard:

1. Functioning of the ABS Clearing House Mechanism (CHM) (Art. 14 of the Protocol establishes a clearing-house mechanism, and the Parties will make available all necessary information for its implementation, including legislation, policies, focal points, permits, etc.; it may also include information on relevant indigenous authorities).
2. Measures to contribute to the capacity building, capacity development and strengthening of human resources and institutional capacities in developing countries and countries with economies in transition (Art. 22 establishes measures to build capacity for the implementation of the Protocol, including measures for indigenous communities).
3. Measures to raise awareness of the importance of genetic resources and associated traditional knowledge (Art. 21 includes several measures related to indigenous peoples and increased awareness).

4. Cooperative measures and institutional mechanisms to promote compliance and address cases of non-compliance (Arts 15 to 19 of the Protocol refer to compliance; for indigenous peoples and many developing countries this aspect of the Protocol is too weak, particularly with regard to sanctions for misappropriation; various Parties insist on the need to strengthen this component in the implementation process).⁷

Indigenous demands

A small group of indigenous representatives, coordinated in the International Indigenous Forum on Biodiversity (IIFB), participated in the meeting. The IIFB insisted on:

- the adequate incorporation of customary law, customary protocols and procedures in the CHM;
- the adequate establishment of contact points for indigenous peoples in this mechanism; the creation of capacity in this regard, in line with the stated needs of the indigenous communities, with a special focus on women's needs;
- and the consideration of best practices for indigenous participation in the CHM (Doc. UNEP/CBD/ICNP/1/L.2).
- A recommendation was made to produce a strategic framework for indigenous capacity building, based on national needs and priorities identified by the indigenous communities themselves (Doc. UNEP/CBD/ICPN/1/L.3).
- In relation to awareness raising, the inclusion of specific activities for indigenous and local communities was proposed, in addition to tools focused on issues of access for indigenous peoples (Doc. UNEP/CBD/ICPN/1/L.4).
- The provision of funds for wider indigenous participation in the ICNP meetings, in order for indigenous peoples to implement their own training and awareness raising activities, etc., was requested.⁸

The next meeting of the ICNP will be held in April 2012, according to the timetable set out in Decision X/1.

Pressure for ratification of the Nagoya protocol

The CBD Secretariat is implementing a series of capacity building activities, both global and regional, aimed at the “rapid ratification” of the Protocol, which included workshops held in Montreal, with indigenous participation, on 4 and 5 June (identification of capacity building priorities) and 29 and 30 October (capacity building and priorities in relation to traditional knowledge associated with genetic resources). Various donors are also implementing national and regional activities on the Protocol with a view to its ratification. It is difficult not to interpret this considerable investment of resources as pressure aimed at ensuring the entry into force of an instrument that continues to raise much mistrust both among developing countries and the indigenous peoples themselves.

Article 8(j) and related provisions and the SBSTTA 15

A number of the COP10 decisions⁹ refer to Article 8(j) (on traditional knowledge) and related provisions. One particularly relevant issue was the decision to develop a programme of work for the implementation of Article 10, with special focus on paragraph (c) (on customary use of biological resources),¹⁰ as a component of the revised Programme of Work on Article 8(j).¹¹

The COP decision authorised the holding of a meeting of technical experts to draw up a proposed programme of work that could be finalised and adopted at the seventh meeting of the Working Group on Article 8(j) and related provisions (WG8J-7) and, subsequently, at the COP 11 (Hyderabad, India, October 2012). The expert meeting was held in Montreal,¹² in July 2011.

On the basis of the report from the meeting, the Secretariat prepared a list of proposed tasks and elements for the consideration of the WG8J-7, held in Montreal from 31 October to 4 November.¹³ The WG8J-7¹⁴ held intense discussions on the issue both in plenary and in a contact group. In the end, it proved impossible to make headway in adopting the programme of work as, in the view of the Parties, it required greater debate and elaboration. Therefore, the draft decision for COP11 proposes a road map for the elaboration and adoption of an action plan, including some “indicative tasks” for this future action plan on customary sustainable use. The result was, in some ways, disappointing because it delays

the adoption of a work plan and because many of the indigenous organisations' key proposals were rejected. This extra time may, however, result in the elaboration and adoption of a program of work that can have a real impact at the local and national levels.

The WG8J-7 also included an in-depth dialogue on ecosystem services and protected areas, with the participation of indigenous panellists, and decisions were adopted on: the implementation of the tasks pending in the programme of work on Article 8(j), *sui generis* systems, and indicators on traditional knowledge and sustainable use, among other issues. Some of the discussions were taken up at the subsequent meeting of the advisory body of the Convention, the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA 15).¹⁵

The IIFB and the Indigenous Women's Network on Biodiversity actively participated in both meetings and organised several activities and side events. The Indigenous Portal contains recordings and documents related to this participation.¹⁶ ○

Notes

- 1 COP10 adopted, among other measures, the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization*, the Aichi Targets and a new multi-year programme of work. All the COP decisions can be found at: <http://www.cbd.int/decisions/cop/?m=cop-10>.
- 2 For other CBD relevant activities during this inter-sessional period, see www.cbd.int. Specifically related to Article 8(j): <http://www.cbd.int/tk/events.shtml>
- 3 Decision X/1 Access to genetic resources and the fair and equitable sharing of the benefits arising from their utilisation. COP10 decisions at: <http://www.cbd.int/decisions/cop/?m=cop-10>
- 4 Text of the Nagoya Protocol at: <http://www.cbd.int/abs/doc/protocol/nagoya-protocol-es.pdf>
- 5 The Protocol is open for signature until 1 February 2012. It will enter into force 90 days after the deposit of the 50th ratification instrument. As of 25 January 2012, the Protocol had 76 signatory countries. The current list of signatories can be found at: <http://www.cbd.int/abs/nagoya-protocol/signatories/>
- 6 The documents, final report and recommendations from this meeting can be found at: <https://www.cbd.int/absicnp1/documents/>
- 7 An interesting critical analysis of the negotiations and content of the Nagoya Protocol has been made by Prof. Gurdial Singh Nijar, who was one of the key negotiators for the megadiverse countries, representing Malaysia. Available from: <http://biogov.cpdrc.ucl.ac.be/multistakeholder/presentations/Gurdial-Nijar-NagoyaProtocolAnalysis-CEBLAW-Brief.pdf>. In *The Indigenous World 2011* you can find a summary of the negotiations, of the indigenous participation, and further references.

- 8 Note on indigenous participation in the first meeting of the ICNP prepared by the IIFB and the *Red de Mujeres Indígenas sobre Biodiversidad de América Latina (mimeo)*.
- 9 Decisions X/40, 41, 42 and 43.
- 10 *Article 10*
Each Contracting Party shall, as far as possible and as appropriate: [...]
c) protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements; [...]
- 11 Several indigenous organisations, in association with the NGO Forest Peoples Programme (FPP), have been working on the issue of sustainable customary use at the local level for a number of years, and have actively participated in the negotiations within the context of the CBD. A summary of case studies can be found at:
<http://www.forestpeoples.org/topics/environmental-governance/news/2011/12/cbd-working-group-agrees-development-new-plan-action-cu>.
 On work in the context of the CBD: <http://www.forestpeoples.org/es/topics/environmental-governance/international-processes/convention-biological-diversity-cbd>
- 12 31 May to 3 June 2011. Report of the meeting at: <http://www.cbd.int/doc/meetings/tk/wg8j-07/official/wg8j-07-05-add1-es.pdf>
- 13 Summary of the meeting by IISD at: <http://www.iisd.ca/vol09/enb09557s.html>.
 A full report in relation to indigenous participation (in Spanish) can be found at:
http://www.almaciga.org/index.php?option=com_k2&view=item&id=58:informe-sobre-la-re-union-del-grupo-de-trabajo-8j-del-cdb&Itemid=41&lang=es
- 14 Final report of the WG8J-7 at: <http://www.cbd.int/doc/?meeting=WG8J-07>
- 15 Information on SBSTTA at <http://www.cbd.int/sbstta/>. Documents and report on the meeting at:
<http://www.cbd.int/doc/?meeting=sbstta-15>.
 Summary of the meeting at: <http://www.iisd.ca/biodiv/sbstta15/>
- 16 <http://iifb.indigenousportal.com/>

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WORLD HERITAGE CONVENTION

The Convention concerning the Protection of the World Cultural and Natural Heritage ('World Heritage Convention') is a multilateral treaty adopted by UNESCO's General Conference in 1972. With 189 States Parties, it is today one of the most widely ratified international instruments. Its main purpose is the identification and collective protection of the world's cultural and natural heritage of "outstanding universal value". 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 Convention only concerns tangible, immovable heritage, i.e. heritage "sites".

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 sites which it considers as having outstanding universal value ("World Heritage List") and oversees that these sites 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. Although a large number of World Heritage sites are located in indigenous territories, indigenous peoples' involvement in the work of the WHC has been very limited, as there are no mechanisms in place that allow for their meaningful participation.

The WHC is supported by three advisory bodies. The International Council on Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature (IUCN) 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 the preservation of cultural sites. An indigenous proposal to establish a "World Heritage Indigenous Peoples Council of Experts" (WHIPCOE) as an additional advisory body to the WHC was rejected by the Committee in 2001.

Since the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, there has been renewed attention to the issue of indigenous participation in the implementation of the World Heritage Convention. In 2010, the UN Permanent Forum on Indigenous Issues (UNPFII), which has a mandate to promote the UNDRIP and raise awareness of indigenous issues within the UN System, for the first time took part in a session of the World Heritage Committee, represented by its then Chairperson, Ms Victoria Tauli-Corpuz. The purpose of this participation was to inform the WHC about the numerous concerns related to the World Heritage Convention that indigenous peoples had brought to the UNPFII's attention since its first session in 2002. According to its statement submitted to the WHC, the UNPFII has a "list of indigenous sites inscribed in the World Heritage List without the adequate participation and involvement of indigenous peoples", compiled from complaints received.¹

The UNPFII's statement contained a number of recommendations. Among other things, the UNPFII called on the WHC to use the UNDRIP as frameworks for the nomination, management and monitoring of World Heritage sites found in indigenous peoples' territories. It also recommended that adequate consultation and participation of indigenous peoples be ensured and their free, prior and informed consent (FPIC) be obtained when their territories are being nominated for World Heritage listing. The UNPFII further urged that the involuntary displacement of indigenous peoples from World Heritage sites be stopped, that subsistence economic activities of indigenous peoples not be undermined or illegalized in World Heritage sites and that adequate social services be provided to indigenous peoples living in these sites.

10th session of the UNPFII, May 2011

At the 10th session of the UNPFII, a joint statement on World Heritage was presented by over 70 indigenous organizations.² The statement expressed serious concern about the disrespect of the principle of FPIC by the WHC when it designates sites in indigenous territories as 'World Heritage sites'. It denounced the fact that three current World Heritage nominations, to be considered by the WHC in June 2011, had been prepared without meaningful involvement and consultation of affected indigenous peoples and that insufficient consideration had been given to indigenous cultural values and stewardship roles. The three cases were

the nominations of Western Ghats (India), Trinational de la Sangha (Congo, Cameroon, Central African Republic) and Kenya Lake System. The joint statement, which was subsequently submitted to UNESCO, urged the WHC to defer the three nominations and call on the respective States to consult and collaborate with the indigenous peoples concerned, in order to ensure that their values and needs are reflected in the nomination documents and to obtain their FPIC. It also recommended several steps aimed at ensuring that the implementation of the World Heritage Convention is consistent with the UNDRIP.

The UNPFII also heard statements on World Heritage by UNESCO and by IUCN. UNESCO noted that in 2007 the WHC added 'Communities' to its Strategic Objectives, in recognition of "the critical importance of involving indigenous, traditional and local communities in the implementation of the Convention".³ UNESCO acknowledged that "the current Operational Guidelines do not explicitly make reference to the FPIC of indigenous communities", but asserted that "continuing efforts are being made in order to respond to this challenge".⁴

IUCN emphasized the importance it attaches to the involvement of indigenous peoples in the establishment and management of World Heritage sites and to issues such as land rights, FPIC, access to resources and benefit sharing. IUCN underlined that it promotes a rights-based approach to World Heritage management and informed the UNPFII that it has started engaging with other advisory bodies to explore ways of improving its own practice and mainstreaming right-based approaches in operative World Heritage management.⁵

In its report, the UNPFII called on the WHC and its advisory bodies to "scrutinize current World Heritage nominations to ensure they comply with international norms and standards of free, prior and informed consent". It made itself available "to assist in the review and revision of UNESCO operational guidelines with regard to nominations and site assessments" and recommended that "UNESCO invite indigenous peoples' representatives and experts to contribute to deliberations on and recommended changes to procedures and operational guidelines".⁶

35th session of the WHC, June 2011

The session was again attended by a representative of the UNPFII, Mr. Paul Kanyinke Sena from Kenya. In an oral statement on 22 June, he presented the relevant recommendations adopted at the UNPFII's 10th session. Additionally, the

statement appealed to the WHC “that the initial efforts to establish a World Heritage Indigenous Peoples’ Council of Experts (WHIPCOE) be revisited and efforts to set up an appropriate mechanism whereby indigenous experts can provide advice to the World Heritage Committee and the World Heritage Center be revived.” The UNPFII also requested “that the practice of inviting a member of the UNPFII to attend the WHC sessions be sustained and that a time slot is given to raise issues relevant to the various agenda items”.⁷

The WHC acknowledged the 2010 and 2011 statements of the UNPFII in a decision adopted on 29 June 2011.⁸ The participation of the UNPFII further led to the adoption of a decision by the WHC, also on 29 June 2011, in which it “encourages States Parties” to “[r]espect the rights of indigenous peoples when nominating, managing and reporting on World Heritage sites in indigenous peoples’ territories”; and to “[i]nvolve indigenous peoples and local communities in decision making, monitoring and evaluation of the state of conservation of the properties and their Outstanding Universal Value”.⁹ This decision is an important step forward; to have a practical effect, however, it will need to be followed up with adequate, stringent changes to the WHC’s procedures and Operational Guidelines.

The concerns raised in the joint statement of indigenous organizations regarding the World Heritage nominations of Western Ghats and Kenya Lake System were completely ignored by the WHC, which neither discussed the joint statement nor the lack of indigenous involvement in these nominations. Kenya Lake System (including the Lake Bogoria National Reserve and two other protected areas) was inscribed on the World Heritage List, in disregard of the objections of the Endorois Welfare Council, the representative body of the indigenous community, and despite the recent ruling of the African Commission on Human and Peoples’ Rights (ACHPR) in the Endorois case.¹⁰ The nominations of Western Ghats and Trinational de la Sangha were referred (not deferred as requested in the joint statement), which means that only some additional information rather than a substantial revision is necessary, and that the nominations can be resubmitted in 2012.¹¹ The WHC’s decision on the Trinational at least calls on the respective States Parties to “[i]ncrease further the involvement and representation of local and indigenous communities in the nomination process and future management” and to “[e]valuate the potential application of cultural criteria to the nominated property... taking into account the rich indigenous cultural heritage”.¹² It remains to be seen to what extent these recommendations will be taken into account.

Other noteworthy developments at the WHC's 35th session included the inscription of the Ningaloo Coast (Australia) and the Konso Cultural Landscape (Ethiopia) on the World Heritage List. The size of the Kakadu World Heritage site (Australia) was extended to include the Koongarra Project Area, at the request of the traditional owners who want Koongarra to be permanently protected from uranium mining. Djok traditional owner Mr. Jeffrey Lee and representatives of the Mirrar people attended the WHC session. The Rio Plátano Biosphere Reserve (Honduras) was inscribed on the List of World Heritage in Danger, due to a combination of threats from illegal logging, illegal occupation and the deterioration of the security situation. The WHC further adopted decisions expressing its utmost concern at the proposed construction of a gas pipeline through the "Golden Mountains of Altai" World Heritage site (Russia) and the likely impacts of the proposed Gibe 3 dam on the Omo River in Ethiopia on the Lake Turkana World Heritage site (Kenya). In both cases, the WHC pointed towards a possible "in Danger" listing in 2012. Both the Gibe 3 dam and the Altai gas pipeline threaten the lands and livelihoods of indigenous and tribal peoples living in the respective regions.¹³

4th session of EMRIP, July 2011

In 2010, the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), had already noted with concern that the Endorois had been "excluded from all decision-making regarding the treatment of their lands".¹⁴ The designation of Lake Bogoria as a World Heritage site without consulting the Endorois induced EMRIP to include the following paragraph in its "Expert Mechanism advice No. 2 (2011): indigenous peoples and the right to participate in decision-making":

*UNESCO should enable and ensure effective representation and participation of indigenous peoples in its decision-making (...). Robust procedures and mechanisms should be established to ensure indigenous peoples are adequately consulted and involved in the management and protection of World Heritage sites, and that their free, prior and informed consent is obtained when their territories are being nominated and inscribed as World Heritage sites.*¹⁵

50th session of the ACHPR, October - November 2011

The inscription of Lake Bogoria also provoked the ACHPR to adopt a resolution on World Heritage.¹⁶ The resolution notes with concern that there are numerous World Heritage sites in Africa that have been inscribed without the FPIC of the indigenous peoples in whose territories they are located and whose management frameworks are not consistent with the principles of the UNDRIP. It emphasizes that the inscription of Lake Bogoria without involving the Endorois in the decision-making process contravenes the ACHPR's Endorois Decision and constitutes a violation of the Endorois' right to development. The resolution urges UNESCO and IUCN to review and revise their current procedures for evaluating nominations as well as the state of conservation of World Heritage sites, with a view to ensuring consistency with UNDRIP and that indigenous rights are respected, protected and fulfilled in World Heritage areas. It also calls on the WHC to "consider establishing an appropriate mechanism through which indigenous peoples can provide advice to the World Heritage Committee and effectively participate in its decision-making processes".

40th Anniversary of the World Heritage Convention (2012)

In 2012, UNESCO celebrates the 40th Anniversary of the Convention with a series of events and conferences throughout the world. The Anniversary was launched in November 2011, during UNESCO's General Conference. The official theme of the Anniversary is "World Heritage and Sustainable Development: the Role of Local Communities".¹⁷ UNESCO has underlined that the Anniversary would "provide an excellent opportunity for indigenous peoples to engage with UNESCO and the Committee and its Secretariat, in order to address concerns that have been raised within the framework of the Permanent Forum and to work towards a constructive solution to the challenges that the UNDRIP brings to the international community as a whole".¹⁸ ○

Notes and references

- 1 Statement of the United Nations Permanent Forum on Indigenous Issues at the 34th Session of the UNESCO World Heritage Committee, Brasilia, 25 July - 4 August 2010. Available at:

- <http://xa.yimg.com/kq/groups/20674633/27593986/name/UNPFII+Statement+WHC+Final.docx>
- 2 Endorois Welfare Council et al., "Joint Statement on continuous violations of the principle of free, prior and informed consent in the context of UNESCO's World Heritage Convention". Available at: <http://www.international-alliance.org/Joint%20Statement%20of%20Indigenous%20organizations%20UNESCO.pdf>.
 - 3 Statement by UNESCO at the 10th Session of the UNPFII, 17 May 2011. Available at: <http://www.docip.org/gsd/collect/cendocdo/index/assoc/HASHbfc/9a7a182d.dir/PF11douglas071.pdf>.
 - 4 UNESCO also informed the Permanent Forum that the organization would "soon initiate a process to elaborate a Policy on Engaging with Indigenous Peoples". It is questionable, however, how much impact such a policy would have on the WHC, as the WHC, though established under the UNESCO umbrella, is the governing body of an independent international convention whose membership differs from that of UNESCO.
 - 5 IUCN Submission to the 10th Session of the UNPFII, UN Doc. E/C.19/2011/CRP.8. Also see IUCN's oral statement "World Heritage Sites and Indigenous Peoples" (under Item 3b, Environment), available at http://cmsdata.iucn.org/downloads/iucn_unpfii_statement_on_item_3b_2.pdf.
 - 6 UN Doc. E/2011/43-E/C.19/2011/14, paras. 40-42. See: http://www.un.org/esa/socdev/unpfii/documents/session_10_report_EN.pdf
 - 7 35th Session of the WHC, Intervention by Mr. Paul Kanyinke Sena, Member of the UNPFII. Available at: <http://sogip.files.wordpress.com/2011/11/anglais1.pdf>.
 - 8 Decision 35 COM 12D ("Celebration of the 40th Anniversary"), para. 10.
 - 9 Decision 35 COM 12E ("Global state of conservation challenges of World Heritage properties"), para. 15.
 - 10 *Communication 276 / 2003 - Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, Decision adopted by the ACHPR at its 46th Ordinary Session (Banjul, The Gambia, 11-25 November 2009).
 - 11 On the difference between a deferral and a referral see the 2011 Operational Guidelines for the Implementation of the World Heritage Convention, paras. 159-160.
 - 12 Decision 35 COM 8B.4.
 - 13 Doc. WHC-11/35.COM/20 ("Decisions adopted by the World Heritage Committee at its 35th session").
 - 14 UN Doc. A/HRC/EMRIP/2010/2, 17 May 2010, para. 29. See: http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-42_en.pdf
 - 15 UN Doc. A/HRC/18/42, 17 August 2011, Annex, para. 38. See: http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-42_en.pdf
 - 16 ACHPR Res.197 (LJ)2011 ("Resolution 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").
 - 17 See WHC Decision 35 COM 12D (2011).
 - 18 Statement by UNESCO at the 10th Session of the UNPFII, 17 May 2011.

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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 main human rights body of the African Union (AU). In 2001, the African Commission established its Working Group on Indigenous Populations / Communities in Africa, which was a remarkable step forward in the promotion and protection of the human rights of indigenous peoples in Africa. The Working Group has produced a thorough report on the rights of indigenous peoples in Africa, and this document has been adopted by the African Commission as its official conceptualization of the rights of indigenous peoples.

The human rights situation of indigenous peoples has, since 2001, been on the agenda of the African Commission and henceforth has been a topic of debate between the African Commission, states, national human rights institutions, NGOs and other interested parties. Indigenous representatives' participation in the sessions and in the Working Group's continued activities – sensitization seminars, country visits, information activities and research – plays a crucial role in ensuring the vital dialogue.

Facilitating dialogue between civil society and states at the session of the African Commission

In 2011, the African Commission held its 49th and 50th ordinary sessions. Many indigenous peoples' representatives participated and contributed by making statements on the human rights situation of indigenous peoples in Africa. The African Commission's Working Group on Indigenous Populations / Communities (Working Group) also presented its progress reports. The participation of indigenous representatives, as well as the intervention of the Working Group's chairper-

son during the sessions, contributed to raising awareness of indigenous peoples' rights.

During each session, the African Commission also examines the periodic reports of African states, in accordance with Article 62 of the African Charter on Human and Peoples' Rights. The periodic reports of Burkina Faso, Uganda, Namibia and Libya were presented at the 49th session and the reports of Burundi, Togo and Nigeria were examined at the 50th session. During almost all the state report examinations, the African Commission raised questions concerning the situation of indigenous peoples and the extent to which their rights are protected (questions were raised with regard to Uganda, Namibia, Burkina Faso, Libya and Burundi). IWGIA's partner organizations also contributed with shadow reports that provide an alternative source of information and assist the African Commission in asking substantiated critical questions on indigenous peoples during the dialogue with the state. Shadow reports were prepared for Burkina Faso and Burundi.

The participation of indigenous peoples' representatives in the African Commission sessions has facilitated the exchanges with their respective governments. For example, the participants from Burkina Faso and Burundi had the opportunity to hold meetings with the government delegation to discuss the situation of indigenous peoples in their country and to define how they can better cooperate in the future to enhance the situation of indigenous peoples. Follow-up meetings were also organised back in their countries.

Documentary film: Indigenous Peoples' Rights in Africa - a Question of Justice

In 2011, the African Commission's Working Group produced a documentary film: "Indigenous Peoples' Rights in Africa: A Question of Justice". The film illustrates the human rights situation of indigenous communities in Kenya: the Endorois and the Ogiek, and in Cameroon: the Bagyeli and the Mbororo. It also gives an overview of the work of the African Commission on indigenous peoples' rights.

The film is part of the ongoing sensitization work being done by the Working Group on the promotion and protection of indigenous peoples' rights in Africa. It will be used during different training sessions and seminars organized by the African Commission, African universities or civil society organizations and will hopefully be shown on television in various African countries.

Sensitizing key stakeholders in East and Central Africa on indigenous peoples' rights

A regional sensitization seminar on the rights of indigenous populations/communities in Central and East Africa was organized by the Working Group in Brazzaville, Republic of Congo, from 22 to 25 August 2011. A total of sixty-five (65) delegates representing six States Parties, four National Human Rights Institutions, seven specialized UN agencies and other inter-governmental organizations, and twenty-eight (28) non-governmental organizations participated in the seminar.

Various issues related to the human rights of indigenous populations in Central and East Africa were discussed by participants. The issues discussed included inter alia:

- The role of the African Commission's Working Group on Indigenous Populations/Communities in the promotion and protection of the rights of indigenous populations/communities in Africa and the jurisprudence of the African Commission;
- Positive developments and challenges in the recognition and protection of the rights of indigenous populations in Central and East Africa;
- The impact of climate change on the lives and well-being of indigenous populations;
- The contribution of pastoralism to national economies in Africa; and
- The role of the different stakeholders in the promotion and protection of the rights of indigenous populations.

The seminar was organized in the Republic of Congo because the country was the first in Africa to adopt a national law for the promotion and protection of indigenous peoples on 25 February 2011.¹ The participants formulated relevant and concrete recommendations for the Government of the Republic of Congo to ensure that the law is effectively implemented with the full participation of indigenous peoples. Recommendations were also made to the governments of the Central and East African region, the African Commission, the civil society organizations, the development partners and to indigenous peoples.

Urgent Appeal: rights to housing for the Batwa peoples in Rwanda

The African Commission's Working Group sent an Urgent Appeal dated 20 January 2011 to the Government of the Republic of Rwanda with respect to the alleged destruction of the huts of the Batwa people of the Eastern, Southern and Western Provinces of Rwanda. The Urgent Appeal expressed its serious concern over the destruction of the huts of the Batwa, which has forced 734 families, comprising 2,936 Batwa people, to live without shelter and food, exposing them to multiple diseases and health problems such as pneumonia, malaria, malnutrition and diarrhoea. The Government of Rwanda was urged to provide clarifications, investigate the alleged human rights violations and take the necessary measures to redress the wrongs. Since then, the Government of Rwanda has entered into discussion with the Batwa Organization, COPORWA, to find solutions and initiatives have been taken to improve the situation.

African Commission expresses concern over lack of UNESCO consultation

During its 50th ordinary session, held from 24 October to 5 November 2011, in Banjul, the Gambia, the African Commission adopted a resolution 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.²

In the resolution, the African Commission expresses its concern that, on the recommendation of the International Union for the Conservation of Nature (IUCN), the 35th session of the World Heritage Committee (UNESCO) placed Lake Bogoria National Reserve on the World Heritage List, without obtaining the free, prior and informed consent of the Endorois through their own representative institutions, and despite the fact that the Endorois Welfare Council had urged the Committee to defer the nomination because of the lack of meaningful involvement of and consultation with the Endorois people.

It is important to recall that the African Commission took a decision, at its 46th session, in November 2009, affirming the right of ownership of the Endorois to their ancestral lands around Lake Bogoria.³

Indigenous Peoples' Rights introduced for the first time in an African university

From 12 to 16 September 2011, the Human Rights Centre of the University of Pretoria in South Africa introduced a new one-week intensive course on indigenous peoples' rights. This introduction marks the first time that a course with a focus on indigenous peoples' rights has been run by an African university. This course targeted senior government officials, civil society and academics in Africa. The lecturers were all well-known experts on the topic, including two members of the Working Group. The programme of the course included various topics, such as, for example:

- Indigenous Peoples: definitional and conceptual issues;
- UN human rights treaty bodies and indigenous peoples;
- Self management, consultation and participation of indigenous peoples;
- Land, environment and natural resources: indigenous people, development and modernity;
- Gender equality and indigenous people;
- The Endorois case: a practical illustration of vindicating the rights of indigenous peoples.

Many participants attended the course and indicated that they were very pleased with the content of the course, the fruitful discussions they had and what they took away with them from the experience.

Exchange of experiences between regional mechanisms

From 28 November to 6 December 2011, the African Commission's Working Group participated in different activities aimed at entering into an exchange with the ASEAN Inter-Governmental Commission on Human Rights (AICHR). The objective was to provide information and inspiration to the AICHR on indigenous peoples' rights issues based on the experiences of the African Commission's Working Group on Indigenous Populations/Communities, with a focus on the

Working Group's establishment and development and the impact it has had so far in Africa.

The Working Group first met with the Indigenous Peoples' Task Force (IPTF) comprising indigenous representatives from the region responsible for lobbying the AICHR on indigenous peoples' rights. The Working Group was invited to a dinner to exchange experiences with indigenous representatives from the region, three commissioners from the AICHR, the OHCHR, the EMRIP and the UNFPIL.

The Working Group also participated in the AICHR meeting on the ASEAN Human Rights Declaration, which is in the process of being drafted. This was a closed meeting and the Working Group was invited to present the African Commission's perspective. The meeting was organized by the AICHR, the Ministry of Foreign Affairs of Indonesia, the OHCHR and UNDP. The Working Group contributed to this by presenting the African Charter on Human and Peoples' Rights, the importance of peoples' rights and the indigenous peoples' perspectives. The Inter-American Commission on Human Rights also participated in this exchange meeting.

New Publications

In 2011, the African Commission's Working Group published the following reports:

- The report of the research and information visit to the Democratic Republic of Congo conducted from 9 to 25 August 2009. The report was published both in French and English.⁴
- The report of the country visit to the Republic of Congo conducted from 15 to 24 March 2010. The report was published both in French and English.⁵

References

- 1 Act No. 5-2011 of 25 February 2011- On the Promotion and Protection of Indigenous Populations http://www.iwgia.org/iwgia_files_news_files/0368_Congolese_Legislation_on_Indigenous_Peoples.pdf
- 2 You can find the resolution here: http://www.achpr.org/english/resolutions/Resolution197_en.htm

- 3 Communication 276 / 2003 – Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya.: http://www.achpr.org/english/Decison_Communication/Kenya/Comm.%20276-03.pdf
- 4 http://www.iwgia.org/publications/search-pubs?publication_id=555
- 5 http://www.iwgia.org/publications/search-pubs?publication_id=561

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INTER-AMERICAN HUMAN RIGHTS SYSTEM

The Inter-American Commission on Human Rights (IACHR), created in 1959, is a principal and autonomous organ of the Organization of American States (OAS). Its mission is to promote and protect human rights in the American hemisphere. It is composed of seven independent members who serve in their personal capacity and it has its headquarters in Washington, D.C., together with the Inter-American Court of Human Rights, installed in 1979.

Since 1972, the IACHR has stressed that the special protection of indigenous peoples is a fundamental obligation of states.¹ In 1990, the IACHR created the Office of the Special Rapporteur on the Rights of Indigenous Peoples to devote attention to the indigenous peoples of the Americas, who are particularly vulnerable to human rights violations, and to strengthen, promote, and systematize the Commission's own work in this area.²

The IACHR protects and promotes indigenous peoples' rights through its different instruments and means of action, including: developing standards for inter-American jurisprudence; granting precautionary measures in urgent and serious cases of threat to the life or integrity of persons; producing specialized in-depth studies and reports on particular themes and topics dealing with indigenous peoples' rights; monitoring and assessing the situation of indigenous peoples in specific countries; acting as a specialized consulting body for states and OAS organs; participating in the elaboration of international legal instruments; organizing training seminars and exchange workshops with indigenous leaders and organizations, representatives of the Member States, international agencies, lawyers, activists and public officials throughout the Americas.

Two or three times a year, the IACHR offers the opportunity of holding public hearings between governments and petitioners or working meetings on specific cases. Governments generally tend to send high-level delegations, but both parties are treated equally and given the same speaking time.

Ensuring respect for the rights of indigenous peoples is a particularly important issue for the inter-American system for the protection of human rights (IAHRS). The Inter-American Commission on Human Rights is currently dealing with hundreds of petitions and requests for precautionary measures³ from all of the OAS Member States with indigenous peoples. Petitions can deal with a wealth of individual and collective rights protected by international human rights law but a substantial proportion of the petitions focus on the protection of territories and natural resources, and states' duties in this regard.

IAHRS jurisprudence on indigenous peoples' right to land and territories

The IAHRS's jurisprudence has attached special importance to indigenous peoples' relationship with their ancestral territories. In this regard, under the individual system of petitions and supervision of the human rights situation on the continent, the IACHR has established that OAS Member States have a duty to respect indigenous collective rights to ownership and possession of their ancestral lands and territories and that any failure to comply with this engages their international responsibility.

In this regard, the IAHRS has made an evolutionary interpretation of international instruments for the protection of human rights with regard to situations relating to indigenous rights. In fact, in the case of the *Mayagna Awas Tingni Community* in Nicaragua, the Inter-American Court stated that Article 21 of the American Convention protects the right to property in a sense that includes, among other things, the rights of members of the indigenous communities within the framework of communal property.⁴

In this case, the judgment stated that, given the characteristics of the case, some clarifications were required as to the concept of property in indigenous communities and, in relation to collective property of the land, it stated that there was a communitarian tradition amongst indigenous peoples with regard to a communal form of collective property of the land, in the sense that ownership of the land was not centred on an individual but rather on the group and its community.

Moreover, the Court established that the close relationship that indigenous peoples hold with their land had to be recognised and understood, adding that: "Indigenous groups, by the fact of their very existence, have the right to live free-

ly in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival.⁵

In addition, the Court established that indigenous peoples needed to fully enjoy their lands in order to preserve their cultural and spiritual legacy and transmit it to future generations because the relationship they maintained with their lands was not merely a matter of possession and production.⁶

In relation to official recognition of the ownership of lands and territories possessed by indigenous peoples, the Inter-American Court established that possession of the land should suffice for the purposes of recognition, taking into consideration indigenous peoples' customary law.⁷

In turn, in the case of *Mary and Carrie Dann* (of the Western Shoshone people from the United States), the IACHR stated that the American Declaration of the Rights and Duties of Man had to be interpreted by taking into consideration the particular principles of international human rights law that govern the individual and collective rights of indigenous peoples.⁸

On the basis of this analysis, the IACHR was of the opinion that the provisions of the American Declaration had to be interpreted and applied, in the context of the indigenous petitioners, with due consideration for the specific principles of international human rights law that govern the individual and collective rights of indigenous peoples. The provisions of the Declaration that are particularly relevant in this regard are Article II (right to equality before the law), Article 18 (right to a fair trial) and Article 23 (right to property). As indicated, this criterion includes adopting special measures to guarantee recognition of the particular and collective interest that indigenous peoples have in the occupation and use of their traditional lands and resources, and their right not to be deprived of this interest except with fully informed consent, under conditions of equality, and with fair compensation.

The Commission wanted to emphasise that, by interpreting the American Declaration in the sense of safeguarding the integrity, survival and culture of indigenous peoples through the effective protection of their individual and collective rights, the Commission was respecting the very aims for which the Declaration was established.⁹

In its subsequent decisions, the Inter-American system has continued to develop its jurisprudence on the rights of indigenous peoples. In recent years, it has delved deeper into the content of the indigenous right to communal ownership of

their lands, territories and natural resources, on the basis of the provisions of the American Convention and American Declaration, interpreted in the light of ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples, the draft American Declaration on the Rights of Indigenous Peoples and other relevant sources, establishing a coherent *corpus iuris* that establishes the duties of OAS Member States in relation to protecting indigenous property rights.

On 17 February 2011, the IACHR published a report entitled “Rights of Indigenous and Tribal Peoples over their ancestral lands and natural resources”. This compiles and analyzes the scope of the rights of indigenous and tribal peoples to their territories, lands and natural resources. It is based on legal instruments of the IAHR - as interpreted by the jurisprudence of the IACHR and the Inter-American Court in the light of developments in general international human rights law. It also discusses the obligation of states to consult indigenous peoples and ensure their participation in decisions relating to any measure affecting their territories.

IACHR sessions in 2011

During its 141st regular session in March, the IACHR expressed concern over the consequences of exploiting natural resources and undertaking massive infrastructure projects on indigenous and Afro-descendant territories as this, in many cases, puts the very survival of these peoples in jeopardy. The IACHR urged the states to take steps to overcome the obstacles that keep indigenous and Afro-descendant populations from fully exercising their right to prior, free and informed consultation regarding decisions that affect their territories.¹⁰

Also during this session, the IACHR decided to create a Rapporteur on the situation of human rights defenders, in consideration of the complaints received and with a view to giving greater visibility to the important role of human rights defenders, as well as court officials, in building a democratic society governed by the rule of law

In August, the IACHR referred Case No. 12576 on human rights violations against members of the indigenous Mapuche people of Chile to the Inter-American Court of Human Rights. This relates to the selective use of anti-terrorism legislation on the basis of ethnic discrimination (*see the article on Chile in this edition*). The IACHR considers that this case will allow the Court to define new

standards on equality and non-discrimination, setting a new course for inter-American jurisprudence. Moreover, the Court will be able to develop its jurisprudence on reparations, including measures of non-repetition that are necessary to address the use of prejudices and stereotypes in the context of the discriminatory application of a legal framework to the detriment of a clearly identified group.

Hearings

The hearings of the 141st session considered, among other issues, the situation of Mapuche children in Chile and the situation of indigenous peoples in voluntary isolation in the Amazon and Gran Chaco, along with the right to free, prior and informed consultation on the part of the indigenous and black peoples of the Andean region.

In the October hearings, corresponding to the 143rd session, a case related to the Nam Qom indigenous community of the Toba people of Argentina was presented. Meanwhile, the Indian Law Resource Center presented a case on violence against indigenous women in the United States, and the Indigenous Peoples Law and Policy Program of the University of Arizona presented the case of the Hul'qumi'num Treaty Group of Canada.

The Latin America and Caribbean Committee for the Defense of the Rights of Women (CLADEM) presented a case on access to education for indigenous, peasant and Afro-descendant women while the National Indigenous and Peasant Coordinating Body of Guatemala (CONIC) presented a case on the human rights situation of indigenous peoples in that country. ○

Notes and references

- 1 At: <http://www.oas.org/en/iachr/mandate/what.asp>
- 2 At: <http://www.oas.org/en/iachr/indigenous/mandate/functions.asp>
- 3 Precautionary measures may include a request to the state involved to suspend its activities, take preventive action or provide other remedial measures to protect a person or persons in urgent and serious cases of threat to the life or integrity of persons.
- 4 Through an evolutionary interpretation of international instruments for the protection of human rights, taking into account applicable norms of interpretation and pursuant to article 29(b) of the Convention -which precludes a restrictive interpretation of rights -, it is the opinion of this Court that article 21 of the Convention protects the right to property in a sense which includes, among

- others, the rights of members of the indigenous communities within the framework of communal property, which is also recognized by the Constitution of Nicaragua. **Inter-American Court of Human Rights (I/A Court H.R.), 2001: *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment of 31 August 2001***. Series C No. 79, para 148.
- 5 **I/A Court H.R. 2001**: Op. cit, para 149.
 - 6 To the indigenous communities the relationship with the land is not merely a question of possession and production but rather a material and spiritual element that they ought to enjoy fully, so as to preserve their cultural legacy and transmit it to future generations. (**Inter-American Court, 2001**: Ibid.)
 - 7 Indigenous peoples' customary law must be especially taken into account for the purpose of this analysis. As a result of customary practices, possession of the land should suffice for indigenous communities lacking real title to property of the land to obtain official recognition of that property, and for consequent registration. (**I/A Court H.R. 2001**: Op. cit. para 151).
 - 8 Report N° 75/02, 27 December 2002, para 124
 - 9 **IACHR 2002**: op. cit. para 131.
 - 10 This concern was reiterated in a press release on 4 November. See Annex to Press Release 117/11 on the 143rd Regular Session of the IACHR.

ARCTIC COUNCIL

The Arctic Council was established in 1996 to promote sustainable development and environmental protection in the Arctic. Canada, Denmark (including Greenland and the Faroe Islands), Finland, Iceland, Norway, the Russian Federation, Sweden and the United States of America are members of the Arctic Council. The eight members in turn hold the chairmanship for two years. In May 2011, the chairmanship was passed from Denmark to Sweden. In order to ensure the active participation and full consultation of indigenous peoples in the Arctic, the following six organizations have been granted status as Permanent Participants in the Council: the Aleut International Association (AIA), the Arctic Athabaskan Council (AAC), the Gwich'in Council International (GCI), the Inuit Circumpolar Council (ICC), the Russian Association of Indigenous Peoples of the North, Siberia and the Far East (RAIPON) and the Saami Council (SC). The Indigenous Peoples Secretariat (IPS), which has its seat in Copenhagen, Denmark, assists the Permanent Participants in making contributions to the work of the Arctic Council. France, Germany, Netherlands, Poland, Spain and the United Kingdom, as well as a number of international and non-governmental organizations – including IWGIA - hold status as Observers in the Arctic Council.

The Nuuk Ministerial

The seventh Arctic Council Ministerial meeting took place in May 2011 in Nuuk, Greenland. One of the most important outcomes of this meeting was the *Agreement on cooperation on aeronautical and maritime search and rescue in the Arctic*, as this is the first international agreement made exclusively for the Arctic region and the first international agreement by the Arctic Council. Some see this as the beginnings of a more specific and effective cooperation in the fu-

ture. At the ensuing press conference, the Arctic ministers emphasized the importance of the Nuuk Declaration in terms of demonstrating the will of the Arctic states to move from conflict to cooperation and to solve disputes in a peaceful manner.

As if to illustrate the growing need for peaceful means, around the same time, according to the *Washington Post*,¹ a leak of diplomatic cables testified to the intensified rivalry over Arctic resources. Northern nations, the newspaper claimed, are stepping up efforts to promote their own interests with regard to shipping, fishing and resource extraction in a way that could potentially lead to armament in the region. And in the same line, in its Strategy for the Arctic 2011-2020, which was officially presented in August, the Kingdom of Denmark announced its plan to increase its naval patrolling of Greenlandic waters and to maintain the heightened level of activity in the future. In general, the individual strategies of the Arctic states provide a colorful context for understanding the collective message of the declaration.²

The “Strengthening” process

The Nuuk Declaration marks the transfer of tasks and concerns of the outgoing chair to the incoming one and, in doing so, it clearly reflects the paramount concern of the Arctic Council in recent years: the Council’s need to strengthen itself so as to enable it to better address climate change and other changing circumstances in the Arctic. It duly addresses the three major elements of the “Strengthening” process - a shift from *shaping* to *making* decisions, the establishment of a *standing Arctic Council secretariat* in Tromsø, Norway, and solving the *Observer question* (see also *The Indigenous World 2011*), to which is added a crosscutting communications and outreach dimension to help tie things together.

A Task Force for Institutional Issues has been set up by the Swedish Chairmanship to deal with the Strengthening initiatives. The work and deliberations of the Task Force remain to a large degree confidential as the Swedish Chairmanship has taken over the practice of its Danish predecessor of having closed sessions involving only the heads of the national and Permanent Participants’ delegations.

The long-drawn-out process of solving the Observer question, in particular, has proved a frustrating exercise, not least for the parties in question who are

nonetheless excluded from talks, the Observers and ad hoc Observers. As a matter of fact, the Observer criteria and role are already set out in the latest Senior Arctic Officials' (SAO) report to Ministers in Nuuk; however, the question of which applicants to actually grant Observer status to has remained insoluble thus far. It is being referred to as the "Observer manual", announced in the SAO report and still awaiting publication.

Some of the Permanent Participants have expressed their apprehension at being marginalized, for example at the level of Working Group meetings, by big and powerful Observers and ad hoc Observers. In return, many notifications have been issued by the Arctic States to the effect that the role of the Permanent Participants must be secured in the future set-up of the Arctic Council. When the Nuuk SAO report specifies that the primary role of Observers in the Arctic Council is to observe, this is a formulation inspired by the position of the Permanent Participants in relation to Observers.

Secretarial issues

The standing secretariat, in contrast, seems well on its way to coming into being and the Swedes are pressing for it to happen well in advance of the time line set by the Nuuk Declaration, i.e., "no later than the beginning of the Canadian Chairmanship of the Arctic Council in 2013." The terms of reference, the size and details of the financing of the secretariat are still being negotiated but, whatever the outcome, it will likely affect other secretariats within the existing institutional set-up of the Arctic Council.

As for the Indigenous Peoples Secretariat (IPS), the Permanent Participants have been requested to carry out a review to determine the feasibility of integrating the secretarial functions of the IPS into the future AC secretariat in Tromsø. The review is currently under way and expected to be finished in time for the resulting recommendations to be presented to the SAOs at their upcoming meeting in late March 2012 in Stockholm. The IPS review can be seen as an offshoot of the efforts – financed in part by the Nordic Council of Ministers – to find ways of establishing a caucus for the Permanent Participants. Up until now, the Board of IPS, which consists of representatives of Permanent Participants as well as representatives of member states, has in some ways acted as such a caucus.

Since the PPs have been asked to give their recommendations in relation only to the one option mentioned above, i.e. to have the IPS integrated into the Arctic Council Secretariat, this option can be taken to be the one favored by the Arctic States. The Permanent Participants have not expressed a unified position on the issue but have maintained that it is still an option to have the IPS continue as a separate facility in the future or for the PPs to recommend some kind of hybrid solution between integration and separation.

The Permanent Participants

It is a remarkable historical fact that three Arctic indigenous peoples' organizations (IPO) – representing Inuit, Saami and Russian indigenous peoples - initially took part as observers in the Arctic Environmental Protection Strategy (AEPS) that, in 1996, evolved into the Arctic Council.

A couple of years prior to that, the Arctic IPO observers had been admitted the privileged status of Permanent Participants. Everyone agrees that the Arctic cooperation distinguished itself by this move, and that the task now is to enhance the unique and critical role of the Permanent Participants in the Arctic Council, for example by establishing a PP Caucus.

Strengthening the Arctic Council ideally should mean, so the thinking goes, strengthening the role of everyone involved, including not least the indigenous partners. At the same time, the process is meant to have the Arctic Council step up into the real world. Or, again, that is how the thinking goes. So, in my opinion, these are two things that will somehow have to add up. ○

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ASSOCIATION OF SOUTHEAST ASIAN NATIONS

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, bringing the number of member states to ten.

The official aims and purposes of ASEAN include the acceleration of economic growth, social progress and cultural development, and the promotion of regional peace and stability through respect for justice and the rule of law in relationships between countries in the region, plus adherence to the principles of the UN Charter.

The ASEAN Charter was adopted in November 2007 and provides a legal status and institutional framework for ASEAN. This Charter is a legally-binding agreement among the ASEAN member states.

There is an estimated population of 100 million people who identify as indigenous in Southeast Asia. However, 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 national censuses.

In recent years, ASEAN has made some progress in integrating human rights into its framework. This can be seen with the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009 and the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC) in 2010.

However, the AICHR has been criticized by many civil society organizations for its lack of a protection mandate, its principle of non-interference in the internal affairs of ASEAN member states and its lack of methods for formally engaging with civil society organizations. In addition, there is no reference to indigenous

peoples or their recognition as distinct peoples with inherent collective rights to their lands, territories and resources in any of its documents, including its Roadmap for an ASEAN Community 2009-2015, which is a critical document for establishing an ASEAN community. This is despite the fact that all ASEAN member states voted in favor of adopting the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

In June 2011, the AICHR, acting on its mandate, commenced work to produce an ASEAN Human Rights Declaration. It formed a drafting group composed of human rights experts appointed by the AICHR from each of the ASEAN member states with the aim of drafting the Declaration in six months. The drafting group completed the draft Declaration in January 2012 and submitted it to the AICHR. The draft will now be negotiated within the AICHR, which has scheduled eight internal meetings and two regional workshops with civil society organizations to discuss it. Following the negotiation phase, the AICHR will submit the Declaration to the ASEAN Ministerial Meeting, which will approve the draft document. It is targeted for adoption during the ASEAN Summit in October 2012 in Cambodia. To date, even after numerous requests from civil society organizations, a copy of the draft Declaration has not been made public.

Indigenous Peoples' Task Force on ASEAN

Indigenous peoples began engaging with ASEAN only in recent years. The Asia Indigenous Peoples' Pact (AIPP) initiated the Indigenous Peoples' Task Force on ASEAN (IPTF-ASEAN), which was formed in 2009 following the Indigenous Peoples' Workshop on the ASEAN Intergovernmental Commission on Human Rights (AICHR), held in October 2009. The IPTF-ASEAN is composed of indigenous leaders acting as national focal persons from eight ASEAN countries with indigenous populations. Its objectives and tasks are to coordinate the participation and engagement of indigenous peoples in relevant ASEAN activities, to jointly formulate strategies and action plans, and to build solidarity and cooperation with the broader civil society organizations and networks aimed at supporting indigenous issues and developing a common platform for advocacy in ASEAN. The convener and coordinator of the IPTF-ASEAN is the Asia Indigenous Peoples' Pact (AIPP), which plays a leading role in advocacy for indigenous peoples' rights in ASEAN.

Since its formation, the IPTF-ASEAN has launched activities including information dissemination, capacity building such as training courses and workshops on ASEAN at the national and regional levels, and has participated in and jointly organized workshops with civil society organizations working on ASEAN. It has actively participated and organized workshops on indigenous issues in the yearly ASEAN Civil Society Conference/ASEAN Peoples' Forum, held parallel to the ASEAN Summit.

Despite the lack of formal venues to engage with ASEAN, the IPTF-ASEAN has held informal dialogues with members of the AICHR in order to get indigenous peoples included within the scope of their work, particularly in terms of pushing for the creation of a working group on indigenous peoples to look into indigenous issues and concerns. It has also submitted a briefing paper on ASEAN's Indigenous Peoples reflecting the human rights situation of indigenous peoples in the region. It has likewise made a submission on the rights of indigenous peoples that should be reflected in the ASEAN Human Rights Declaration currently being drafted by the AICHR. Through its engagement, the IPTF-ASEAN has established good working relationships with at least three members of the AICHR.

In November 2011, the IPTF-ASEAN made a breakthrough in its engagement with the AICHR when it organized an informal exchange between the African Commission on Human and Peoples' Rights-Working Group on Indigenous Populations /Communities (ACHPR-WGIP), three members of the AICHR, members of National Human Rights Institutions (NHRIs), the UN Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the IPTF-ASEAN. A significant result of this meeting was the invitation made to the ACHPR-WGIP representative to act as a resource person in AICHR's workshop on the ASEAN Human Rights Declaration. In addition, some members of the AICHR have expressed their interest in participating in an exchange visit during one of the sessions of the ACHPR and its WGIP to learn from its experiences of working with indigenous peoples. Further, a reception dinner organized by AIPP and the IPTF-ASEAN provided an avenue for interaction between indigenous leaders and members of the AICHR and NHRI representatives, paving the way for further engagement at the national level.

For 2012, the IPTF-ASEAN plans to strengthen its advocacy at the national level in order to engage the ASEAN bodies based in the member countries. At the regional level, the IPTF-ASEAN will strengthen its lobbying and advocacy, especially with regard to including indigenous peoples' rights in the ASEAN Human

Rights Declaration. It will also look into expanding its engagement not only with the AICHR but also with the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children, and on the issue of environment and climate change since most of the ASEAN members are REDD+ countries.

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PART III

GENERAL INFORMATION

ABOUT IWGIA

IWGIA is an independent international membership organization that supports indigenous peoples' right to self-determination. Since its foundation in 1968, IWGIA's secretariat has been based in Copenhagen, Denmark.

IWGIA holds consultative status with the United Nations Economic and Social Council (ECOSOC) and has observer status with the Arctic Council and with the African Commission on Human and Peoples Rights.

Aims and activities

IWGIA supports indigenous peoples' struggles for human rights, self-determination, the right to territory, control of land and resources, cultural integrity, and the right to development on their own terms. In order to fulfil this mission, IWGIA works in a wide range of areas: documentation and publication, human rights advocacy and lobbying, plus direct support to indigenous organisations' programmes of work.

IWGIA works worldwide at local, regional and international level, in close cooperation with indigenous partner organizations.

More information about IWGIA can be found on our website, www.iwgia.org, where you can also download our Annual Report.

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